

# Poor People's Wealth



plain language information about

TANZANIA'S  
PROPERTY AND BUSINESS FORMALISATION  
PROGRAMME

## MKURABITA

FEBRUARY 2007



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about

TANZANIA'S  
PROPERTY AND BUSINESS  
FORMALISATION PROGRAMME –

# MKURABITA

## **Acknowledgements**

Following the launch of the MKURABITA process, many people felt that it was necessary to produce a plain language information kit to familiarise Tanzanians with the programme. We hope that 'Poor Peoples' Wealth' enables a wide group of people to debate and discuss MKURABITA in an informed way.

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## **Abbreviations**

BEST – Business Environment Strengthening in Tanzania (MKUMBITA)

DR – Diagnosis Report

GPS - Global Positioning System

CLEP – Commission on the Legal Empowerment of the Poor (see details in Note 4 at the end of this booklet)

ILD – Institute for Liberty and Democracy (see details in Note 4 at the end of this booklet)

MKUKUTA – Kiswahili acronym for the National Strategy for Growth and the Reduction of Poverty

PBFP – Property and Business Formalisation Programme (MKURABITA)

PMU – Programme Management Unit of MKURABITA

SACCOS - Savings and Credit Cooperative Society

SIDO - Small Industries Development Organisation

SPILL – Strategic Plan for the Implementation of the Land Laws

SUDP - Strategic Urban Development Planning

TBA - Tanzania Bankers Association

## **MKURABITA STRATEGY**

To set up a unified national system of property rights and businesses. This system will be built from a harmonious marriage of standardised and modernised customary practices from the bottom-up and the relevant modified laws from the top-down.

## **MKURABITA GOAL**

To empower groups and individuals, especially in the informal sector, so that they can participate effectively in the modern, formal, market economy.

## **MKURABITA OBJECTIVE**

To empower the marginalised majority in the informal sector so that they can make better use of their property and business assets and take advantage of other opportunities in the modern market economy. They will therefore be able to expand their businesses, increase their income and participate in the reduction of poverty.

## **MKURABITA EXPECTED RESULTS**

Reduced individual household poverty, improved living standards of the target group and an expanded national economy that is governed by the rule of law.

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# Introduction

This is a plain language information kit about Tanzania's Property and Business Formalisation Programme (PBFP), which is popularly known by its Kiswahili name of MKURABITA. The information kit is in two parts.

**Part One** outlines the main ideas behind, and the proposed outputs of, the MKURABITA programme. It is in four sections. Firstly, we briefly introduce MKURABITA. We look at the idea that 'formalising' the assets of Tanzanians will lead to a reduction in poverty by making it easier for people to borrow.

We then move on to look in more detail at the ideas behind formalisation and how it could contribute to poverty reduction. We look at three sets of economic 'tools' that are useful in a modern economy and at the move from a traditional informal economy to a modern formal economy. We look at the barriers faced by Tanzanians in dealing with the legal and bureaucratic system today and we note that a formalisation process involving a marriage between traditional and modern legal systems could make it easier and cheaper for Tanzanians to participate in the modern economy. We also explore other issues that must be addressed if the reforms are to enable the poor to benefit from formalisation. The third section of Part 1 looks at some of the main reforms that have been discussed during the current Reform Design stage of MKURABITA. **In order to address these issues, the Government and Parliament must decide what changes to make in laws, procedures and government programmes. Some of the potential reform proposals set out here may be approved, others not; some could be implemented quickly, others would take much longer.** The final section looks at some of the linkages between MKURABITA and other programmes and at who is responsible for its implementation.

**Part Two** discusses aspects of MKURABITA through questions and answers. These represent a combination of the views of stakeholders and the authors of this book. You may or may not agree with some of the answers but we hope they will stimulate you to follow the MKURABITA process as it unfolds.

The information kit has been designed to help readers dig deeper into those topics that most interest them. There are footnotes at the bottom of many pages pointing to areas of MKURABITA documents which deal in depth with particular topics. There are also notes at the end of the booklet which expand on ideas that were passed over quite quickly in the main text. For extra support there is also a list of useful internet links for those who wish to put MKURABITA in international perspective.

... there is no single approach to reform.

**The fundamental challenge ... (is) to frame an incentive-based strategy that takes into account the complexity of the legal, social, cultural, political and economic dimensions of informality – a strategy that is both bottom-up and top-down, fully reflecting the objectives, priorities, and concerns of the poor; a strategy that is transparent, broadly owned, and supported by an approach to effective implementation.**  
CLEP (Jan 2006) p5

## Part One: The Programme

# 1. What is MKURABITA?

**In this section we briefly introduce MKURABITA. We look at the idea that ‘formalising’ the assets of Tanzanians may lead to a reduction in poverty, as it may be easier for people to borrow and invest when their assets are legally secured. We point out that MKURABITA is a complex programme which is in the design phase and that many aspects of how it will operate remain unclear.**

Although the Tanzanian economy has been growing in recent times the benefits of that growth are not always reaching the poorest members of society. This means that poverty reduction is not happening fast enough.

The Government of Tanzania has initiated a number of policies and programmes aimed at achieving growth and reducing poverty by increasing the participation of all Tanzanians in economic activities.

The main Government policy behind these initiatives is the Economic Empowerment Policy, which aims to enable Tanzanians to own, run and benefit from their own economy. In order to achieve this objective, programmes have been put in place to remove some of the barriers to economic activity faced by many Tanzanians. Two of the aims of the empowerment policy are to improve the access of Tanzanians to capital and to improve the legal and regulatory system in order to make it more user friendly.

One of the ideas that the Government is looking at as a possible method of increasing economic participation involves bringing more people into the formal, documented economy.

The idea behind this is that many poor people do actually possess wealth in the form of land, small businesses and other property, but that this wealth is not legally recognised, or ‘formalised’. If people do not have secure title to their land, or work in unregistered and unregulated business, they may have little access to capital or be unable to expand their economic activities beyond their own local area. So, the main idea behind MKURABITA is to make it possible, affordable and desirable for poor people to operate within the formal, legal system<sup>1</sup> so that they



**What about people with no property to formalise—the poorest of the poor? How will they benefit?**

***What kind of property is MKURABITA concerned with?***

**Mostly, it is land, houses and other buildings. However, some aspects concern moveable property such as a bicycle, a radio or a car that could be used as security to get a loan**

<sup>1</sup> Note 1 lists some stakeholder views of the gains and risks that might be involved in becoming formalised



can make use of their assets to increase their participation in not only local markets, but also national and global ones. The overall goal is to reduce poverty.

The idea that giving people formal title to their property and business will improve their economic chances has gained a lot of attention internationally through the work of a Peruvian economist called Hernando de Soto<sup>2</sup>. De Soto observed that most of the world's poor are involved in the informal economy, which is largely unregulated by the laws of countries. He sees informality as a barrier to economic and social development because people have few legal rights and protection and are, therefore, vulnerable. President Mkapa invited Hernando de Soto to address the Tanzanian parliament in February 2003 and this led to de Soto's Institute for Liberty and Democracy (ILD) being commissioned to prepare a Property and Business Formalization Programme (PBFP), better known by its Swahili acronym, MKURABITA. MKURABITA is being developed in stages:

<b>Diagnosis</b> (ended October 2005)	This stage involved an evaluation of the nature and size of the country's legal and informal sectors along with an analysis of the advantages and disadvantages of staying outside the present legal sector.
<b>Reform Design</b> (ends in October 2007)	This stage will set out the details of a policy and strategy to integrate informal property and businesses into legal systems so as to boost economic growth, reduce poverty and eventually expand the tax base.
<b>Implementation<sup>3</sup></b>	This stage will take place over several years and will create public awareness, train administrators and generally make sure that the various different reforms are effectively put in place and that formalised property can be used to generate additional wealth, create capital, and achieve sustainable development.

MKURABITA will be a very challenging programme to implement. It is important to realise that the programme is not just about formalising the assets of the poor. It will also aim to increase entrepreneurial capacity and standards in Tanzania in order to take advantage of a formalised economy. In the end, the programme is intended to contribute to the goals of MKUKUTA. Its scope is such that it will require complex coordination with a number of Government Ministries, Departments and Agencies. It also has many aims in common with other

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<sup>2</sup> His ideas are presented in two books – “The Other Path” (1989) and “The Mystery of Capital – why capitalism triumphs in the West and fails everywhere else” (2000)

<sup>3</sup> The official MKURABITA document mentions a fourth stage, ‘Capital Formation and Good Governance’, but in practice this is not separate from implementation.

Government economic empowerment programmes such as BEST (MKUMBITA) and SPILL. How it will fit in with these programmes is unclear at present.

According to ILD, the potential rewards could be immense. The diagnosis study undertaken by the Institute suggests that US\$29 billion of ‘dead capital’ is presently tied up in the land, property and businesses of the extralegal sector. If this pool of capital could be accessed, the Institute predicts that it would have an enormous impact on lives of the 90% of Tanzanians who are presently excluded from the legal system. The promise is for expanded economic growth from which everyone benefits, if only we could identify and learn to make better use of poor people’s wealth. However, research in countries where a degree of formalisation has already taken place suggests that while poor people may take the opportunity to get proper title and registration for their land and businesses, they are less likely to use these documented assets as collateral for a loan. We will explore some of these issues later in this guide.

## 2. Why Formalise?

In this section we look in more detail at the ideas behind formalisation and how it could contribute to poverty reduction. We look at three sets of economic ‘tools’ found in modern economies and at the move from a traditional informal economy to a modern formal economy. We look at the barriers faced by Tanzanians in dealing with the legal and bureaucratic system today. Finally, we note that a formalisation process involving a marriage between traditional and modern legal systems could make it easier and cheaper for Tanzanians to participate in the modern economy. We also explore other issues that must be addressed if the reforms are to enable the poor to benefit from formalisation.

### The foundations of a modern economy

In traditional economic systems people deal on trust, largely with family and friends, so there is no need for paperwork. In modern economic systems there is the problem of dealing with strangers and deciding if they can be trusted. Standardised legal documents and procedures can help to bring the rule of law and security to modern economic transactions.

History suggests<sup>4</sup> that there are three sets of economic tools which must be in place if a nation is to develop an economic system that includes everyone. The tools are (a) secure property rights, (b) appropriate business organisation forms and (c) access to expanded markets. We will consider each of these in turn. Then we will look at some of the building blocks that must be added to this foundation to enable poor people to take advantage of them.



<sup>4</sup> See MKURABITA Work Plan-Reform Design Stage, Annex 1 for a 4 page briefing by the ILD on this topic

**Table 1: Three sets of economic tools**

<b>Tool 1- Property Rights</b>	In the modern economy it can be very helpful to have official, documented proof that you own your property. These documents not only help with security of tenure but they can also be used to guarantee a loan.
<b>Tool 2- Business Organisational Forms</b>	In the modern economy businesses often benefit from having a standardised legal identity in order to distinguish them from their owners. Once this legal identity is in place, strangers feel more secure about dealing with these businesses. Businesses also need to have a well thought out division of labour and standardised employment contracts.
<b>Tool 3- Tools for Expanded Markets</b>	In the modern economy businesses look for customers and associates at the national or even international levels. This involves having reliable and standardised legal documents and identification tools that allow businesses to form networks of secure, long distance contacts and transactions.

When thinking about these tools it is useful to also think in terms of three levels in the way that they provide legal security and allow for market inclusion. The idea is that once rights and titles have been formally documented<sup>5</sup> they can then be centrally registered and this will make it much easier to deal with strangers and thus make your assets and businesses grow. The three levels are described briefly in the table below<sup>6</sup>.

**Table 2: The three levels of security and inclusion**

<b>Level 1- Documentation</b>	Property rights, business organisations and contracts can be officially documented using legally binding, standardised forms. You may then be able to use your ‘assets’ in a much more flexible way.
<b>Level 2- Registration</b>	Copies of documents can be deposited in official registries (some local and some central – but all linked). Your assets are then more secure and reliable.
<b>Level 3- Market Inclusion</b>	Once documentation and registration is standardised and formalised then the door is open to the expanded system of national and global markets. This means that the potential for the growth of your business, and thus the economy, is enormous.

<sup>5</sup> A recent semi-humorous jargon word for this process is ‘paperisation’

<sup>6</sup> See Note 2 for a matrix of the initial reform issues categorised according to the three modern economic tools and the three levels of security and inclusion.

## The move from informal to formal



So, when thinking about what MKURABITA is proposing, it is useful to think of a development path leading from the traditional, informal system through a modern, informal system to a modern, formal system. The following table outlines some of the differences.

**Table 3: towards a modern, formal economy**

<b>TRADITIONAL</b>		<b>MODERN</b> The world of documents and laws - dealing with strangers
<b>Informal</b> The paperless informal world - dealing with family and friends	→	<b>Informal</b> Locally recognised documents and registers
		→ <b>Formal</b> Legal, standardised documents and registers

Research carried out by ILD shows that many Tanzanians are already moving away from traditional ways of managing their land and running their businesses<sup>7</sup>. They see the need for written documents, and for registries where the documents can be stored safely. However, if it were simple and affordable for people to move directly into the modern economy they would already have done so in large numbers. The truth is that it is neither simple nor affordable for ordinary Tanzanians to operate in the formal economy. Therefore, many poorer Tanzanians are forced to use more informal systems. This is because they cannot afford the time or the money needed to use the formal, legal and standardised national systems which already exist. The ILD research also looked at the extent of the problems faced by ordinary Tanzanians when dealing with the legal sector and bureaucracy. We look at what they found out next.

### Towards the people's law

**... many eager entrepreneurs are busy inventing their own practices, mechanisms, and associations to do business, to register and protect their deals and their property, to grow their businesses, to enforce their invoices and contracts, to expand into new markets - all of this in an effort to improve their productivity and economic situation.**

**Forced to operate in the shadows of a hostile, discriminatory, and unaffordable legal system, tens of thousands of Tanzanians are, in effect, spontaneously generating their own laws - the people's law. [ILD Diagnostic Report Vol. 2 p8]**

<sup>7</sup> The ILD Diagnostic Report gives many detailed examples of these emerging systems

## The legal sector – costs in time and money



The legal system needed to deal in property and to start up, operate, expand and eventually close a business appears to be in place in Tanzania. But only 11% of properties and 2% of businesses are using them, according to the ILD research. Why is this? Basically, the existing system lacks transparency, predictability and economic sense.

The following two boxes offer examples of what the problems are and of the barriers that are blocking poor people from engaging with the legal economy. The information comes from fieldwork and interviews with real people in real situations in present day Tanzania<sup>8</sup>.

### What does it take to do business in Tanzania's Legal Sector?

If an entrepreneur in Arusha wants to start up a legal business, the simplest way is to register as a sole proprietor. This will mean spending 60 hours in government offices and it will cost US\$ 81 in fees. After an average period of about 86 days, he will get his license to operate.

He might then decide to incorporate as a private company so as to reduce risks and/or to raise capital from partners. This will take another 1,628 hours in government offices and will cost another US\$ 1,040.

If he has dreams of making his business grow, he will need to get a bank to lend him some money against his property. That will require a "certification of allocation of land for urban purposes," planning consent, a building permit, and a mortgage registration fee. It will cost US\$ 1,548 and take 144 hours in government offices to get approvals - which will come after a total of 1,046 days.

And then over the years there will be other business costs. 8 hours (US\$ 11) to pay an annual business registration fee; 60 hours each time (US\$ 74) to get annual approval to legally advertise; 28 hours each time (US\$ 35) to obtain insurance every year; 96 hours each time (US\$ 993) to object to taxes levied; 164 days (US\$ 2,539) to resolve disputes with another business; and 48 hours (US\$ 1,783) to "wind up" his company.



<sup>8</sup> The numbers used are overall national averages. The actual details will vary from one business type to another and from place to place around the country.

## How much can the current rules cost your business?

On average, over the life of a business that lasts for 50 years, an entrepreneur will have to pay US\$ 91,000 and spend 1,118 days (or 4 years) in Government offices seeking various licenses, permits, and approvals. (During this time he could have earned another US\$ 9,350!) Then he will have to wait another 32,216 days to receive the proper permits and approvals, losing another US\$ 79,600 in potential income.

The grand total of these large and unjustified costs is almost US\$ 180,000. This is enough money in today's Tanzania to create 31 more small enterprises. If he had put that same amount of money into a savings account with 5% annual interest, he would have earned at least US\$ 9,000 a year. This is equivalent to 33 times the Gross National Income per capita. If he put that US\$ 9,000 back into his company, he could triple the size of his business - every year.



The following table offers a very small selection of costs and burdens associated with different types of legal procedures. Fieldwork and interviews allowed researchers to divide each procedure into a series of stages and steps. These were then used as the basis for calculating the number of days an average person takes to get through the procedures and how much they have to pay. The results explain why so many poor people are forced to operate within the extralegal sector.

**Table 4: Costs in time and money of legal procedures**

Procedure:	Stages	Steps	Days	Costs
To legally incorporate a private company (Bureau of Change) in Mbeya	10	103	379	US\$5,506
To resolve commercial disputes at the commercial court division (claims for a debt)	9	96	390	US\$11,964
To collect a debt by executing a court decree	5	7	1286	US\$1,022
To allocate land for building purposes and to obtain a building permit	13	68	2920	US\$2,252

## What changes are necessary?



In order to make it easy for most if not all Tanzanians to use the formal legal system it will be necessary to make changes that marry the formal and informal systems together to form a single system, affordable to all.

The existing formal, legal system has to be simplified and adapted so that it meets the needs of the great majority of Tanzanians who operate in the informal sector<sup>9</sup>. Also, the various procedures and documents in the informal sector need to be adapted so that they become more formal and are in harmony with the improved legal system. This will involve some changes from the top down and others from the bottom up.

Once these changes have been made there will be one rule of law instead of two and the economy can expand to include all members of society. The necessary pattern of reform is gradually emerging from ongoing discussion with stakeholders.

If a simple and affordable legal and bureaucratic system can be set up, it will make it easier for Tanzanians to increase their participation in the economy. For example, if Tanzanians are able to register their businesses in one or two steps by visiting an office that is close to where they live, they will be much more likely to do so. If business registration is linked to a standard form of personal identification, which enables customers and suppliers to be comfortable about who they are dealing with, then businesses will be able to operate over a much wider area. This will improve on the more traditional system of asking a VEO or Village Chairman to sign a non-standard identity form, which may not be widely accepted.

Similarly, if formalisation means that it is possible to get a certificate of customary right of occupancy in a few steps, instead of filling many forms and spending many days visiting various offices, it will be possible for many more people to document and register their ownership of their property.

However, if formalisation is to enable Tanzanians to take advantage of the opportunities presented by a unified national system of property rights and business organisation more building blocks will be needed. These building blocks would build on the foundation of the economic tools MKURABITA is aiming to provide and address a number of obstacles faced by Tanzanians wishing to increase their participation in their economy.

### THE BUILDING BLOCKS-OTHER MKURABITA ISSUES



#### 1. People need training to succeed in a formalised economy

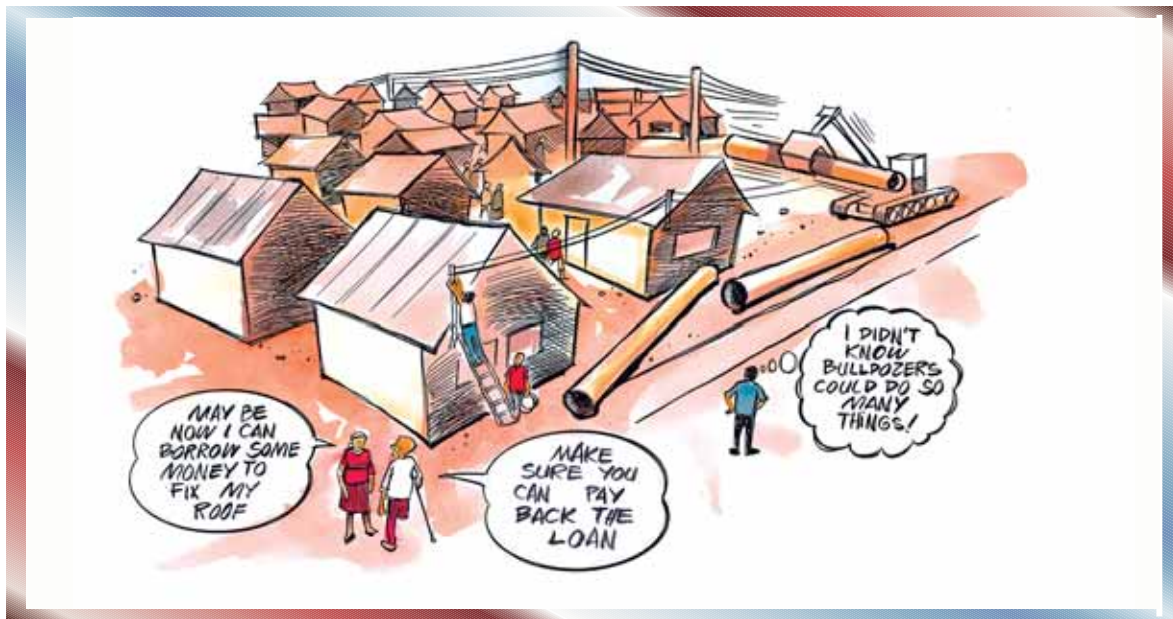
People working in the informal sector, in other words most Tanzanians, will have to be provided with the skills required to expand their businesses in the formal sector. At present many people in the informal sector have low levels of business education, little market information and poor production technologies. In addition, informal sector business associations are weak in management and planning. For many in the informal sector, improved property rights and business registration and licensing will not alone be enough to enable them to succeed: informal operators will need training, information and strengthening of their associations. However, at present many government departments and local authorities are poorly equipped to provide business support and training to many people due to various reasons, including lack of extension staff.

<sup>9</sup> See Note 2 for some examples. These are linked to reforms of public administration and also to improving Property Rights, Business Organizational Forms and Expanded Markets.



## 2. Financial institutions must be willing to lend to small and micro enterprises

At the moment, small businesses and poorer people have great difficulty getting loans from financial institutions. One of the reasons is that the banks must operate within rules, set by the Bank of Tanzania, that reduce the risks they can take with the savings of their customers. It will be necessary to review these rules in order to make it possible for banks to help people take advantage of their formalised assets. This is just one of many tasks that will need to be done to expand the provision of credit to small borrowers.



## 3. A standard personal identification system is needed

If a property or a business is registered in a person's name, we will need to know if this is the same person that is standing in front of us! In order, to do this a national ID system is needed to enable us to check national and local business and property registers and to find out if this person is likely to be a reliable borrower or business partner.

## 4. Local government record keeping must improve

At present, many local governments use a manual system of filing records. Often, poor filing and bureaucratic delays can cause problems for people trying to register and access records. Standardisation and computerisation of filing systems could help to enforce standards and make information accessible. It will be important to ensure that this is done carefully and with enough technical support and money for repairing and replacing equipment.

## 5. Governance and access to justice must improve

If poorer people are to have an incentive to formalise their property they must be sure that the government and the judicial system will treat them fairly. They must be sure that the system will not be open to official abuse and that richer people will not be able to gain unfair advantage. Implementation and enforcement of standards must be accountable. The taxation system must be fair and the justice system must be accessible to everybody.

In Section 3, we will look at the changes that are being proposed in a little more detail.

# 3. MKURABITA Reforms - What is being proposed?

Here we look at some of the main reforms that have been discussed during the current Reform Design stage of MKURABITA. In order to address these issues, the Government and Parliament must decide what changes to make in laws, procedures and government programmes. Some of the potential reform proposals set out here may be approved, others not; some could be implemented quickly, others would take much longer. By looking at these proposals you can start to decide how MKURABITA might be relevant to you.

As we saw at the start of this guide, the objective of MKURABITA is to empower the marginalised majority in the informal sector so that they can make better use of their property and business assets and take advantage of other opportunities in the modern market economy. The reforms are aimed at enabling the target groups to expand their businesses, increase their income and participate in the reduction of poverty.

So, how is it proposed to implement this strategy and to achieve the objectives of the MKURABITA reform programme? We will look at the proposed reform issues and the activities associated with them under four headings:<sup>10</sup>

1. Make it easier to get clear land rights and to transfer them
2. Make it easier to operate a business legally and profitably
3. Make it easier to access loans and other financial services
4. Set up an efficient information system

In most cases, reforms will take place separately in Mainland and Zanzibar, due to the differences of laws and administrative systems in these two territories of the United Republic. However, the key aspects of most reform proposals apply to both territories. Look at the changes being considered and try to find the ones that affect you directly.

## 1. Make it easier to get clear land rights and to transfer them

In the countryside, most land users have a legal right to occupy and use the land they are now using (a Customary Right of Occupancy) but do not have a formal certificate of title, which is added evidence of that right. In the cities, urban plans are not updated often enough to cope with expanding population and development and do not include enough appropriate places where people can set up new businesses without fear of eviction. Many people living in unplanned urban settlements do not even have a legal right to occupy their plot (although recently in Dar es Salaam some people have received temporary licenses that give them some

<sup>10</sup> Many of the following potential reforms were mentioned by the ILD in its Diagnosis Report and in its workplan for the Reform Design. For a summary of those earlier suggestions, see Note 2 at the end of this Guide.

security). If you want a certificate of title to your plot, the process of surveying it and applying for title is slow and expensive, especially in rural areas.

Having a certificate of title to your land may help you to keep control of your land. However, even with title, it may be difficult to avoid disputes about your land. This is because there is no reliable official system for **registering** titles and other documents that give rights to use land (such as your neighbour's lease of part of your land, or what you agreed when you settled a boundary dispute with your neighbour). For the same reason, certificates of title to the same land are sometimes issued by different officials to different people. Lenders such as banks who want to use land as security for a loan cannot get reliable information about your title and any rights (such as a lease) that you have given to others. When there is no reliable registration of land rights, it is difficult to check whether the rights of spouses and children are protected.

## What changes are being considered?

- **Create simple, standard procedures for documenting and registering contracts and agreements concerning land**

→Speed up the establishment of village registries (in urban areas these are called local registries), and give local officials the power to approve and register documents relating to land.

- *Note: see Reform Area 4 for more information about how the system of registering land documents could be made more effective.*

- **Create simple, standard procedures for resolving disputes over land**

→Train local officials, e.g. Village or Street Executive Officers, to help people in dispute with each other over land to reach clear agreements that can be legally enforced. Provide guidelines for mediation by these officials and by Village Land Councils and Ward Tribunals. This would include using new standard forms to record essential facts about the agreement, certifying the forms and maintaining a copy in a proper filing system so that people concerned with that land can see what has been agreed.

→Instead of the Minister of Lands, local authorities could appoint mediators in village boundary disputes. Land-use planning and titling of plots could continue in areas that are not disputed.

- **Make it easier to get formal title to land**

→Speed up the process of surveying village land and allocating certificates of title. The map of village boundaries and the certificate of title for the village land as a whole could be approved in the district, instead of the Ministry. Instead of relying on district officials, ward and village officials could be trained to support participatory land-use planning by village communities.

→To save time and costs, entire villages could undergo 'blanket titling' of all individual plots. VEOs and ward officials could be provided with hand-held GPS and training to enable them to do this. Instead of three forms, only one could be used to apply for a title certificate for a plot, and people with a

customary right of occupancy could receive a certificate without needing a letter of offer.

→ Rural communal land and urban public spaces could be demarcated and protected.

→ Speed up the process of ‘regularising’ informal urban settlements. This would include decentralising decisions that now have to be made by the Ministry of Lands, using private urban planners (instead of government officers) to develop plans for regularising each settlement, and surveying plots without waiting for infrastructure and services to be installed. Improving the local registration of titles would also help (see Reform Area 4).

→ Make urban planning processes more effective. Urban plans would incorporate ways to ensure enough suitable places for small-scale business operators.

- **Make it easier to transfer property title and rights (including Customary Rights of Occupancy)**

→ Speed up the procedures for selling or transferring land: enable land to be transferred without waiting for officials to check that the land has been used properly and taxes have been paid; simplify the taxes on land transactions; instead of the Land Officer, the registrar or a notary could check that the transfer document is legally correct.

→ Make the registration of land documents more accurate and complete, so that people buying or leasing land can be sure there are no hidden claims or problems.

## **2. Make it easier to operate a business legally and profitably**

At present, complicated and inefficient procedures discourage small business people from entering the formal economy. Registering a business and obtaining the necessary licenses to operate takes much time and money, and licensing requirements are unclear and changeable. There is no simple form of business registration for the many people in the informal sector who do business as members of a group or association.

It can be very difficult to enforce a business contract. Most people cannot afford to use the courts to settle business disputes, but cheaper, quicker methods such as arbitration may be ineffective because they are not done according to clear standards. Moreover, if a case goes to court, only contracts that have certain features and are certified and registered can conclusively prove what was agreed.

Even if they are registered and licensed, most small informal-sector operators still need well-located premises where they can operate free from fear of eviction (see Reform Area 1, above). They also need information, advice and training to improve their business to a level where they can benefit from operating more formally: for example, to maintain accounts to a standard that is acceptable to banks and the tax authority. This kind of support may be easier to obtain through an effective business association.



## What changes are being considered?

- **Make it easier to register and license a business**

→The procedures for registering a business could be greatly simplified to reduce the waste of time and money. This issue is principally being addressed through the BEST programme.

→The personal financial risks of some business people could be reduced by creating 'limited liability' partnerships for those who do business as members of a group, and 'limited liability' sole proprietorships for those who work independently. Limited liability completely separates the money and assets of the business from those of the owner, so the owner does not have to pay all the debts of the business if it fails.

- **Create simple, standard procedures for documenting and registering business contracts that are legally enforceable.**

→Simple, standard forms for common types of commercial contract could be provided through Village and Street Executive Officers. These could include forms for purchases, loans, leases and other common types of contract. The forms would ensure that the basic legal features of a binding contract are included. Village and Street Executive Officers would receive guidance and

training in certifying and registering the contracts, and costs would be covered by a service fee.

- **Make it easier to use local arbitration and conciliation services to resolve business disputes, instead of slow and expensive court cases.**

→ Local officials, e.g. Village or Street Executive Officers could be trained to help people in dispute with each other over land to reach clear agreements that can be legally enforced. Provide guidelines for mediation by these officials and by Village Land Councils and Ward Tribunals. This would include using new standard forms to record essential facts about the agreement, certifying the forms and maintaining a copy in a proper filing system so that people concerned with that land can see what has been agreed.

→ An official conciliation and arbitration service could also be established (staffed by trained arbitrators, not lawyers) to help businesses to resolve disputes more quickly and cheaply without going to court.

→ The law could be changed to enable Primary Courts to enforce agreements that have been reached through a valid process of conciliation or arbitration, while removing the Court's power to change what was agreed.

- **Help informal business people to acquire the knowledge and skills they need to operate effectively in the formal economy.**

→ Simple guidelines could be given to small business operators showing how they can comply with laws: for example how to prepare adequate financial accounts, pay the right amount of tax and observe the labour laws. Training in these and other areas of business management could be extended to more small businesses. Better mechanisms could also be devised to keep small businesses informed about the financial and other services available to them.

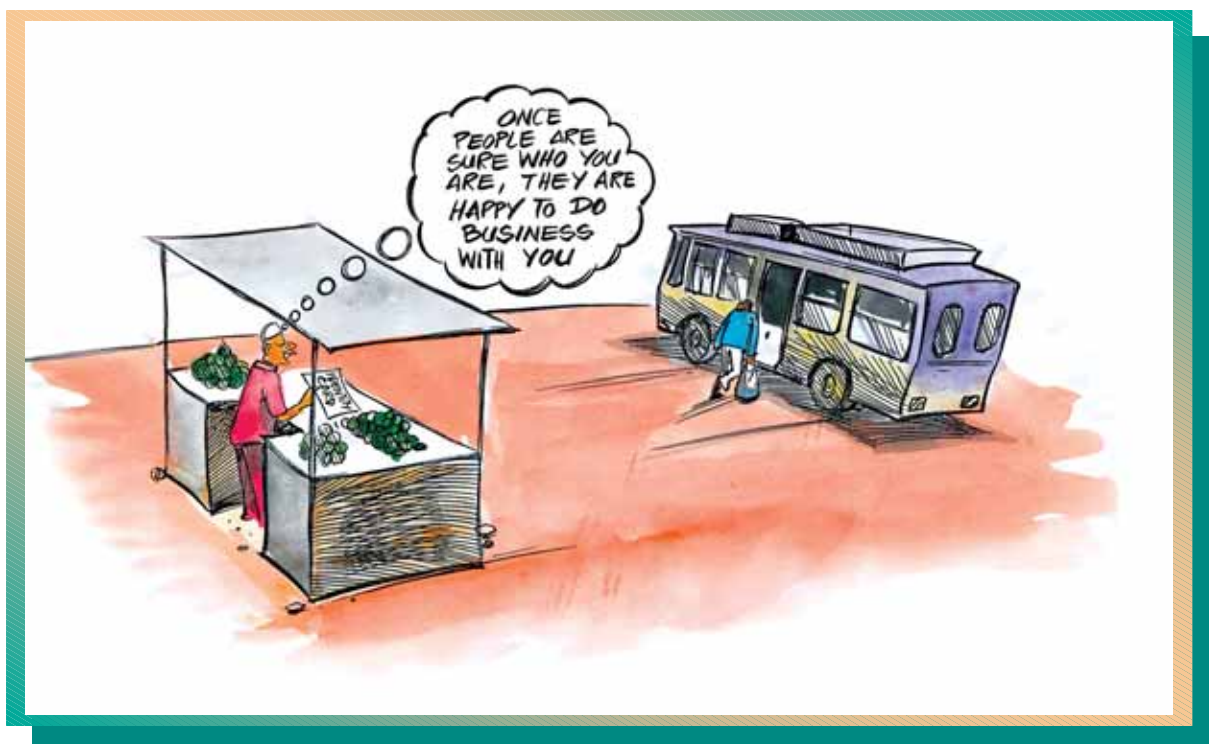
→ Services of these types might be provided by existing institutions such as the Small Industries Support Organisation (SIDO), by a unified business registry (see Reform Area 4, below), or by some other unit established to support the transition of small businesses to formality.

→ Build capacity of business associations to serve their members better.

- **Make rules for simplifying administrative procedures.**

→ A new General Law of Administrative Procedures could be made to ensure that each government department has just one set of procedures, and that these are made as transparent and easy as possible for poor people to follow. The law would specify the standards for officials to act legally, responsibly and fairly, for eliminating time-wasting requirements and for dealing with feedback and complaints from the public.

→ Taxes payable by small businesses could be made more simple, predictable and affordable.



### 3. Make it easier to access loans and other financial services

It can be very difficult for people to get credit to establish, maintain or develop their business (whether that business is a small farm or a factory). One way to encourage more lending is to make it easier to use land or other property as security for a loan – or to make the loan less risky for the lender in other ways. Presently there is no legal system for registering a pledge (where moveable property such as a radio or a car or a future harvest is used as security for a loan). Thus, a bank making an agricultural loan cannot be sure whether the borrower's security – some of the next harvest, or a bicycle - has been promised to another lender. Similarly, mortgages (where landed property is used as security for a loan) are often not properly registered, so a bank does not know if the property is already mortgaged to another bank.

#### What changes are being considered?

- **Make it easier to use land and other assets as security for a loan.**
  - A system could be established for registering pledges in village or local registries. Pledges of harvests could be registered in the Village Land Registry.
  - The process of making a pledge or mortgage could be speeded up by using simple standard forms, removing some of the initial checks, simplifying the taxes on land transactions and enabling a notary or registrar to certify the legality of the mortgage (instead of a District Land Officer).

- **Make it easier and safer for banks to lend money**

- Having a certificate of title to land may help a borrower to get a loan – either by using it as security for the loan or as a way of proving their identity and address.
- People could borrow more easily if they have standard, widely acceptable forms of identification documents (see Reform Area 4 below).
- The registry should contain clear and accurate information about the spouse or spouses of title holders.
- Financial institutions that accept land as security for a loan based on information in the Village or Local Land Registry could be protected against losing the security: so a person having an earlier right to the land that is not registered could not prevent the land being taken if the loan is not repaid.
- The Government could work with the Tanzania Bankers Association (TBA) to harmonise lending conditions for small enterprises and establish guarantee mechanisms for small business loans. The Bank of Tanzania's rules for the precautions that banks should take when making small loans could perhaps be relaxed to make it easier for banks to lend.
- If a secured loan is not repaid, lenders might use a professional conciliation and arbitration service (see below) to take possession of the collateral (land or other assets) instead of going to court.
- A new Credit Reference Bureau would help banks to assess whether a borrower is reliable (see Reform Area 4, below).

## 4. Set up an efficient information system

A co-ordinated information system can help to answer essential questions. Is this person or company reliable to do business with or to lend money to? Is there a boundary dispute on this land that I want to lease? Does someone else have another title certificate for the same land? As a spouse, are my rights to land registered? Has this borrower already pledged her sewing machine as security to another microfinance institution? As a bank manager, can I accept this land as security for a house-building loan, or has it already been secured by another lender?

It is difficult to get reliable information about a person or a company to check whether what they say about themselves is correct. There is no standard document that a person can use to prove their identity. A person or company may be in debt to many creditors, but there is no place to find that out. This makes it risky to deal with people or companies you don't know personally – and sometimes even with people you do know. Information about land may be held in different places and in different forms.

Public information is kept in registries (from village to national level), but documents are not properly standardised, and files are not kept in ways that keep documents safe and enable them to be found quickly when they are needed. There are separate registries for different forms of business, which makes for extra cost and inefficiency.



## What changes are being considered?

- **Establish a clear and accessible network of document registries to record contracts and agreements.**

→ Create a single registry at village or street level for all contracts and agreements concerning land, business, disputes and other matters. VEOs and MEOs could be trained and provided with standard formats and rules for writing agreements and contracts, and for certifying, registering and filing them correctly. An official fee for each document could fund this service.

→ Agreements made previously could be registered if the essential details are copied to the appropriate standard format.

→ VEOs and MEOs would send a copy of each registered document to the District Registry, which would file it and send basic information about the document to the Zonal Registry (there are six zones in Tanzania).

- **Unify the land registration system**

→ The three main registries of land rights (the Village Land Registry, the Local Land Registry and the Registry of Titles) could work in a more co-ordinated way, using the same standards for documentation, registration and filing, and passing data to a central unit that ensures the whole system provides reliable information.

- **Establish an integrated and simplified business registry and business information system.**

→ Essential standards of documentation, registration and filing could be adopted by all registries of businesses and organisations.

→ Subsequently, the separate registries (for companies, business names and co-operatives) could be merged into one new business registry using a unique number for each business, thus helping identify it in all its dealings. This registry could take charge of seeing that all business licenses are issued or objected to within a time limit. It could also provide simple information to all registered companies to help them comply with the law.

→ A Credit Reference Bureau could be set up to provide information to potential lenders or business partners about how people and businesses have honoured their various financial obligations. This information would be automatically updated from different sources: the land and business registries, the tax authority, TANESCO and others who sell on credit. It would be linked to the new Credit Reference Databank established in 2006 to give information about borrowers who have defaulted on debts to banks. People must be able to see what information is kept about themselves, and there would be clear rules on who can request information.

### Did you know?

A publicly registered document is accepted as legal proof of what the parties agreed. Everybody has a legal right to see any publicly registered document (but may have to pay an official fee for this)

- **Create a standard system of personal identification.**

→ The Government is considering introducing national identity cards that would assign each person a unique number. Alongside this, the letters from Village or Street chairpersons that confirm people's address or their personal background could be converted into official certificates of residence or background, in a standard format. These could be signed by the village/street chairperson, certified by the village/street executive officer and recorded in local registry book – and could be signed at a district level if they need to be accepted in other parts of the country.



**Remember:**  
These reforms are proposals only at this stage. They are being discussed by wide ranging groups of stakeholders. In Part 2 of this book we will look at some of the questions that are being asked about MKURABITA. Through these questions and their answers we look at some of the views and concerns of stakeholders who have already commented on the programme.

## 4. MKURABITA - Responsibilities and linkages

In this section we look at who is responsible for the implementation of MKURABITA and at some other Government programmes doing work which is relevant to the MKURABITA reforms.

### ***MKURABITA - who is responsible?***

MKURABITA is a rolling programme which will involve more and more people as time goes on. In the early stages there are three key participant groups whose tasks are as follows:

#### **Government of Tanzania**

- Provide political leadership
- Sustain commitment and keep the Programme as a priority on its agenda
- Make key and strategic decisions

#### **Programme Management Unit (PMU)**

- Provide technical, administrative and logistical support
- Help interaction with government offices and stakeholders
- Implement awareness and communications campaigns

#### **Institute for Liberty and Democracy (ILD)**

- Provide technical leadership
- Define content issues
- Conduct research
- Prepare proposals and reform plans

**Could these reforms be implemented by existing government programmes, or are new 'MKURABITA' institutions needed?**



*Several existing government programmes are concerned with some of the reform areas being considered in MKURABITA. Here are some aspects of the three most relevant programmes.*

The **BEST** programme (Business Environment Strengthening in Tanzania), led by the Ministry of Planning, Economy and Empowerment, is intended to address several of the same issues as MKURABITA. Its purpose is to make it easier for Tanzanians and foreigners to operate a profitable business. It is funded by several foreign governments and the World Bank. BEST has financed the Ministry's new "Better Regulation" unit, which is responsible for suggesting changes in the laws and regulations so that they do not impose unnecessary burdens on businesses. This unit has developed a new law – the Business Activities Registration Act - to make registration and licensing of businesses easier and more efficient.

The **SPILL** (Strategic Plan for Implementing the Land Laws), led by the Ministry of Lands and Human Settlement Development, has been trying out ways to survey and give certificates of title to village and urban land, and to set up local registries for land documents. This includes granting official licenses for people to continue living in their homes in unplanned areas of Dar es Salaam. These licences last for two years but can be renewed, and are meant to be exchanged for a proper certificate of title after the areas have been surveyed. In Mbozi district, most villages have been issued with certificates of title to the village land, and some people with customary rights of occupancy have received a certificate of title. The Ministry of Lands intends to expand this process of titling to 30 more districts and to other cities.

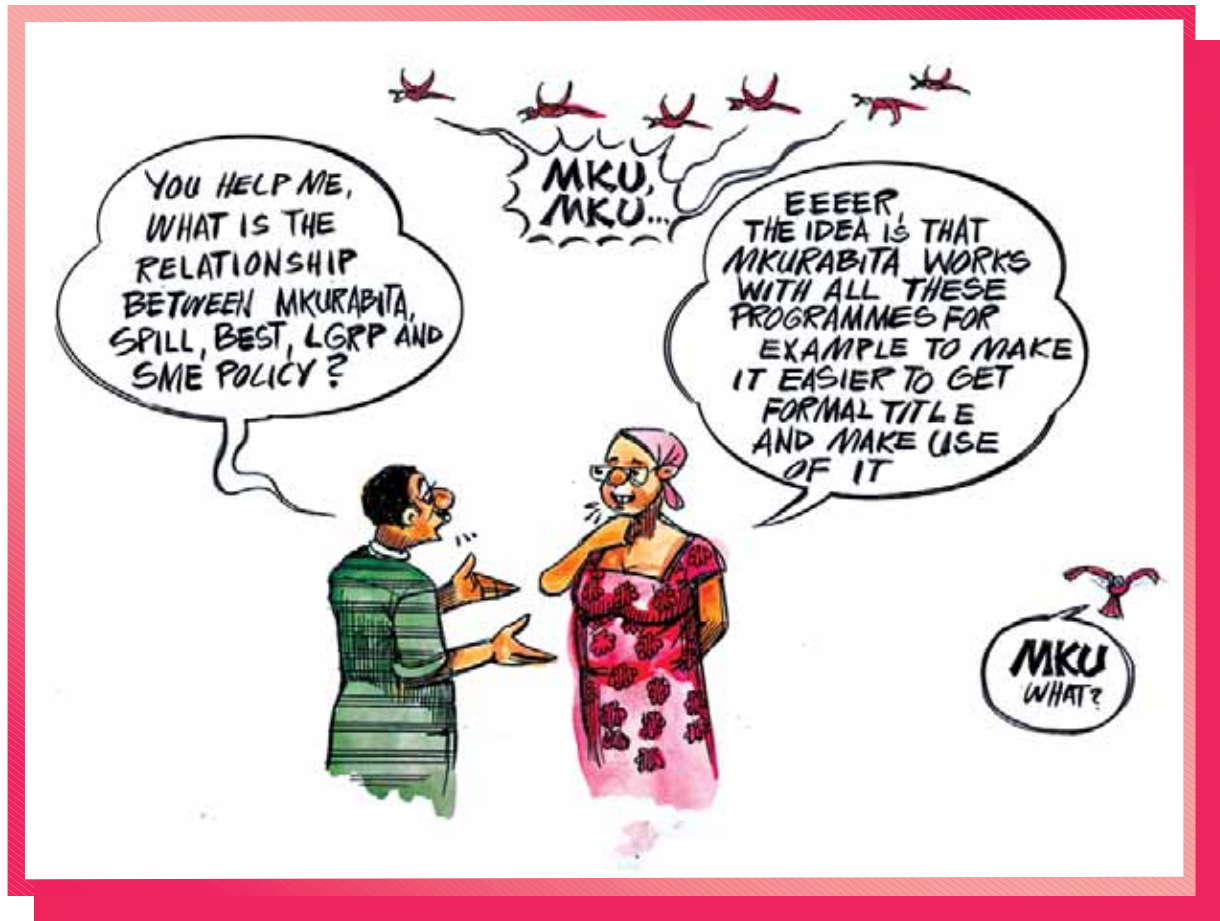
The urban plans for Dar es Salaam will be reviewed in 2007. This may be an opportunity to make legal premises easier for businesses (including small businesses) to obtain.

The **Local Government Reform Programme**, led by the department of Regional Government and Local Administration in the Prime Minister's Office (PMO-RALG), has the task of making local government efficient and accountable. This includes suggesting any changes in the tasks of local government officials, as well as training of different levels of local government officers in a range of different tasks. In practice any changes in tasks or programmes of training and development for local government officers (such as those required for the MKURABITA reforms) will need to be integrated with the PMO-RALG's work and the Local Government Reform Programme.

The Government must avoid creating unnecessary and costly new institutions. However, some of the suggested reforms might need a level of co-ordination that is too complex or time-consuming to be provided by existing institutions, and might be valuable enough to justify the extra costs of a new institution. For example:

- a new institution to lead the process of making a single, co-ordinated system of registries for contracts and agreements on land, business and other matters, and for linking it to other sources of information such as a unified register of businesses and a business information system
- a new institution to lead the whole process of formalising rural and urban landed property.

There has been some discussion about creating a more general Property and Business Formalisation **Authority** to oversee the implementation of all the reforms that are selected. Associated with this is the suggestion to formulate a national 'Policy on Empowerment of Entrepreneurs' as a framework for helping informal-sector entrepreneurs to operate profitably in the formal sector. Government must decide whether a new authority is necessary, or whether the reforms can be managed by existing state bodies. Perhaps the key question is: will there be a new approach to economic empowerment that is so different and so politically important that it requires a fresh institution to ensure that other Government institutions implement it effectively?



## Part Two: Questions about MKURABITA

As we have seen in Part 1, MKURABITA is a large and complicated set of proposals, which aim to increase the participation of the poor in the formal economy of Tanzania. At its foundation, the programme aims to encourage poor people to document and register their land, property and businesses. Once this basic form of formalisation has taken place, some poor people may have the opportunity to use their property as security for loans to expand their businesses and improve their livelihoods.

The documentation and registration process alone involves a major reform of the legal and administrative system in order to make it more accessible and affordable for ordinary Tanzanians. The proposals put forward to achieve this goal must take account of many issues. For example, how can customary law and practices be harmonised with the formal legal system and how to ensure that banks will give loans to poorer people once they have title to their property. Above all, it is important to recognise that a process of formalisation presents not only possible gains but also possible risks for different groups of poor people.

Many people disagree with the view that land that is not formalised should be seen as 'dead capital'. People's customary right to use land is of immense value, even if it is difficult to put a price on all the benefits it gives: not just production but also security, flexibility, and cultural roots. In many countries the true value of land becomes clear only when people lose it and join the ranks of the landless. Others argue that if people do not take risks there will be no development. Can MKURABITA ensure that formalising land title does not expose poor people to a greater risk of losing their land rights? What do you think?

MKURABITA recognises that for some small businesses, formality is not an option, and that the formal system must change so that people are not forced to formalise against their will, but benefit by formalising their business. If you operate an informal small business, would the reform ideas of MKURABITA encourage you to register, license and pay your full taxes?

We have also learned that many other issues must be addressed before poor people will be able to take advantage of this opportunity. Business skills must be improved and most people will also need training on accounting and taxation in order that they will be able to fulfil their obligations in the formal economy.

The MKURABITA proposals have yet to be finalised. The Government and Parliament of Tanzania will make the final decisions about which proposals will be implemented. Before these decisions are made, Tanzanians have the right to know how the proposals might affect them in their daily lives. For this reason it is important that as many people as possible are aware of MKURABITA and are able to agree or disagree with its proposals in an informed way.

Many people have already expressed their opinions about MKURABITA. These include representatives of many areas of Tanzanian society, academics, civil society, lawyers, farmers, pastoralists, business people and government officials. Different people have different levels of understanding of the proposals. Many people know a little about the programme, but very few are aware of everything that it contains. Some people approve of some of the proposals and disapprove of

others. Some people see the programme as a good idea as long as all its proposals are implemented fully and the rights of the poorest Tanzanians are protected at all times. Others think that MKURABITA is likely to bring the most benefits to those who have property already and to increase inequality.

Many people have asked questions about how the programme will be implemented and if it will improve the lives of the poorest people in Tanzania. In this section we will look at some of these questions. Many of the questions have no easy answers. This because it is often difficult to predict what will happen when the proposals are implemented. The questions and answers we will look at here are a summary of what different people think will happen.

## Q<sub>1</sub>. Has formalising property led to reductions in poverty in other developing countries?



Very few developing countries have implemented formalisation programmes like that proposed under MKURABITA. The evidence so far suggests that poor people are interested in getting title to their property in order to feel secure in their ownership. However, very few people, and especially those who are very poor, are taking loans based on the value of their property. This may be because very poor people are unwilling to risk losing their home or small business as the result of their inability to pay back a loan. They prefer to use informal sources of credit based on personal and community relationships.

## Q<sub>2</sub>. So, who will benefit most from MKURABITA?



The goal of MKURABITA is to reduce poverty by helping poor people to access credit. However, some have suggested that richer people, those who can afford to take the risk associated with using property as security for a loan, are most likely to benefit from a titling programme. If this is true, then the gap between rich and poor in Tanzania may increase as those who can afford to invest and take risks reap the benefits of those investments, while those who cannot afford to take risks become relatively poorer.

### Note:

**Some suggest that it is impossible to achieve long term development in a country without first increasing levels of inequality. The first people to benefit from a growing economy are those who take risks and invest. If these people are those who have more assets to begin with then they are likely to become even richer than those who feel they cannot afford to take risks. However, it has been argued that over time the benefits of a growing economy will eventually find their way to all levels of a society, even the poorest. What do you think?**

In order to encourage poorer people to invest, MKURABITA proposes that they should be provided with business training and that the rules and regulations for businesses should be simplified and made standard. It will be important to ensure that this training is appropriate to the needs of ordinary Tanzanians and that it is available to everybody, so that the benefits of formalisation come to all levels in society. Until now, state-supported programmes of business training have been

limited in comparison with the scale of need, and have mostly taken place in towns. Experience shows that meeting the need for training and advice will require very high levels of funding, organisation and co-operation between state and non-state providers.

The government already has a programme, which aims to promote business development, BEST (MKUMBITA in Kiswahili). At the moment we do not know how MKURABITA and MKUMBITA will work together. In order to meet the needs of poorer people there will need to be a focus on smaller scale enterprises.



### Q<sub>3</sub>. Will more loans lead to economic growth?



This depends on what reforms are chosen, how well they are implemented and how they are used. For example, if it becomes easier for me to borrow money, how will I invest this money? If borrowed money is invested in a business making goods or providing services, then employment may be created and some benefit may go to poorer people. If a loan is secured on the value of an empty plot in order to finance the construction of a house on that plot then that money will benefit those who work on the construction and companies who supply material such as cement and other building materials. However, if a person uses borrowed money to buy another house in order to rent it to tenants then the economy will not benefit as nothing is being produced.



#### **Q4. Will the value of my land and house rise, and will I benefit or lose from this?**



If it is very difficult to sell or transfer a property, then the property has little financial value. But this does not mean that it has no value. If the property provides a family with a place to live or a way to make their livelihood then it has huge value to that family.

But, if a family documents and registers their land or business then they will establish secure and transferable legal ownership of that property. With this type of ownership the property can be sold to a much bigger range of potential buyers. However, if the property is in a remote rural area it is unlikely that the number of people interested in buying the property will increase and therefore its financial value will not rise.

On the other hand, if someone formalises property in an area that is likely to be developed then its value is likely to rise. If you get title to your house in an area that was previously unplanned, the value of your house will probably increase. Would this affect your wealth? Possibly, if you are able to use the house as security for a loan. If you sell the house you will need to pay more for another house with title.

#### **Q5. Will I benefit from formally registering and licensing my business?**



A fully formalised business (registered and licensed, with clearly identified assets, clean accounts and tax records and legal premises) may be worth more than an informal business. It is certainly likely to find it easier to get a bank loan. However, the main value of most small businesses lies in the skills, abilities and connections of the people who run it. For example an electrical fundi may operate from home with little equipment. Without the fundi, this business is worth little. The same can be said of many small businesses run by individuals, families, or groups. For such businesses, MKURABITA may make it easier to operate legally and access financial and other services, even if the business cannot be sold.

Two new forms of business organisation have been proposed by the ILD. These both involve limited liability, which requires completely separating the assets of the business owners from those of the business. In practice, this may cause problems for many small business operators, since it is very important for them to be able to shift equipment and money between home and business. A carpenter may use his bicycle to reach his work location and a member of his family may use the same bicycle to take vegetables to market. People who work as a group (as partners) may be helped most by making it easier to form and register a simple partnership without limited liability.

## Q6. Will everybody who formalises his or her property be able to get a loan?

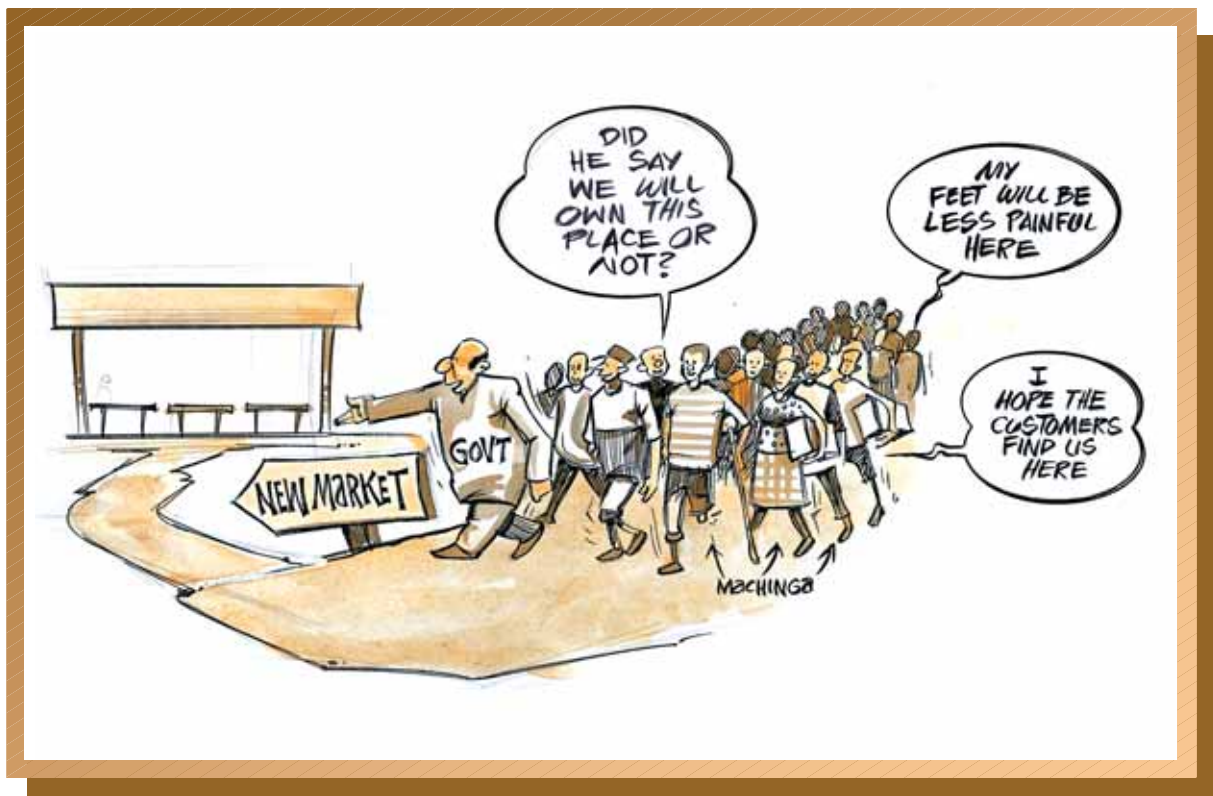


People who have legal title to property that can be transferred to another person or organisation may find it easier to get loans. However, there are a number of reasons why people with titles still may find it difficult to get access to credit after formalisation.

Firstly, the property that is titled may have little financial value. If a plot of land is small and is in a remote area, its cash value may be very low. In this case, a bank may refuse to give a loan as the loan will be very small and, if the person getting the loan could not pay it back, the bank also might have difficulty selling the property. The community that the property is in may object to the sale of a plot and make it impossible to sell. As many of the poorest people in Tanzania have small plots in remote areas it is likely that many will still find it difficult to access credit after formalisation.

However, there is a possibility that smaller lenders, such as SACCOS, might be more likely to lend money to people with titles to their property. Over the last few years in Dar Es Salaam, many people have applied for and received residential licences, which are valid for two years and can be renewed. Some small financial institutions have given loans to these people on the basis of this recognition of ownership.

Secondly, in the case of a loan for business purpose, a bank will only lend money if it thinks the person running the business has a good plan to pay back the loan without losing their property.



## Q7. Will small businesses in urban areas have to go to particular areas before they can be formalised?



There is a proposal in MKURABITA that small informal business operators should be given access to places where they can do business. These must be a mix of specific plots and areas of public space. If a participatory process of planning is used, building on the experience 'Strategic Urban Development Planning' during the 1990's, microentrepreneurs and others can be involved in identifying appropriate places.

Where specific plots for business are concerned, the MKURABITA proposals are unclear if these should be allocated in large market-type areas at certain locations or if they will be distributed evenly around urban areas. Small traders will need to participate in the planning process in order to ensure that their needs are met. Many people will have heard that small traders in some urban areas have already been moved from the streets to market areas. Some of these traders have complained that it is more difficult for them to make a living in these markets. Some people have suggested that urban plans should allow a mix of houses, shops and other businesses within areas. In this way, small enterprises can be close to their customers instead of being in big central markets, which may be difficult to get to for some people.

## Q8. Will a minimum plot size be enforced?



The issue of the minimum plot size that can be titled is important for poorer people. It is even more important in urban areas and in rural areas where there is a tradition of subdividing land for use by the next generation.

The Town and Country Planning (Space Standards) Regulations of 1997 say that plots should be no smaller than 400 square metres. In urban areas very few poor people will be able to afford to buy a plot of this size. Also, if these regulations are enforced when land is being titled in urban areas, most plots will not be large enough to qualify for titles. Most plots in urban areas are between 100 and 300 square metres in area and only a small percentage are over 400 square meters. Many plots are less than 100 square meters.

MKURABITA does not make any proposal about what the minimum plot size for titling will be, but it is clear that enforcing existing regulations will mean that poorer people will be excluded from the titling process. In order for MKURABITA to achieve its objective of formalising the assets of poor people it will be necessary to look at the existing regulations and make changes.

## Q9. How will the rights of women and families be protected during formalisation?



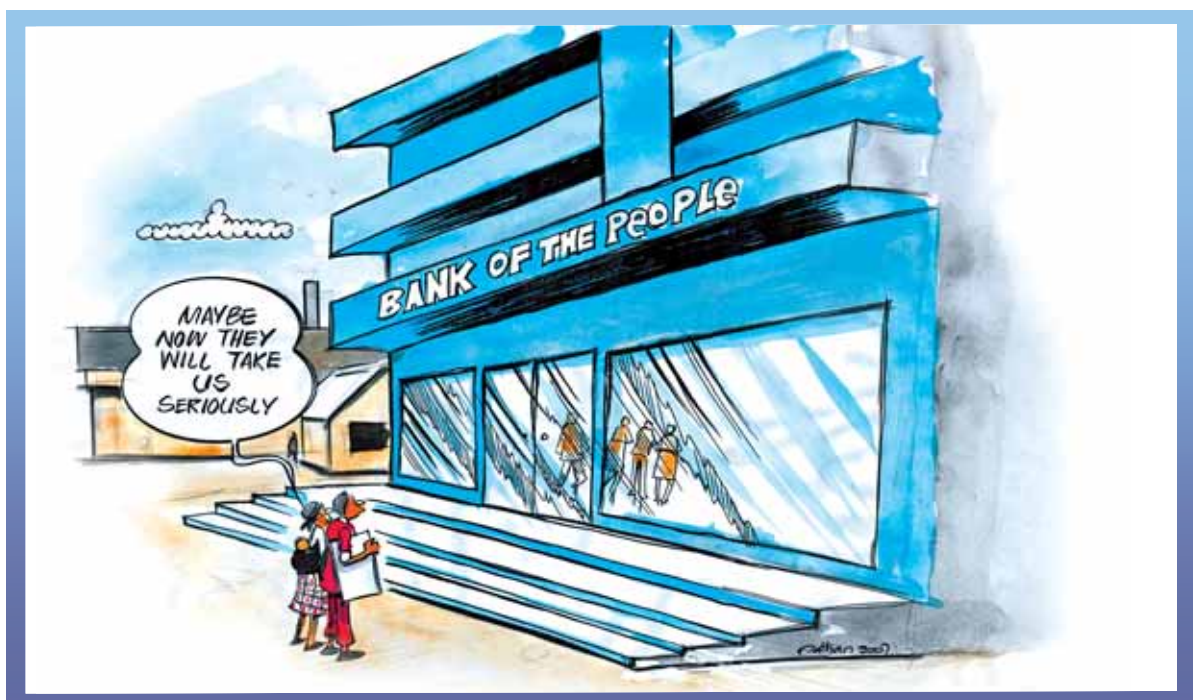
In most types of customary law property is held in the name of the male head of a family. Under national law, a wife has the right to stop the sale of a family home or family land, but family and community pressure often stops her from using that right. Women and children can easily lose their land rights when a husband dies or a husband and wife divorce. One of the big concerns about formalisation is that it will reinforce men's domination of land ownership. Many men would like the formal title to be in their name only.

MKURABITA makes very little comment about the protection of the rights of women and families other than to say that current norms regarding women's participation in property transactions should be complied with. At present, women have the right to state their agreement with the sale of a property. MKURABITA would like to ensure that the wives' names are included in all certificates of title to the family's land so that they must agree to any future sale, mortgage or other big change. Do you think this can be enforced?

Another issue that must be addressed is that of non-legal marriages. These may be recognised under customary law but may not achieve recognition under a standardised, unified legal system. There are also the rights of the children born to these marriages to be considered. The rights of women and families in polygamous cultures must also be defined.

In order to ensure that the rights of women and families are fully protected in the area of property it will be necessary to create an environment where all family members are aware of these rights and can participate fully in decision making about property matters. A change of mindset is required.

What else could MKURABITA do to protect the rights of a woman and her children?



## Q10. Can rural land titling be done fairly?



One of the biggest challenges faced by MKURABITA is how to ensure that titling, and the land-use planning and surveying that precede it, are carried out efficiently and fairly at the local level. One important question is: should the Government start a large campaign of titling individual plots of village land across the country, or should individual land users decide when to apply for title to their plot? At present, if you have a customary right of occupancy, or wish to buy a right of occupancy from somebody else, you can pay for a survey and apply for a certificate of title. However, the costs of this individual titling 'on demand' will be expensive, and it may make it easier for land to be allocated through deals between village leaders and outsiders or wealthier local residents, without the rest of the community being aware. MKURABITA is looking at how Local Government can organise 'blanket surveying' of all (or most) plots in a village, and issue title to those plots at one time. This is much cheaper, and ensures that people know that something is going on! However, it can also lead to land grabbing. Why? Because people may fear that this is the last chance to secure more land for themselves and their descendants. In this way, there is a risk that people with more power in the community will gain land at the expense of people who cannot so easily demand land rights: women, common land users, and future generations who risk having no land available if it is all titled today.

Whether village land is titled at the same time or on demand, how can titling be made easier and cheaper? One MKURABITA proposal is that instead of relying on District officials, Village and Ward Officials should be trained to organise participatory land use planning in their areas, so that all community members have a chance to discuss how land should be allocated. They could also be trained to survey plots, using an electronic method called Global Positioning System (GPS). This could greatly speed up the process. Do you think this would work well?

If most land in a village or urban area is titled at the same time, as MKURABITA may propose, there may be many disputes, old and new, to resolve in a short period of time. Can this be done fairly? The MKURABITA proposal is to improve the dispute resolution skills of Village Land Councils and Ward Tribunals through training, providing standard forms for recording agreements and clear rules for registering them in village and district registries. If a dispute cannot be settled locally, MKURABITA proposes that District authorities appoint a mediator and that land titling should continue in areas that are not disputed.

Other requirements for fairness include ensuring that all local residents are informed in good time about Village Assembly meetings and have an opportunity to attend.

Fairness in titling is vitally important for livelihoods and social development across the country. Better-resourced or more powerful people, within and outside the community, should not be able to take advantage of a titling process to make unfair gains at the expense of people who are poor. Most people agree that the tasks involved, such as training, supporting and monitoring local officials to ensure fair processes of land use planning, surveying and titling, are huge and challenging. However, if a fair system can be set up it could help many people to acquire more secure land rights. How do you think the Government can ensure that land rights are safeguarded, and titling done in fair ways?

## Q11. How will poor people have equal access to justice?



In order to ensure that poorer people are treated fairly in disputes about land or business it is important to have a system of solving problems that is accessible to everybody. Many disputes can be solved at local level using customary practices and laws, as well as non-professional legal bodies such as Village Land Councils and Ward Tribunals. However, if these methods of settling disagreements fail, the only option may be to go to court. The court system can often be so expensive that it is inaccessible to ordinary people, which is why MKURABITA may propose that other conciliation and arbitration services should be improved and expanded throughout the country. Many peoples' ability to access justice is also reduced by lack of knowledge and understanding of the law and their rights.

It has been suggested that, in order to ensure fairness in the implementation of MKURABITA, ordinary Tanzanians should be made more aware of the laws that govern their lives and that they should have access to affordable justice. Laws in Tanzania are published in English, therefore making it impossible for most people to understand what is written. Translating laws and policies into Kiswahili and disseminating them through national awareness campaigns could improve levels of legal awareness. It has also been suggested that a system of legal advocacy for poorer communities, a kind of free or cheap legal aid, could improve access to the justice system for those with fewer resources. Confidence in the legal system could also be improved by addressing the issue of conflicts between different pieces of legislation. These conflicts are seen as detrimental to the interests of poorer people.

Most people agree that establishing a unified, formal legal system that incorporates the effective, affordable and non-discriminatory elements of existing customary law may be the best way of ensuring equal access to justice for all.

## Q12. What concerns do pastoralists and other common land users have about MKURABITA?



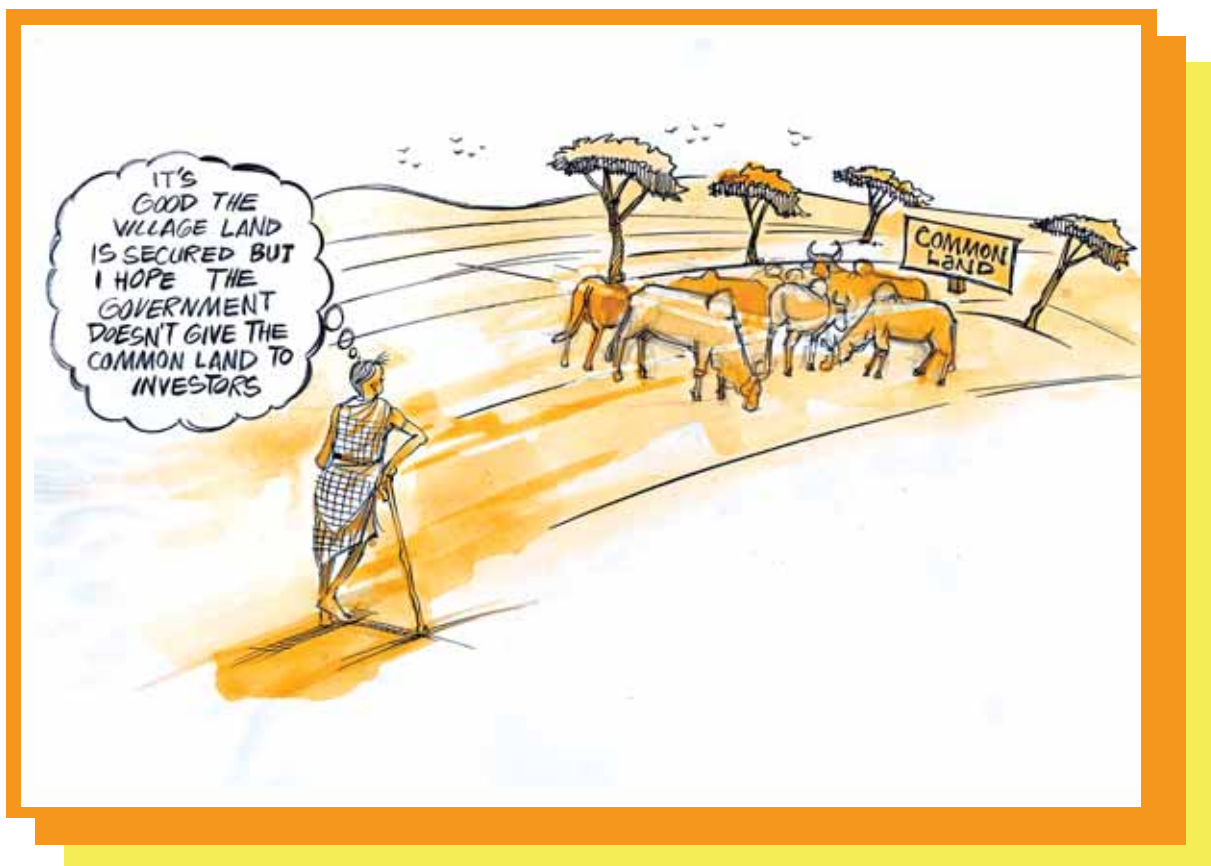
Land formalisation and titling is normally taken to mean the documentation and registration of land by an individual or company. The ILD recommends that common land, such as forest land, grazing land and pastoral range land, should be defined and protected in the formalisation process. However, MKURABITA is not yet clear about how this could be done.

Many people feel that customary rights to use common property are extremely important for rural livelihoods, and need to be safeguarded in any process that formalises customary rights. The value of common land rights can easily be underestimated. For example, many people rely on customary access to water sources. If an investor secures formal title to an area containing a public water source, the full impact of this needs to be recognised<sup>11</sup>, and adequate alternative arrangements made, including full compensation for any loss of livelihoods that cannot be prevented.

<sup>11</sup> Normal 'environmental impact assessments' of new investments may not assess the full cost of losing common land use rights – or lead to proper compensation.

Some key attributes of common tenure require protection, such as the possibility to move grazing livestock according to the conditions of the rangelands, thus sustaining herds and preventing overgrazing. As titling takes place within villages, there can be pressure to increase the amount of land available for individual plots and reduce the amount for grazing and movement of animals. However, the bigger threat to common land rights comes from the allocation of rangelands by Government to investors and state uses such as national parks. Some people think that formalising common land rights could protect them in relation to the Land Bank operated by the Tanzania Investment Centre, which identifies land that can be allocated to investors, some of which may be common land that is in use.

Do you think that formalising customary rights, including rights to use common land, could help to protect common land rights and reduce conflicts over land? If so, how can the rights to use common land be defined? And can you think of a way in which the customary use of village common land by livestock keepers and other users from neighbouring villages can be formalised?



## Note 1: Stakeholder views of MKURABITA Gains and Risks

The tables below list a selection of the possible gains and risks of MKURABITA as seen by the participants at a stakeholder workshop in Dar Es Salaam in November 2006.

### *Access to Financial Services (Credit)*

Possible Gains	Possible Risks
<ul style="list-style-type: none"> <li>▪ More access to loans because people will have documentation</li> <li>▪ More production and income due to loans</li> <li>▪ More revenue to the Government</li> <li>▪ Value added to property because of formal title</li> <li>▪ Reduced land disputes by having reliable documentation</li> <li>▪ Clear division between social and business use</li> </ul>	<ul style="list-style-type: none"> <li>▪ Social conflict due to failure to repay - auctioning properties can lead to community disruption</li> <li>▪ Loss of assets through repossession</li> <li>▪ Eliminating existing culture and customs - for example making it hard to subdivide, more likely for people to swallow up others' plots.</li> <li>▪ Danger of people using their property as security for someone else's loan in return for payment.</li> <li>▪ Danger of loss of land to foreigners</li> </ul>

### *Land Titling – Urban*

Possible Gains	Possible Risks
<ul style="list-style-type: none"> <li>▪ Security of knowing you have title and can stay in your property</li> <li>▪ Your property title gives you an official identity</li> <li>▪ Access to credit - through reduction in bureaucracy</li> <li>▪ Government can raise funds through property tax</li> </ul>	<ul style="list-style-type: none"> <li>▪ If the titling process is non-transparent and non-participatory it may not be beneficial</li> <li>▪ Poor people may fail to repay loans and therefore lose their land</li> <li>▪ Risk of mismanagement of the register of land transactions</li> <li>▪ Simplified procedures also simplify the grabbing of someone's land through deception</li> </ul>



## *Land Titling – rural*

<b>Possible Gains</b>	<b>Possible Risks</b>
<ul style="list-style-type: none"> <li>▪ With secure title, people will settle and be more productive and will invest in the land. This was the experience after villagisation.</li> <li>▪ Land use conflict will be minimised if title is clear.</li> <li>▪ Titling of individual plots, or at least the land-use planning stage that precedes it, will tend to protect common areas within the village territory.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Subdivision of land makes the process more complicated and some resistance is likely in e.g. Kilimanjaro, as people may perceive that titles cannot be so easily subdivided.</li> <li>▪ Titling will provoke conflict, or entrench unjust land holding.</li> <li>▪ The practice of registering land in a man's name is prejudicial to women.</li> <li>▪ The costs of institutionalising rural land titling are high.</li> <li>▪ There is a risk that villages may not receive adequate compensation when land is assigned to the Land Bank of the Tanzania Investment Centre (TIC) for offer to investors.</li> <li>▪ Having formal title means your land can be taxed</li> </ul>

## *Rural Business*

<b>Possible Gains</b>	<b>Possible Risks</b>
<ul style="list-style-type: none"> <li>▪ Better possibility of getting loans because of having title</li> <li>▪ Access to agricultural inputs</li> <li>▪ Increased technology use</li> <li>▪ Increased competitiveness and credibility</li> <li>▪ Reduced urban-rural migration</li> <li>▪ Rural processing that adds value</li> </ul>	<ul style="list-style-type: none"> <li>▪ There might be a fall in market prices because of more people accessing loans and producing more of the same products</li> <li>▪ Lack of extension services and entrepreneurial skill may prevent people from taking advantage</li> <li>▪ There might be a focus on subsistence (quantity) rather than a market (quality) orientation.</li> </ul>

## Urban Business

Possible Gains	Possible Risks
<ul style="list-style-type: none"> <li>▪ People will be recognised (through licensing, registration) and thus have more security</li> <li>▪ Government will get more tax</li> <li>▪ Business people will get more loans</li> <li>▪ There will be an increase in investment due to being recognised</li> <li>▪ The key improvement is not so much in urban business organisation as in securing premises</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lack of business skills, education and creativity - too much 'cut and paste' entrepreneurship.</li> <li>▪ Competition from big companies e.g. Azam and Bakhressa making chapatis and crowding out the mamantilie, or selling ice creams where the informal sellers are forbidden to do so - a problem of financial power and favouritism</li> <li>▪ Loss of property when businesses fail after taking loans</li> <li>▪ Contradictory laws - e.g. the 'Nguvu kazi' laws encouraging people to set up local enterprises does not fit with town planning requirements</li> <li>▪ Small businesses may be obliged to pay taxes they cannot afford</li> </ul>

## Women and Families

Possible Gains	Possible Risks
<ul style="list-style-type: none"> <li>▪ The programme will make women and youth more aware that land has value and they have a right to own it.</li> <li>▪ Young people and women will be able to get title.</li> <li>▪ There will be opportunity for reviewing customary and patrimonial laws</li> <li>▪ People could become more aware of their rights - a rights-based view</li> </ul>	<ul style="list-style-type: none"> <li>▪ Women and youth could lose out if land can be more easily transferred</li> <li>▪ Titling, registration, and marketability of land could lead to family conflicts over its use</li> <li>▪ Mortgaging could lead to increased loss of land through failure to repay loans, at the expense of women and dependents.</li> </ul>

## Common Land Users

Possible Gains	Possible Risks
<ul style="list-style-type: none"> <li>▪ Under the Land Act of 1999 pastoral land is already protected in principle. But formal documentary recognition of rights could give more security and reduce conflict.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Changes in the law protecting Common Land which do not appreciate customary patterns of use</li> <li>▪ Individual titling can limit the movement of pastoral livestock and increase degradation of the remaining narrow corridors.</li> <li>▪ The risk already exists that 'empty land' can be appropriated by the President.</li> </ul>

## Note 2: Initial Reform Issues

Most of the possible reforms set out in Part 1 are rooted in the recommendations made by the ILD in its Diagnosis Report. Here we summarise the main elements of those recommendations. In its plan for the next (Reform Design) stage, the ILD presented a full set of ‘initial reform issues’ for investigation: these are also presented here.

The following categorised list gives a brief indication of the main areas of reform that the ILD proposed should be considered in the current Reform Design Phase. As you can see, many of these ideas are included in the possible reforms listed in Part 1.

### Reforms to improve Public Administration

- Introduce simplification and modernization principles, legislation, and procedures for public administration, such as: acceptance of applications and statements at face value; decentralization; deregulation; elimination of unnecessary and expensive requirements and formalities; making sure that public bodies can easily share information; standard forms and procedures; mechanisms to guarantee citizen access to public information; etc.. Harmonise the current programs, projects and initiatives that, at least partially, attempt to improve specific aspects of the institutional framework to facilitate entrepreneurial activity and assign clear property rights in Tanzania

### Reforms to improve Property Rights

- Improve the existing formalisation procedure by considering, for example: (a) allowing for costly and time consuming official surveys to be conducted by private professionals, (b) setting up a simplified, decentralised, massive and low cost registration procedure with a geographical database (c) setting up legal mechanisms to protect third party rights and (d) establishing a system that avoids administrative intervention in future private transactions and thus avoids the need for Village Council approval. Establish simplified, standardised and low cost procedures for the registration of transactions involving formalised real estate assets and the harmonisation of current registers in the Mainland and Zanzibar

### Reforms to improve Business Organisation Forms

- Allow access to asset partitioning and risk reduction through limited liability facilities for all enterprises and particularly sole traders and partnerships. Establish decentralised, simplified, standardised and low cost procedures for the operation of all businesses, and introduce (a) customer advisory services (to inform businesses about their labour, tax and other obligations), and (b) principles to organise inspections and reduce arbitrary decisions by inspectors

### Reforms to facilitate operation in Expanded Markets

- Establish simplified and low cost procedures that allow small and medium sole traders and partnerships to contract with the Tanzanian State and to abide by the legal and administrative conditions about exporting, importing, and advertising. Design an interconnected business information system to provide all interested parties with a clear, reliable and updated information service. This will have information about amongst other things: the legal status of the

business; its movable and immovable assets; its track record for fulfilling commercial obligations with financial institutions, clients, private suppliers and the State; and its capacity to meet payment obligations punctually.

23 Initial Reform Issues (IRI) were identified and grouped in a table using the three basic economic tools and the three levels of security and inclusion to head the columns and rows.

<b>Categorised list of 23 Initial Reform Issues</b>			
	<b>Secure property rights</b>	<b>Appropriate business organisational forms</b>	<b>Access to expanded markets</b>
<b>Documentation</b>	1. Documentation and standardisation of individual and collective property	8. Documentation and standardisation of private agreements to organise businesses	14. Documentation, standardisation and enforcement of private contracts and guarantees
<b>Registration</b>	2. Registration of property 3. Acquisition and transfer procedures	9. Registration of businesses 10. Access to legal incorporation and limited liability	15. Business information system
<b>Market Inclusion</b>	4. Registration of real estate transactions 5. Authorisations to build, subdivide and compound real estate 6. Access to information about zoning, land use, protected and common areas 7. Drawing up and foreclosing real estate guarantees	11. Basic accounting rules 12. Compliance of labour and tax obligations 13. Legal closing of business (protecting third party rights)	16. Access to third parties financing 17. Contracting procedures with the state 18. Procedures for export of goods and services

### **Cross sectional issues**

- 19. Regulatory improvement and streamlining, including feedback mechanisms
- 20. Conflict resolution (court and out of court procedures)
- 21. Identification of persons (identity cards and addresses)
- 22. Access of women and relevant minority groups to reform benefits
- 23. Harmonisation of customary and statutory law

## Note 3: MKURABITA Documents

MKURABITA is a work in progress. Research and analysis leads to recommendations which, after widespread consultation, are modified and become the focus for further research and analysis. Gradually broadening the scope of the consultation in this way makes sure that (a) workable solutions are generated and (b) that they are 'owned' by a broad range of stakeholders.

MKURABITA is designed to fit in with many other ongoing development strategies, programmes and projects. Here we list the documents that have been generated specifically in support of MKURABITA.

### **Diagnosis Report (DR)** (Oct 2005) 1700 pages in 6 volumes

- Vol 1 Executive Summary (25pp)
- Vol 2 Tanzania's extralegal economy, its archetypes and size
- Vol 3 Analysis of the institutions and costs of the nation's legal sector
- Vol 4 Details of the barriers to using property and doing business nationwide
- Vol 5 A step by step view of how ordinary Tanzanian's experience the existing legal procedures regulating business and real estate
- Vol 6 The documents that support the Diagnosis

### **Work Plan – Reform Design Stage (WP-RDS)** (Mar 2006) 109 pages

### **First Progress Report (FPR)** (2006) 5 volumes

Programme Management Unit (PMU) – **Programme Concept Document - Zero Draft** (Feb 2006) 102 pages

Commission on the Legal Empowerment of the Poor (CLEP) – **Overview Paper** (Jan 2006) 24 pages

### **(CLEP) National Consultation on Legal Empowerment – 4 Thematic Papers**

Focus groups 7-8 Nov 2006

National Consultation 29-30 Nov 2006

- “Access to Justice and the Rule of Law” – Dr Fauz Twaib
- “Making property rights work for the poor” – Prof J M L Kironde
- “Labour Rights” – Rose Teemba and Cornel Mtaki
- “Unleashing Entrepreneurial Potentials of the Poor in Tanzania: Prospects, Challenges and Way Forward” – Donath Ulomi.

## Note 4: Internet Links

### Hakikazi Catalyst

The web site of this Tanzanian Civil Society organisation has links to downloadable copies of (a) most recent government policies and programmes and (b) its own plain language versions of a range of key documents (including this document)  
<http://www.hakikazi.org/>

### Commission on Legal Empowerment of the Poor (CLEP)

The Commission on Legal Empowerment of the Poor is a new, independent, global initiative. It explores how nations can reduce poverty through reforms that expand access to legal protection and opportunities for all. The Commission believes that poverty can only be eradicated if governments give all citizens, especially the poor, a legitimate stake in the economy by extending the rule of law, making access to users' and property rights and other legal protections not the privilege of the few but the right of all citizens.  
<http://legalempowerment.undp.org/>

### Institute for Liberty and Democracy (ILD)

Four billion people in developing and post-Soviet nations - two thirds of the world's population - have been locked out of the global economy: forced to operate outside the rule of law, they have no legal identity, no credit, no capital, and thus no way to prosper. The Institute for Liberty and Democracy (ILD), based in Lima, Peru, proposes a strategy for legal reform that offers the majority of the world's people a stake in the market economy.  
<http://www.ild.org.pe/>

### Land Rights Watch

A select group of NGOs (including NPA) keep a watchful eye on the activities of the Commission for the Legal Empowerment of the Poor (CLEP). The website has a very useful section giving links to many of the relevant Tanzania documents.  
<http://www.landrightswatch.net/>

### **Tanzania Natural Resource Forum (TNRF)**

TNRF is a collective civil society-based initiative to improve natural resource management in Tanzania by addressing fundamental issues of natural resource governance. TNRF recognises that governance determines how natural resources are managed and how they support the livelihoods of Tanzanians. TNRF therefore aims to improve accountability, transparency and local empowerment in natural resource management. It does this by bringing together a range of stakeholders and interests to share information, build collaboration and pool resources towards common aims of better and devolved natural resource governance and management. TNRF is therefore a process of advocacy and capacity-building, based on collaboration, consensus, and collective interests.

<http://www.tnrf.org/>

### **MKURABITA**

An official MKURABITA website is being developed and is likely to be ready from May 2007. Some information on MKURABITA may be found on the official Tanzania National Website: [www.tanzania.go.tz](http://www.tanzania.go.tz)

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