

Property and Business Reform Design Reform Objectives, Components, Outputs and Activities

Property and Business Formalization
Program

MKURABITA

4-March-2008

General Objective of the Reforms

- Providing the government with detailed policy, legal and institutional reform proposals, as well as an implementation strategy
- Integrating extralegal real estate and businesses into the legal system in order to boost economic growth, reduce poverty, and eventually expand the tax base.
- Getting the Poor majority who do not have access/titles to land have access to titled land and the capacity to use them economically.

Main Reform Objectives

- Strengthen the security of tenure of real properties owned by the few rich Tanzanians and enable them to gain economic benefits from such property.
- Legally and economically empower the majority of the Tanzanians who have no access to real property to get easy and cheap access to real property and create an enabling environment for the economic use of their real properties

Main Reform Outputs

- An architecture of property and business rules that will bring together, standardise, and modernise the prevailing local customary arrangements dispersed throughout the country, so as to create one Tanzanian property and business legal system that incorporates all sectors of the society
- An integrated national property and business information system that will enable the government to bring the extralegal sector into the legal system and help to govern the nation's market activities more effectively.

Progress Made To-date

- MKUKUTA (based on Vision 2025) and MKUZA (based on Zanzibar vision 2020) represent broad frameworks that the Government has adopted to fight poverty and ensure sustainable development in Tanzania
- Programs implementing these frameworks include:
 - Enactment of the Land Laws for Tanzania and Zanzibar
 - SPILL – the strategic plan for implementation of the land laws which is the key driver to village boundary surveys and the establishment of MIS for land administration in the country championed by the Ministry of Lands
 - Parastatal Sector Reform Program (PSRC)
 - MKURABITA
 - BEST
 - Local Government Reform Program
 - Public Sector Reform Program

Past Government Initiatives

- Several initiatives have been undertaken over the past two decades to address poverty eradication in urban and rural areas:
- The sustainable cities programs and EMIS established in more than nine municipalities of Tanzania in the 1990's.
- Recent formalization efforts by the Ministry of Lands, Housing and Human Settlements in informal urban settlements leading to issuing residential licenses.
- Research case studies and MKURABITA pilot studies addressing problems of informal settlements and regularization of urban squatters in Dar – Es Salaam (Hanna Nasif), Mwanza City, Dodoma Mnadani and other cities

Past Government Initiatives

- Massive large scale surveys of urban plots in Dar Es Salaam (20,000 plots program), Mwanza City and other urban centres supported by the revolving fund setup by the Ministry of Lands, Housing and Human Settlements Development
- Government initiatives to re-vamp and reinvigorate rural cooperative societies as a way to boost rural economy and empower the masses
- The introduction of SACCOS in urban and rural districts of Tanzania to facilitate access to credit facilities
- Other initiatives such as PRIDE Tanzania that have setup country level networks of credit facilities for small entrepreneurs and businesses

Some Negative Aspects of Past Government Initiatives

- The Programs initiated by Urban Councils to eradicate the so called “Machinga Problem” and the frequent demolitions of properties and business premises deemed to have been illegally established is a threat to the realization of the MKURABITA reform objectives.
- Support by local governments for the appropriation of large tracts of rural lands for “investment” purposes has in some cases lead to conflicts with villagers complaining of being displaced in Bagamoyo, Mkuranga and other places

Policy Context for Reform Design

- The Land Policy of Tanzania places a strong emphasis on safeguards and protection of land tenure for the poor majority. This is abundantly apparent in Objectives 2.1 to 2.3 of the land policy
- The Land Policy statements 4.2.8 (i) and (ii) constitute an area of concern since these literally provides the means for foreigners to "acquire" land notwithstanding the constitutional maxim that no foreigner shall be granted title to land
- policy statement 4.2.2(ii) prevents the officers appointed by the Commissioner for Lands from having anything to do with village land administration.

Policy Context for Reform Design

- Land Policy statements 4.2.8 (i) and (ii) state: special areas for various investments will be identified and set aside for allocation to investors by the Government; Land will be allocated to investors according to their ability to develop it and that interests of citizens over their land shall be safeguarded.
- The safeguards envisaged under the Land Policy statement 4.2.8 (ii) are in effect not provided for in the Land Acts No. 4 and 5 of 1999.
- Land The policy statements 4.2.8 (i) and (ii) should therefore be replaced with statements to the effect that a non-citizen can only have use rights by entering into agreement (partnership) with a citizen or company owned by a citizen who/which has a title to such land.

Policy Context ...

- Land Policy statement 4.2.16 should be updated to incorporate the spirit of the changes suggested above. Specifically "Investment land" should be removed from the category of "public interest".
- Major land acquisitions for investment should be submitted to the parliament for approval as stipulated in Section 4 (2) of the Land Acquisition Act, 1967.
- Mining policy section 3.3.4 (v) calls for the establishment of a co-ordinated consultative mechanism with the central ministries responsible for - planning, health, finance, lands etc

Policy Context for Reform Design

- The current reform proposals, which call for establishment of a commission that will have coordinating and oversight functions to oversee the transformation of the extralegal economy into a formal economy, strongly links with the above mining policy statement
- The mineral sector policy objectives are however very silent on the role that the mineral sector should play in transforming Tanzania into an industrial state which would be the surest way to banish poverty from this potentially very rich nation.
- The property formalization reform proposals are primarily couched in the spirit of the land policy objectives of guaranteed economic exploitation of real estates without jeopardizing the interests of the Tanzanian majority.

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LOCAL REFORM DESIGN TEAM

Policy context for Reforms

- The following general weaknesses have been identified in the Trade Policy:
 - The trade policy provides no objectives for long term or medium term strategies for protecting the nascent national economy from adverse global forces.
 - The narrow focus of the trade policy on building an export led and market oriented society in Tanzania at a time when most of the primary industries dealing with conversion of our vast natural resources into commodities have been shut down is highly questionable.
 - Trade policy's lack of focus on developing a strong internal trade as a platform for launching a viable external trade.
 - The time frame for the trade policy which is five years is too short to be a reference for the formalization proposal which is intended to span a number of decades.
 - In a developing country one would expect that all national policies would have long term objectives that encompass the medium and short term components

Policy Considerations for Reforms

The reforms call for a review of the land policy and land laws to introduce :

- Reforms that protect national interests by recognising explicitly that national sovereignty is mutually linked to land ownership by the state and indigenous Tanzanians and that land cannot and must not therefore be alienated from the people of Tanzania in any manner.
- Reforms that recognise that land is the single most important strategic national resource that, wisely used, can extinguish the chronic poverty of the Tanzanian people.
- Reforms that encourage and support formalization so that indigenous people may use land (titled) as collateral in major investments in agriculture, building and construction, mining, forest resources exploitation, tourism and other development sectors.

Policy Considerations

- Reforms that encourage and facilitate land development and discourage hoarding and speculation by use of exponential tax regimes that rewards investment on land and punishes hoarding and speculation in land.
- Reforms to create a parallel hierarchy for village land administration under the Commissioner for Lands that will re-enforce the equivalence between CCRO and granted land title and abolish conversion of CCRO to granted titles OR Alternatively Reforms that will create a single Land Law in order to remove the idea of having one law for the minority rich (and foreigners) and another land law for the ordinary majority Tanzanians
- Reforms that will introduce efficient and effective legal and institutional framework for land administration in Tanzania

Key of Reform Outputs

1. Proposals for reforms of the current legal system for property and business administration to create a unified property and business legal system including the necessary regulations and institutional arrangements.
2. Proposals for the creation of a legally constituted entity mandated for the realization of the formalization program objectives, directly responsible for the formalization processes and responsible for oversight on the activities related to formalization.
3. An implementation plan comprising of formalization strategies, schedule of activities, time frame and budget.

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LOCAL REFORM DESIGN TEAM

Key Reform Outputs

4. Proposals for funding, including consensus building on the funding of the implementation phase.
5. A tested Development Communication Strategy sufficiently linked to the National Strategy for Growth and Reduction of Poverty (NSGRP) and other sector reform programs.

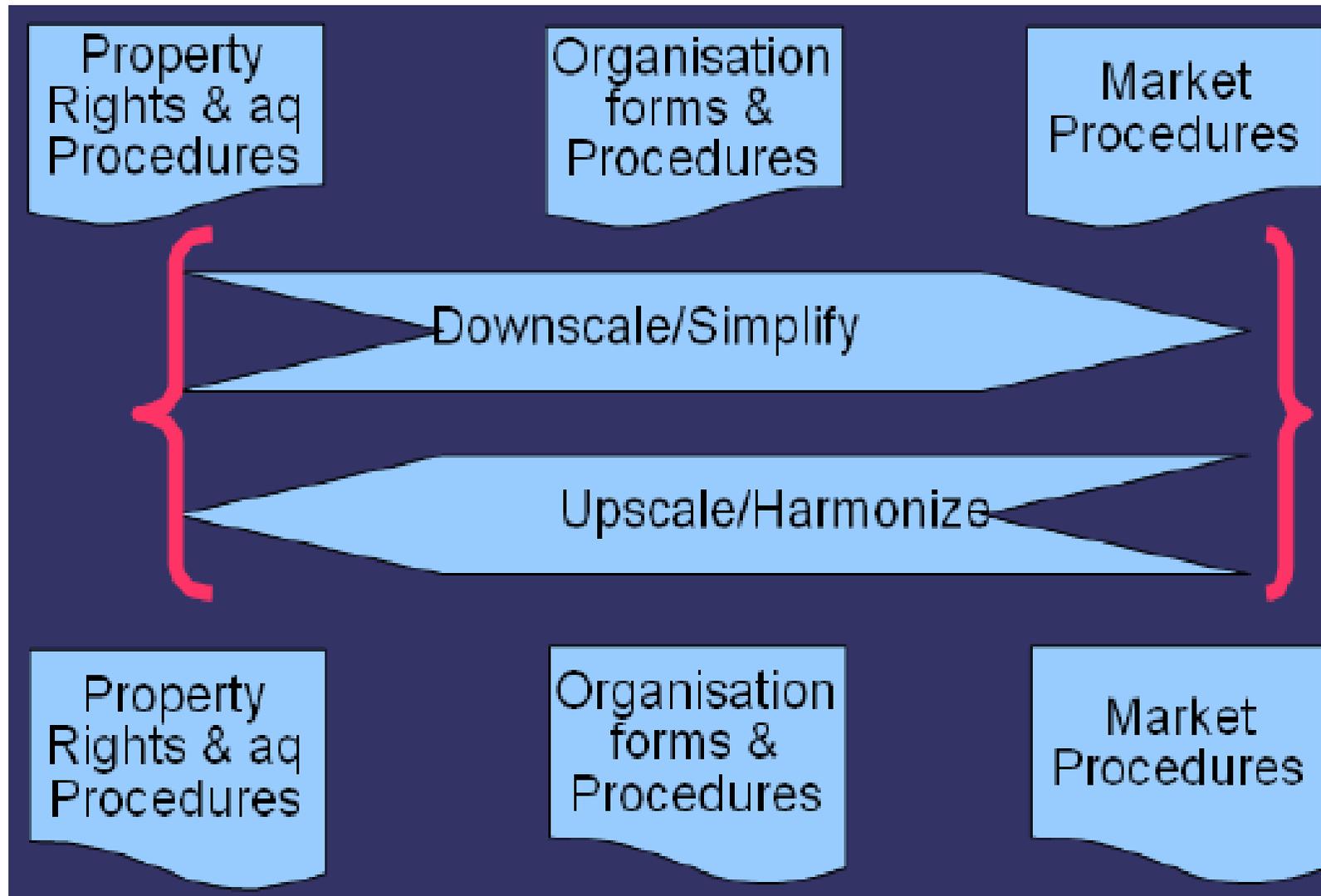
Reform Design Methodology

- The reform design phase builds on well-established local legal and extralegal practices that Tanzanians identify with and respect
- Reform Design analyses these practices, or "Archetypes" as they are called, to design reform proposals for reducing/eliminating extralegal and illegal practices using four strategies

Strategies for Reform Design

- 1) Reduction of the time and cost to enter and operate in the legal sector;
- 2) Eliminating wasteful procedures and streamlining rules and procedures which govern real estate and business activities;
- 3) Laying the groundwork for a systematic formalisation campaign;
- 4) Providing institutional and legal basis for the Programme to effectively implement reforms that will facilitate economic growth and poverty eradication.
- 5) Safeguards to ensure that the sovereign & economic interests of the country are protected for posterity

Convergence Analysis



Economic Safeguards

$$NW = IP + EI - GO$$

NW = National Wealth

IP = Internal Productivity

EI = External Inputs

GO = Gross Outflow

The Reform Components

- Urban and Property Reform Component
- Business Reform Component
- Institutional Reform Component
- Action Plan for Reform Implementation
 - Short, Medium and long term reforms
 - Financial resources for reform implementation
 - Communication Strategy
- Monitoring and Evaluation Framework

Specific Reform Proposals

- Legal instruments for property and business formalisation and provides the structure and responsibilities for a national level entity – an institution that will oversee the implementation phase of the reforms.

The Property Reform Component

- The property reforms address the following key issues:
 - Weaknesses in the conflict resolution legal framework that delays the resolution of land ownership disputes
 - Over-centralization of the responsibilities for land administration which concentrates powers to the Commissioner for Lands and Directors of Surveys
 - Ambiguous and conflicting provisions in the Land Acts and other laws that weaken the security of rural and urban land tenure

The Property Reform Component

- Complex, cumbersome and expensive property formalization procedures that act as barriers to the majority of extralegal property owners
- Lack of equivalence between the CCRO and granted title that renders rural property owners prone to disenfranchisement
- Barriers to credit facilities faced by extralegal property owners and those possessing CCRO and residential licenses.

Business Reform Component

- Tanzanians wishing to setup businesses are required to comply with a multitude of daunting statutory business regulations and social obligations as well as many tax obligations
- Existing laws do not provide for limited liability partnership and single shareholder companies that constitute the majority of extralegal businesses in the country
- The majority who find it difficult to comply with the statutory obligations and tax obligations choose to remain extralegal

Key Business Reforms

1. Amendment of the Companies Act to introduce LLP and LLSSC
2. Simplification of business registration procedures and decentralization of the business registry to simplify access to improve access
3. Elimination of the presumptive tax and creation of a simplified and consolidated tax system for businesses registered under LLSSC and LLP
4. Introduction of a simplified accounting system for businesses created under LLP and LLSSC
5. Introduction of a simplified low cost labor and social security mechanism for businesses under LLP and LLSSC
6. Creation of an efficient business information system

Key Business Reforms

7. The enactment of a new Act called Establishment of the Office of the Registrar General's Office Act for Zanzibar to introduce, inter alia, a Business Information System Unit;
8. The establishment of a simple and less costly mechanism that permits citizens to enter into contracts in a simplified and relatively low cost manner to ensure a degree of juridical security so that rights and duties are easily enforceable in court;
9. The re-enactment of a new Zanzibar Pawnbrokers and Moneylenders Act and establishment a decentralized registry of pledges and that of chattels at the district level.

END OF OVERVIEW

- THANKS FOR YOUR ATTENTION