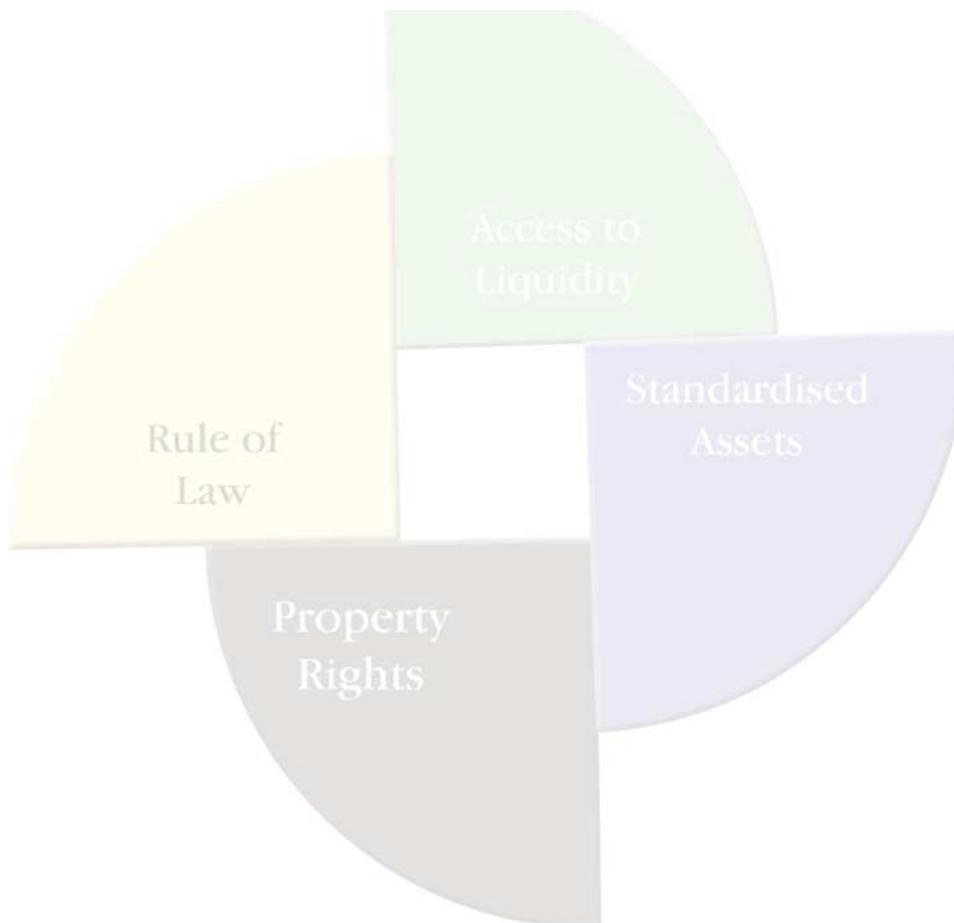




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MKURABITA IN THE CONTEXT OF LEGAL EMPOWERMENT OF THE POOR



A Note Submitted to Highlight the Possibilities of using MKURABITA to implement CLEP Recommendations in Tanzania

Prepared by the Program Management Unit – January, 2009

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Preface

This note is intended to briefly highlight the relevance and capability of MKURABITA in taking forward the agenda on Legal Empowerment of the Poor in Tanzania.

It is neither a project proposal nor a Concept Note for Government of Tanzania cooperation with the UNDP, through MKURABITA, to implement the CLEP recommendations in Tanzania.

It is just an overview of what is on the ground in Tanzania which can contribute to decisions on the next steps towards the implementation of the CLEP recommendations.

The contribution of the Institute for Liberty and Democracy was instrumental in the implementation of the first two phases of MKURABITA and will remain useful in the implementation of the subsequent phases.

The Financial Support provided by the Government of the Kingdom of Norway was a major enabling factor, which indeed underscore the need and importance of external financial and technical support in the envisaged institutional strengthening and actual rolling out of a massive property and business formalization program whose key outcome would be the actualization of the agenda on Legal Empowerment of the Poor.

1. BACKGROUND INFORMATION ON MKURABITA

The Property and Business Formalization Program for Tanzania known in Kiswahili as Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania – MKURABITA is an initiative of Tanzania Government seeking to establish a Legal and Institutional framework (architecture) of property and entrepreneurial rights which is accessible to all the people and is largely affordable by many.

An architecture that will facilitate:-

- Legal recognition (titling of land and incorporation of businesses) of the vast real estate and business assets now held and exchanged in the extra – legal (informal) sector.
- Asset exchange within the confines of the law governing formal economic activities.

The Program further seeks to promote the use of formalized assets to access economic opportunities in the formal market. Its development objective is to empower the targeted beneficiaries for self development through which they can participate in enhancing inclusive development in the country.

Formalized assets gain legal recognition and protection which provides them with the means to unleash the full potential (capital) in them.

The Government decision to embark on the Program and indeed its adoption of an implementation model developed by the Institute for Liberty and Democracy (ILD) of Lima Peru is founded on empirical evidence that real estate assets are an important foundation for many development endeavours and that assets held and exchanged extra legally are so “defective” that owners are perpetually held hostage of the inherent deficiencies of small markets and informal capital outlays, among other constraints. They specifically lack the following three mechanisms for creating wealth:-

- i. Legal and economic mechanisms that increase productivity through the creation of “distinct legal entities”, incorporating “asset partitioning” and an efficient “division of labour”.

- ii. Legal means for enterprises to operate in the expanded market, acquiring the capacity to gain access to networks beyond family members and circles of acquaintances.
- iii. Formal, fungible property rights that not only allow assets to be identified but also allow ordinary people to move them in the expanded market to capture as much economic value as possible.

The ILD developed model adopted for the implementation of MKURABITA has the following four phases:-

The first phase is the Diagnosis of the extra legal (informal) sector during which the modus operandi of the sector, its size and economic impacts were determined as well as the legal and institutional barriers which the assets owners meet when they attempt to transit to the formal sector.

The findings from this research were not unfamiliar but astounding all the same:-

- About 90% of Tanzanian reside and earn their livelihoods in the extra legal (informal) sector.
- About 98% of businesses (in numbers) are extra legal
- About 89% of real estate is extra legal.
- The value of these extra legal assets (dead capital) is estimated at US\$ 29 billion.
- The actors in the sector have created rules, regulations and institutional arrangements (archetypes) for owning and managing real estate and businesses outside the formal systems. Though limited in scope and spread, they are obviously good seeds of a formal economy. (Contracts are being executed, managed through some form of documentation and conflicts resolution systems are in use).

They are however constrained on account of their locality specificity and inadequate institutional support and protection.

- On the front of formal economy entry is constrained by a cumbersome, inaccessible and costly legal regime as well as the institutional and administrative barriers, not to mention the unhelpful mind set of the majority of the actors.

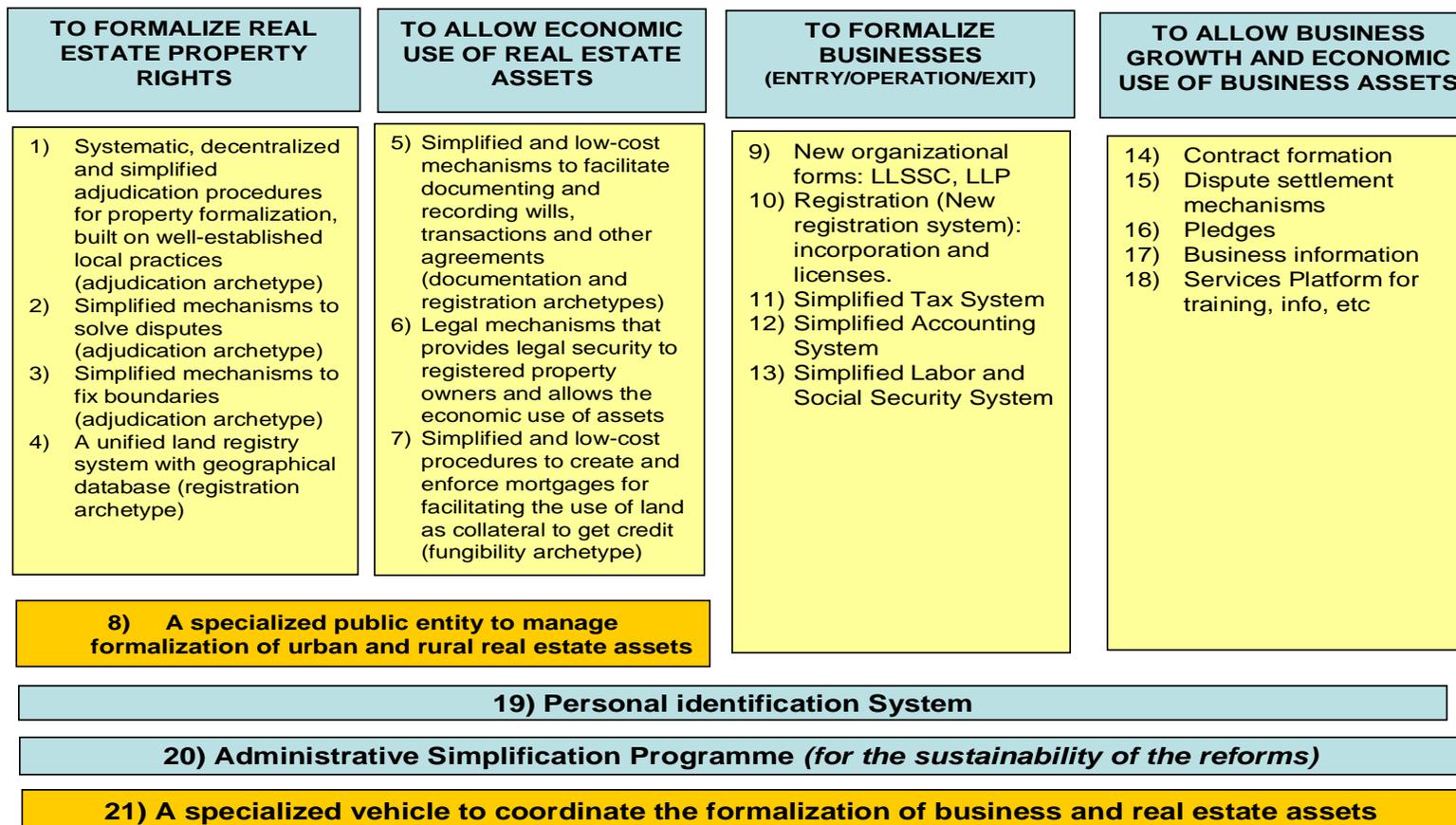
The second phase entailed the development of Legal and Institutional Reforms that will facilitate the establishment an Architecture of Property and Business rights referred to above. This framework has subsequently been used in developing modalities for fast track and cost effective formalization of the current extra legal assets and in facilitating their economic use in the market.

The key outputs of the second phase are a series of Reforms proposals whose adoption and implementation will provide the assets owners with Legal recognition and protection of their assets and the means to use them for economic benefits in the formal market.

These Reform proposals emanating from a framework shown below have been used to develop a ten year implementation plan in which the budget for the first five years is estimated at USD 117Million.

Figure 1 – The Framework for Business and Property Reforms

The Framework for Business and Property Reforms



The Reform proposals referred to above were grouped into five sets from which a series of Reform packages, whose implementation constitute the work plan, were developed.

The outputs from the second phase also included a Communication Strategy and its work plan, a Cost Benefit Analysis Framework that helps to justify investing in implementation of the reforms and a Monitoring and Evaluation Framework.

These outputs are described in detail in seven volumes listed below:-

1. Volume I - Executive Summary
2. Volume II - Reforms for Properties Mainland
3. Volume III - Reforms for Properties Zanzibar
4. Volume IV - Reforms for Business Mainland
5. Volume V - Reforms for Business Zanzibar
6. Volume VI - Institutional Arrangements and Communication Strategy.
7. Volume VII - Work plan, Monitoring and Evaluation and Cost Benefit Analysis.

Implementation of the third phase of the Program which entails institutionalizing the Legal and Institutional Framework developed in the second phase and rolling out the processes of formalizing the extra legal assets began in July, 2008 (2008/2009 Financial Year). It is essentially a legal and institutional reform processes that entails:-

- Amending and or enacting new legislations and or regulations that will facilitate the institutionalization of the fast track and cost effective property and business formalization systems detailed in relevant Reform Package.
- Reviewing of some selected policies and establishment of proposed national entities necessary for mainstreaming property and business formalization in the appropriate Government structures at central and local level.
- Institutional strengthening by supporting the establishment of the necessary infrastructure and training of required personnel.

The fourth phase whose main components are assets capitalization and good governance will, to a large extent, run concurrently with the implementation of the third phase.

In the context of Legal Empowerment of the Poor – MKURABITA conceptual framework is in line with the agenda on Legal Empowerment of the Poor in that:-

- i. Both seek to promote the acceptance of the centrality of the Law in any meaningful socio-economic development endeavour.
- ii. MKURABITA is currently dealing with promoting the acquisition of legal Property and Business Rights which are two of the pillars of the Agenda on Legal Empowerment of the Poor.
- iii. MKURABITA relates strongly to Labour Rights and Access to Justice when designing interventions on economic use of assets.

Both of these (Labour rights and Access to Justice) are the other two pillars of the Legal Empowerment Agenda.

2. EMPIRICAL EVIDENCE ON THE LEGAL AND ECONOMIC EMPOWERMENT CHARACTERISTICS OF MKURABITA

Through the implementation of Land titling projects in Handeni, Bagamoyo, Hanna Nasif – Kinondoni evidence has been collected to certify that owners of hitherto extra legal assets attach substantial value to Legal ownership of their properties and foresee enhanced economic potential in using formalized assets. Indeed some owners of recently formalized farm lands in Handeni District are in the processes of using the certificates for Customary Right of Occupancy (CCRO). Communities enthusiastically participated in improving Land Registry buildings – a measure of their acceptance of the Program.



Old Mzeri Village Government



*New Mzeri Village
Government and Land
Registry Office*

Though in limited scope women have demonstrated significant appreciation of their recognition as equal partners to men in owning land and property there in.

Preliminary interventions in formalizing businesses which included capacity building to some micro and small business owners has generated remarkable enthusiasm for the Program and demonstrated the necessary interventions needed beyond the legal and institutional Reform. Some 272 groups and individual small businesses have registered their businesses as a result of this limited intervention by MKURABITA.



Individual groups supported by MKURABITA in formalizing their businesses enterprises

Evidence is therefore available to prove that there is value in formalizing the extra legal assets in that:-

- Great potential (Dead Capital estimated at USD 29.3 billion) held in the extra legal economy of Tanzania can be unleashed and mainstreamed in the national economy to contribute significantly to annual GDP growth and reduction of poverty. (China, Ghana, Nicaragua, Poland and Rumania are some of the countries where evidence is available to attest the above claim).
- Inclusive development which is necessary for attaining equity in the distribution of national economic benefits and for sustaining peace is intrinsically linked to a regime of legal property and business rights as well as access to justice and labour rights.

MKURABITA, working with other national initiatives provides a vehicle for carrying forward the Legal Empowerment of the Poor agenda in this regard.

In summary the empowerment aspects of MKURABITA, legal, economic and social, are chiefly centred on:-

- Legal Identify of assets owners – this is linked with the development and operationalization of the National Program for Citizen’s Identify cards. (This aspect is currently addressed by fixing owners photographs to the Certificate of Right of Occupancy).
- Legally protected property and business Rights, which is achieved through the issuance of the titles and its registration as well as creating the necessary infrastructure, personnel capabilities and management systems for sustainable use of the asset for economic benefits.
- Legally protected Labour Rights (Development and operationalization of a flexible labour right regime that responds to actual demands of the small enterprises is part of MKURABITA proposed Reforms).
- Access to justice (Developing a system of dispensation of justice that is readily accessible to the majority – low income people is also considered in the MKURABITA Reform Proposals).

The participatory approached based on top down and bottom up methodology used in arriving at the Reform proposals and in instituting these arrangements at all levels strengthens ownership of the reforms.

- Incentivizing the targeted beneficiaries to use their assets to access economic benefits in the market.

3. CHALLENGES OF USING MKURABITA AS A VEHICLE FOR IMPLEMENTING THE AGENDA ON LEGAL EMPOWERMENT OF THE POOR

Several challenges exist and some will emerge in the process of using MKURABITA to implement the agenda on Legal Empowerment of the Poor.

Those in existence include:-

- 3.1 The need to implement awareness campaigns to achieve national acceptance of the Final Report and Recommendation of Commission of Legal Empowerment of the Poor (The Report can be adopted and customized to Tanzanian situation).
- 3.2 Creating a local entity to lead the implementation of the CLEP recommendations and capacitating it for that purpose - Designating MKURABITA as the National Entity (Agency).
- 3.3 Defining the interventions (subprograms) for implementing the recommendations including the interventions that are necessary pre-requisite for success, notably establishment of the necessary infrastructure and training the required personnel to sustainably implement the property and business formalization. (Registries and their management systems.)



1980s systems



Systems that existed in the 1920s

Registered Documents stored in strong room in Zanzibar

- 3.4 Mobilizing resources (internally and externally) to finance key pre-requisite interventions which should include institutional strengthening subprograms at national and local government levels and for:-
 - Rolling out systematic extra legal assets formalization.
 - Creating mechanisms and interventions that will capacitate and incentivize targeted beneficiaries to formalize their properties and use them to access economic opportunities.

- Providing continuous education to all stakeholders on the importance of transitioning from informality to formality and living formal socially and economically.

3.5 Aligning the Commercial Financial Institutions with the Initiatives for economic use of assets. (Unleashing the economic potential of assets now hidden in the dead capital)

4 CONCLUSION

In the context of the AU conference the thrust would be to demonstrate that:-

- 4.1 Through MKURABITA, Tanzania is already in the process of implementing the CLEP recommendations and results are encouraging.
- 4.2 Substantial Financial Resources are needed to move forward appreciably thus external support would help greatly.
- 4.3 MKURABITA can lead the national efforts in customizing the CLEP recommendations to the country's requirements. (MKURABITA has been involved with CLEP since its inception including in organizing national consultation processes in November, 2006).



President Jakaya M. Kikwete with the Co-Chair of CLEP Hon. Madeleine Albright and the Former President Hon. Benjamin W. Mkapa during the official opening of the

National Consultation Conference on Legal Empowerment of the Poor (CLEP) held at Kilimanjaro Hotel Kempinski, 29th November, 2006

4.4 Tanzanian commitment to the agenda on Legal Empowerment was firmly confirmed by His Excellency President Jakaya Mrisho Kikwete when he officiated at the CLEP National Consultation processes in November, 2006

The President also pointed the synergies of MKURABITA with the CLEP agenda.

“We are extremely happy that the mission of the Commission on Legal Empowerment of the Poor is coincidentally identical with the spirit and aspirations of our Formalization Programme. It is also in line with several other government initiatives which target the improvement of the legal framework governing business development, land management and access to justice for all.

I want to assure everyone here that the Formalization Programme is a major component of our political program. Empowering the poor is an agenda I zealously campaigned on. Therefore I have a personal interest in seeing to it that it attains its objectives as soon as possible”.

Extract of President Jakaya Mrisho Kikwete opening speech for the National Consultation Conference for Commission for Legal Empowerment of the Poor on 29th November, 2006 at the Kilimanjaro Kempinski Hotel.

To take the Agenda forward Tanzania could offer itself as a “Laboratory” for developing operational modalities for the CLEP recommendations in Africa.

(Further consultations with the UNDP could lead to a firm Technical Cooperation agreement).

