

UNITED REPUBLIC OF TANZANIA



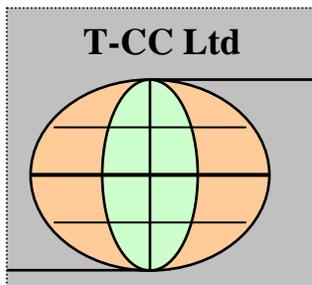
**MINISTRY OF LANDS
AND HUMAN SETTLEMENTS DEVELOPMENT
(MLHSD)**

**STRATEGIC PLAN
FOR THE IMPLEMENTATION OF THE LAND LAWS
(SPILL)**

**AGREED PRINCIPLES AND KEY STRATEGIC OBJECTIVES
TO BE ADOPTED FOR THE PLAN, WHICH WILL ENSURE MAXIMUM
CONTRIBUTION OF THE LAND ACTS TO POVERTY REDUCTION IN
GOVERNMENT PRIORITY SECTORS.**

(With Inputs From Field Consultative Meetings)

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Agreed Principles And Key Strategic Objectives To Be Adopted For The Plan, Which Will Ensure Maximum Contribution Of The Land Acts To Poverty Reduction In Government Priority Sectors.

BACKGROUND

The terms of reference (ToR) of the project for the “preparation of a strategic plan for the implementation of the land laws (**SPILL**)” have charged the team of consultants with both team and individual responsibilities. The land administration and policy specialist (**LAPS**) is called upon to produce four main individual outputs, namely;

1. A brief (no more than 10 pages) analysis of the broad relevance/ impact of the land sector and the Land Act to government policy objectives including poverty reduction, modernisation of agriculture, and decentralisation, after one week of consultancy.
2. Agreed principles and key objectives to be adopted for the plan, which will ensure the maximum contribution of the Land Acts to poverty reduction in Government priority sectors.
3. A brief (no more than ten pages) review of the current roles, capacity and constraint of the stakeholders in the land sector with reference to implementing the Land Acts, and a summary of the implications of the review for institutional framework for implementation, together with suggestions for related institutional organisation and capacity building for the sector after two weeks of consultancy.
4. Agreed prioritisation of objectives, actions and outputs based on the key principles and strategic objectives, a draft outline of the strategic action plan, preliminary financial estimates for the strategic action plan by the end of the consultancy.

This particular write-up addresses the second benchmark on the above list but is being referred to as Output No. 3 through sequencing of the production of these individual reports. The write-up has substantially benefited from field stakeholder consultations held in over 100 meetings across the country.

INTRODUCTION

The enactment of the new Land Laws in Tanzania is a historical milestone that has been undertaken by the Government. It was aimed at giving citizens deserving rights in a key resource that will greatly influence poverty eradication, while providing people with a sense of belonging and nationhood.

Land policies of the past century were inherited from the powers of the time and sporadically altered in content through the independence years. Land policies remained tied to political systems of the day, until recently. To begin with, the colonial land policy was focused at alienating land to settlers under documentary titles, while neglecting any formalization of customary rights to indigenous peoples, known as natives.

Through the years following the country's Independence, the need for a comprehensive land policy, that is truly national and supportive of the country's constitution and economic aspirations, was felt but not addressed comprehensively. At its infancy, Tanzania dealt with aspects of upholding indigenous customary rights, while largely maintaining the colonial policy. Freehold titles, Feudal tenure and Government leaseholds went through conversion policy approaches but, were later also abolished. More loopholes were identified in the land policy and administration, with passing time. There was, for example, no room for customary titles and affirmative action for vulnerable groups. Discrimination in land tenure was therefore, rampant. The Ujamaa politics of the 1970s and 1980s altered rural land tenure most significantly. It created a land tenure situation that will take time to reverse and an undesirable toll on the environment.

A synthesis of the tenure history briefly discussed here, brought about the 1995 National Land Policy (**NLP**) that has now been translated into law. The Land Act No. 4 and Village Land Act No. 5 of 1999 preceded the Land Disputes Courts Act No. 2 of 2002 and the more recent Land (Amendment) Act of 2004. Tanzania's transition from command to market economy policies at the end of the 1980s, coupled with changes in world order including commitments to the Rio-declaration, wide acceptance of the **UN-Habitat** agenda, and recognition of gender equity, as well as support for the Highly Indebted Poor Countries' (**HIPC**) initiatives in the 1990s have influenced and shaped the current land policy a great deal. **NLP** has also benefited from major Government studies and commissions such as the Shivji Commission, of early 1990s. The Public Expenditure Review Studies of recent years, has provide great revelations that enhance the principles behind the formulation of a strategic plan for the implementation of the land laws (**SPILL**).

The Strategic Plan is aimed at operationalising the land laws, which means that it will take on-board, all that needs to be done by the lands administration machinery to frame customary and granted land rights for land users and facilitate, among others, the alleviation of poverty particularly, in the rural areas. The objective of preparing **SPILL** is to:

“develop an agreed strategic framework for the lands sector and a strategic plan for the implementation of the Land Act (1999), Village Land Act (1999) and Land Disputes Courts (2002) over the medium (3 years) and longer (10 years) terms. The strategic framework will maximize the contribution of the Lands Sector and the Land Laws to the Government’s priority sectors and policy goals and will also promote an increased security of tenure to the benefit of Tanzania Land owners and users.”

The agreed principles and strategic objectives to be adopted constitute the framework for the plan. These have their genesis in the 1995 National Land Policy (NLP) and in analyses and syntheses of situations in the lands sector dating back to early Independence years, four decades ago. These have been compounded from the fundamental principles of the NLP and the new Land Laws and enhanced by the discussions held in over 100 consultative meetings conducted by the team of consultants country wide. The principles discussed herein largely address the land policy and administration framework of land tenure in Tanzania today. Economic aspects are to be discussed under separate cover by the specialist on the subject.

AGREED PRINCIPLES:

- 1. Land is the ultimate resource for humankind, and for Tanzanians in particular most of who earn their livelihood out of the land. Two view points follow this principle:**

Firstly, Land development constitutes part of Tanzania's development philosophy that is built around *people, land, and good governance* (good policies and leadership qualities), as promulgated by the founding President of the Republic a few years after Independence, to guide government policies in confronting the three main development huddles of the time namely; disease, ignorance and poverty (**DIP**). This development philosophy, decries the easing of emphasis on the role of land in day-to-day lives of Tanzanians, including Government policies – as witnessed in recent years contrary to expectations of both the national land policy, **NLP** and the new Land Laws. The latter documents seek to find motivated and empowered “land developers” and to set up a national land administration system, (**LAS**) that will confer desired levels of tenure security. Tenure security is fundamental to environmental protection as most environmental issues such as desertification, land degradation, deforestation, erosion, etc., are essentially, issues about poor management of land and its resources rooted in tenure insecurity.

Secondly, Land as a resource is also a valuable national asset that shall be used, developed, and made productive and sustainable so as to benefit directly and indirectly, the economy of Tanzania. In this regard, land rights are granted with a land development caveat, so as to ensure that it is developed or put under productive use. It is acknowledged that whilst the size of productive land per unit population is shrinking, its productivity is not increasing as it ought to if good custody of the land and its resources was enhanced. As a matter of principle productive land must not lie idle, and hazardous non-productive land must be identified and so declared under the law in order to help identify appropriate land-use for such land. It is envisaged, through this economic principle, that even the reserve land will be exploited for the benefits of the economy through tourism, mining, power generation, pulp and paper industries, recreation, etc.

Thirdly, the lands sector is crosscutting and backbone of the national economy. The Land policy, and hence the Land Laws, are built on the premise that Land is a primary resource for the existence of Life. It is the habitat of humankind and a platform of human socio-economic activity. Its wide use is therefore crucial for the economic, social and environmental advancement of Tanzania. Without land there would be no human survival, let alone discussion about the quality of life or the environment. Socio-economic affluence is enhanced in part by the productive capacity of the land and potentials of its

natural resources. All of Government's policies, strategies and programmes in socio-economic sectors, outside the lands sector, must uphold the simple truth in this principle to avoid marginal performance and success in many of Government's land based projects.

2. **All Land in Tanzania is public land vested in the President as trustee on behalf of all citizens.** By this cardinal principle, Tanzania has, through its Parliament, elected to adopt a specific land tenure system – the **leasehold** as different from the freehold system of land tenure. The leasehold system grants rights of occupancy (**RO**) to land users, constituting limited land ownership of well-defined land parcels for a definite and fixed term. In this system, a certificate of occupancy (**CO**) is issued to a citizen who has been granted land rights on a surveyed land parcel, under a set of conditions. Customary tenure is recognized under village land act (**VLA**), where Certificates of customary Right to Tenure (**CCRT**) are provided for. In both cases, the individual does not own the land but rather, s/he owns the rights to use the land under a set of conditions. S/he owns the developments on the land, but not most of the natural resources and sub-surface resources thereon (minerals, water, etc), which then remain under the jurisdiction of the state. Public land is administered with public interests in focus.

It is in the public interest that *the people of Tanzania have legal access to land through granted and customary land rights, and an equitable distribution of land that includes limitations in acreages of land over which any single citizen or business can have jurisdiction.* This public policy is a reflection of considerations for a growing population, a recognition of the level of development of the economy in which many people still live out of the land, and a recognition that land resources are limited and exhaustible, not renewable. Tanzanians are given the singular and collective responsibility of managing the land through land management of the individual land parcels and the environment within bounds of defined parcels. This policy underscores that the high level of responsibility for land management rests with the land user and not the land administrator. The land administration system must ensure that all land is appropriately distributed and land use conditions are complied with.

3. **Land laws have been enacted to govern people's relationships with the land - a relationship that existed much longer before national laws, and particularly these laws, were enacted.**

Long standing land occupation and land-use are given due recognition at law and where it is for the benefit of many that any existing land rights be revoked, then a full, fair and prompt compensation shall be paid at market rates and at cost to the state. This principle upholds the fact that land development is a long-term investment that is being encouraged by the Government. To individuals, land is a family heritage too, and collectively, it is a national one. As land rights are granted and guaranteed, to give occupiers faith in the land administration machinery, so must such faith be extended to all whose interests in land have not

been extinguished to the satisfaction of the two parties. The land laws do not constitute statutes on capturing the productive capacity of the land only, but rather of encouraging ties to the land and consequently, on investing in it. People's relationship with land is a dynamic one and so are land policies and corresponding legal provisions. Peoples mindset must always be tuned up for such dynamism.

In Tanzania, *People's mindset on land is still positioned in the yester years, so much so that major Government policy initiatives including land reforms of the 1990s seem to go unnoticed and therefore with little achievement in practice.* As a result, rural development and particularly, modernisation of agriculture and animal husbandry policies are particularly curtailed in this way. Major reforms introduced by the 1995 **NLP** and subsequent three land laws are: the granting of titles on customary village lands; official acceptance of a valuable bare and undeveloped land concept that has paved way to a formal and open land market; a legislated land compensation mechanism to address compulsory land acquisitions and encumbrances in land titles; and a recognition by Government policies that land tenure is a vital element in the drive towards poverty eradication – a position that now compels the allocation of land by setting minimum levels of land holdings for small holder peasant farmers and herders.

Certificates of Customary Right to Tenure call be offered subject to two conditions: approved boundary surveys of village land and absence of boundary and other inter and intra village disputes. As it is with land rights in general lands, so it is with village lands that cadastral surveys feature prominently on the critical path of certification objectives. According to the 2003/04 budget speech of the **MLHSD**, there were some 4,000 Surveyed out of the 12,000 registered villages and at this rate it will be a long while before all willing village land holders will receive **CCRTs** for their lands.

Village boundary surveys are not the only surveys expected in villages. Title adjudication is another form of survey that, in the end, produces a sketch of the land parcel. Stakeholders have noted with concern that adjudication, through witnessing is necessary but not sufficient in granting a **CCRT** for a tenure lasting more than a couple of years. Reasons behind this concern include the possibility of emigration of witnesses, future boundary misidentification and witnesses changing their mind for personal reasons. Stakeholders think that the process must be improved upon and experts view a solution to this problem being the inception of '*progressive titling*' that will eventually yield a survey plan as a replacement of an adjudicated sketch. Simple and affordable techniques, such as chain and compass surveys, exist for the purpose in rural areas, as a starting point.

4. **Land tenure systems are managed by efficient, transparent, cost-effective and well-empowered land administration systems – systems which Tanzania must establish with urgency.**

A Land Administration System (**LAS**) is facilitated by the existence of a land administration infrastructure (**LAI**), that encompasses the *institutions* (e.g. **MLHSD** or **LGA** offices) for revenue collection, surveys, mapping, valuations, title registries, dispute settlements, adjudication committees, etc, many of which have socio-economic benefits beyond the land administration function. **LAI** also includes *standards, processes, information gathering and dissemination systems and appropriate technologies* required to support the allocation, transfer, use and transactions in land parcels and properties thereon.

An effective **LAI** must be sufficiently robust so as to support the goals of enhancing and guaranteeing security of tenure and access to credit, while being sufficiently simple and efficient so as to promote and sustain wide participation. The Land Act facilitates all this through a land administration system that is centred around the Commissioner of Lands (**CoL**) and the two Directorates of the **MLHSD**. The Village Land Act (**VLA**) for example, provides for such participation through the village land committees and calls for simple land registration and transfer mechanisms. The effectiveness of the **LAI** is achievable mostly through decentralisation of Land Administration Support Services (**LASS**). The major support services include those offered primarily in support of the functions of land administration by both **MLHSD** and **PO-RALG** where, in principle, the former is responsible for policy and regulatory services whilst the latter deals with land users directly in the execution of physical planning, cadastral processes and land registration and control. The services have traditionally been provided by the **MLHSD**. But even after the policy of decentralisation and devolution of powers down to the District and Village level, **MLHSD** continues to be more than a watchdog and maintains a strong executing arm from headquarters in Dar Es Salaam.

In the decentralisation of **LASS** great precaution must be taken to preserve the key aspect of all land administration services, namely **record keeping** i.e., once framed and approved land records must continue to be preserved for as long as possible and be accessed with the same authority stipulated in sectoral laws, so as not to disturb, damage or in any way undervalue the century old string of records of the sector. Misplacements and loss of land records is a prime source of chaos in land tenure systems that can only serve to fuel commotion in neighbourhoods and exert stress to the land and the economy. Such chaos is impossible to repair or overhaul.

The weak and fragile nature of the existing **LAI**, centred at **MLHSD** headquarters is hereby acknowledged. Existing **LAI** must not only be rebuilt and modernised, it

must be decentralised down to the District level without devolving its functions to local authorities in **PO-RALG**. The decentralisation will make the land administration infrastructure serve the target group of stakeholders justly, expeditiously, effectively and economically. The preservation of the **LASS** as a key mandate of the **MLHSD** will uphold the regulatory nature of such a mandate and uniquely maintain the original land records. The offices of the three technical departments of the Commissioner of Lands (**CoL**), Surveys and Mapping (**SMD**), Human Settlements Development (**HSD**) will, in this exercise, establish and maintain offices at the District level. The responsibilities expected of these offices include authority to examine and approve town planning drawings, cadastral surveys, and valuation reports; signing certificates of title; undertaking title verifications, adjudications, transfers and transmissions; and keeping copies of land records land-use plans and approved layout designs pertaining to the specific Districts in a well-developed and maintained land information system, **LIS**.

The day to day activities of the lands sector operatives at District level will be to establish and maintain framework and thematic data and its use in land delivery, preparation of settlement layouts, valuations, administering provisions of the land and other sectoral laws, village boundary surveys and dispute settlements.

It is recognised that decentralisation requires resource availability for the establishment of offices, capacity building and institutional setups and linkages. Therefore a three-phase ten-year plan to reach the target is envisaged. In the first phase, the existing six zonal offices of the Registrar of Titles are to be transformed into zonal offices of all technical departments of the **MLHSD**, be appropriately equipped and officers of the **CoL**, **SMD**, and **HSD** appointed to run these offices as assistants of the respective departmental heads. It is envisaged that phase I will be completed within a year. The second phase will see an expansion of the six zones to twenty one each housed at a Regional Headquarters, in three years after the end of phase one. The third and last phase will create **MLHSD** zonal offices at each of the one hundred and seventeen district headquarters in the country. This last phase will have a duration of five years after the ending of phase two. Capacity building must look at the required numbers of professional and technical staff for the phased programme already discussed.

Each zone will require a land officer, land surveyor, town planner, lawyer, and **LIS/GIS** professional for a total of five graduate professionals in each District office of the **MLHSD**. Technicians may not be required. Local Government offices' requirements depend on the extent at which the projects are taken to tender involving the private sector. Where a tendering process is maximized, the same numbers as for the **MLHSD** will be required in processing project write-ups, the tenders and project management, with a one to one support from technicians. The use of internal executions call for a higher composition of both professional and technician personnel in District land offices – figures that are not easy to predict except by doubling of professional and a tripling of technicians staff.

5. The Land Acts shall facilitate the operation and regulation of a market in land to ensure that the market flourishes while making due recognition of disadvantaged peasants, herders and poor homeowners.

As a valuable asset and containing valuable property, land is a commodity that can significantly contribute to economic growth. Like the economy itself, its liberalisation is important. But, land markets can open up depending on the extent at which the economy itself has been liberalised. Under the command economy of the past few decades in Tanzania, formal land markets were marginalized and informal ones were squeezed by low-level liquidity. Also, many landed properties had no certificates of title, the land administration machinery was not responsive to transactions in land and property and market prices were arbitrary.

Land markets provide opportunities for investors to obtain land for investment ventures. Marketable land is a basis for collateralisation in credit markets. However, this is only possible where the credibility of titles to land are not called into question. To facilitate land markets, **the sanctity of the title to land must therefore be upheld at all levels.**

Certificates of Title must instil in the owners of land rights a feeling of irrevocable security guarantees against any prejudices, and encumbrances, including trespasses. Owners must not, at any time, be convinced that such a right can only be guaranteed by the courts. Like any other potential or real breach of individual rights, owners of land rights ought to be saved from any possible breach of their rights by the immediate law enforcement agents namely, the police upon call. By the same token, there ought not be any difficulties, including delays and bureaucratic inefficiency, in transferring such rights upon disposition of the same through any legal form of conveyance.

6. The Lands Sector, empowered and facilitated by the new Land Laws, must restore the performance of the cadastral system through a cadastral reform process and ICT applications including a digital land information system (LIS).

A cadastral system in Tanzania has many nodes. It starts with landscape modelling and continues through land-use planning, land adjudication, liquidation of existing interests in land, cadastral surveying, land allocations, titling, land registration and culminating with estate/land development and management, in that order. As a system, there ought not to be a failure or under-performance of any of its component parts as such situation could lead to a collapse of the system. The cadastral system in Tanzania 'limping its way to the intensive care unit' as is manifested in the apparent land *development activities that have, since the 1970s, preceded land delivery* particularly, in the urban centres where irregular settlements have grown at an unprecedented rate as a consequence.

The collapse is also evident in its nodes or land administration infrastructure, as evidenced by the absence of maps for land-use planning, high demand for surveyed plots, delays in issuing titles, land disputes, absence of mortgage facility, poor enforcement of planning and building regulations and corruption in land delivery. The reform is aimed at availing appropriate human and financial resources for revitalising the land administration infrastructure, **LAI** and the mindset of people (*both administrators and users*) about the land. A key function of the lands sector is to deliver land to users through an *existing cadastral system* as a preparation for land development.

- 7. Land tenure for rural land cannot be secure enough, in facilitating poverty reduction, unless herders agree to settle down and confine themselves to allocated pastoral lands, i.e., land tenure as a PRS in rural areas is incompatible with nomadic lifestyles and civilizations.** Land tenure in the rural areas can only facilitate the poverty reduction strategy policy and environmental protection if firstly, each small holder peasant and herder has enough land to increase income levels and upon which land s/he can learn and practice modern agriculture and / or animal husbandry. A minimum 10 hectares for each peasant and about three times for herders ought to be made available and maintained in the next 3-year period. Land can be obtained through buyouts of other villagers' farms but can predominantly be allocated in a **national village resettlement scheme (NVRS)** for the landless – anyone with less than the economically viable acreage for the reduction of poverty and prevention of land degradation is deemed to fall in the landless category.

In this regard, stakeholders have agreed that **village land tenure in poverty reduction support requires an nationally supported alternative scheme for the landless to be known as a national village resettlement scheme. NVRS** aims also at establishing farming and pastoral villages in which either farming or herding predominates. This setup aims also at reducing obvious conflicts between the two groups, encourage each landowner to make a good living out of the land allocated in such villages, and protect the environment. Pastoral villages would develop into cooperative ranches whilst farming villages adopt modern farming methods. **NVRS** can be developed as a comprehensive scheme that takes into account the ever increasing human and domestic animal populations that are noted as major sources of land shortages in villages. In other words, **NVRS** provides for population dynamics for poverty reduction and environmental protection that is based on a firm land tenure dispensation built within a sustainable long-term policy framework.

- 8. Sustainable land tenure activities, including the implementation of the land laws, require a firm sectoral financing mechanism that draws out of the land.** Considerations for setting up a fund to finance land sector activities include:- Firstly, the new view of bare land as a valuable resource. This should come as no surprise since approaches in past policies held the contrary view. Secondly, that the budget for the **MLHSD** is ever shrinking even in light of more expectations

from the sector including its being viewed nationally as strategic in poverty reduction. Thirdly, that many activities necessary for the normal functioning of the lands sector were suspended some three decades ago and must be resuscitated to the level of financing that is commensurate with demands placed upon it by the current policy framework and the economy. Finally, that the fundamental principles of the **NLP** expect a higher level of funding to facilitate the envisaged (efficient, effective, transparent, and economical) land administration system.

Stakeholders have agreed therefore that it is prudent to establish a **Land Administration Infrastructure Fund (LAIF)**, with a setup similar to that of the Compensation Fund provided in Land Act No. 4, Section 173. It is envisaged that the fund will be used to finance the land administration infrastructure (**LAI**), comprised of the *institutions, standards, processes, information gathering and dissemination systems and appropriate technologies* required to support the allocation, transfer, use and transactions in land parcels and properties thereon. In terms of the activities assigned to the **MLHSD** the **LAI** includes: land-use mapping; preparation of master-plans; geodetic and topographic surveys; base mapping; cadastral surveys; national spatial data infrastructure, **NSDI**; settlements development control; valuation services; land allocation; land registration processes; settlement layout designs; and regularization of settlements.

All of these activities incorporate at some level, institutional development, capacity building and capability building. In light of the key consideration of setting up **LAIF**, the sources of finance will be in a form of land-user fees (not land rent) levied against each hectare of land granted either through specific legislation or provisions in laws, but not to individuals, through allocations by village or township authorities. In this regard, it is expected that the following will be contributors to the fund: planning areas; road, railway and rural airport corridors; forests; national parks; conservation areas; game protected areas; villages; farms and agricultural estates.

9. **Conglomerates of irregular settlements which are not only an eye sore but, by and large, not safe as a human habitat shall be regularized to acceptable human standards.** The period preceding the formulation of the **NLP** and thereafter, was one in which land delivery in urban centres lost sense and direction and thus disturbing the human habitat. It was also a period of unprecedented rural to urban migrations that have exerted immense pressure on existing tenure arrangements in urban centres. Many a village created during ‘operation vijiji’ of the 1970s have experienced a population explosion that simple band-aid solutions, such as splits into two or more, cannot transform for the better. As a consequence villages with a population that is officially accepted as ‘small towns’ continue to be governed and administered as villages. Physical planning laws are not easy to enforce in such settlements without first making land acquisitions and paying lawful compensations.

Both situations now require a hefty bill to address and bring under control. In this regard, the new land laws provide for a compensation fund, but leave the question of sources of finance for this fund open and unknown. Bearing in mind the complexities and intricacies of managing such a fund for diverse stakeholders countrywide, consultative meetings have revealed the peoples desire for **District Compensation Funds (DCF)**, rather than a national one. The stakeholders are of a converging opinion that viable inputs into such funding mechanisms ought to be sourced from levies that will be built into payments for newly created land parcels at the time of delivery to users. However, there will be Districts that cannot collect sufficient levies for the task particularly, where the many nucleated settlements explode into townships and, as a rule, land administration must shift from using provisions of the Village Land Act No. 5 to Land Act No. 4 from then on. In this regard, compensations shall be part and parcel of the process of transforming the settlements. The process must be considered as a function of both **PO-RALG** and **MLHSD** and be funded in the normal way in which these Ministries fund their other regular activities.

10. Land Disputes shall be settled through a just independent and expeditious system of courts.

There are three main categories of land disputes around the country:

- The first group is that of land disputes about title, boundaries, and/or conditions of tenure for individual land parcels.
- The second group encompasses land disputes of a socio-economic nature that focus on the violations in land-use and protection of a grantee's land rights against encumbrances and interferences.
- The third and last group of land disputes are territorial in nature and involve village and township jurisdictions over land.

Recent boundary disputes have their root causes in:

- the absence of adequate consultations with neighbouring villages;
- marking of village boundaries on hill tops without other markers on-line;
- expansion of conservation and reserve areas without consultative considerations and the welfare and aspirations of village populations;
- poor record keeping and fast turnover of Government officials in Village Governments;
- inclusion of environmentally sensitive areas within village boundaries;
- the nomadic culture of herders and lastly,
- unknown and unmarked buffer zones.

Most serious recent boundary problems have occurred in Ngorongoro District and stakeholders there, have called for a fresh delineation and resurvey of village boundaries in villages located around Loliondo as part of a 'road map' to tranquillity. It has also been recommended, in the absence of survey manuals for village boundaries, that regulations for farm surveys be applicable to the survey of village boundaries.

Any land dispute infringes on the security of tenure and is an unfortunate mishap in terms of the spirit of the national land policy and new land laws. Recognising this fact, the Government has enacted the Lands Disputes Courts Act No. 2 of 2002 as an instrument to deal with all such issues. At the lower level, the new system of justice has established land councils and tribunals – village land councils, ward tribunals and District land and housing tribunals. In terms of representation the councils and tribunals involve aspects of jurisprudence and are more responsive to the nature of the problems to be addressed than the magistrate's courts.

Noting this advantage, the stakeholders have however, shown reservations on a number of points, such as:

- the setting up of the Councils and tribunals has been delayed so much that there seems to exist an impasse that delays justice. Primary and District courts should therefore continue to deal with land matters until the tribunals have been established.
- Ward tribunals are located far from many villages. Stakeholders wish that a rotational system between villages in a ward be instituted to make it easier for the majority of misunderstandings about land matters to be brought before the tribunals.
- Boundaries ought to be demarcated with durable markers immediately upon agreement between villages as evidence to remove ambiguity that may arise when team of surveyors arrive.
- Members of land tribunals must have a minimum level of secondary education and go through seminars on the land laws.
- Most fines and penalties are too small to be effective. These must be stiffened to reflect the gravity of the offences in terms of poverty reduction and environmental degradation. **TANAPA** ought to compensate villagers when animals in parks and conservation areas or any animal that is protected by conservation laws invade and destroy crops and property in villages.
- Certificates of customary rights of tenure, **CCRT** for couples shall be registered in the two names unless one of the two willingly opts out of this arrangement.
- Religious laws should not be entertained in land councils and tribunals and,
- The rule of law must prevail and legal provisions be accordingly enforced in upholding the sanctity of titles to land.

In view of all the above, it is only the type of *land administration of village land that respects the Fundamental Principles of the NLP and new Land Laws that will do away with the volatile nature of land disputes between farming and herding communities in the rural areas that now constitute a firm chapter in land tenure practice in the country.*

Consultative meeting conducted across the country have identified five types of such disputes when viewed from the tenure point of view. These are:

- Disputes between villagers in one village in which small scale farmers and small scale herders co-exist but both sides seem to hold on to the notion that farming must be undertaken in ones customary lands while herding is conducted in any

‘empty space’. Such herding does not confine itself to those areas but occasionally the herds stray into farms under crop. *This kind of dispute is caused, principally by pressure on land use by people struggling to rid themselves of poverty but who still think land-use violations can be tolerated.*

- Disputes between predominant farmers and predominant herders living in one village. As village governments continue to allocate more land to farmers, the herders are pushed into fewer grazing areas but with the increase of the village herd the shortage of land for farmers becomes apparent. This then leads to deliberate assaults on farming areas particularly, during or immediately after harvest that is accompanied with shortages in pasture. *The causes in such a situation emanates from one group of land users having little or no regard for the other and ignorant of the provisions of the Village Land Act.*
- Disputes between farmers in predominantly farming villages and herders with a nomadic culture who seem to want to go anywhere and assume control over good pasture regardless of existing land rights there. Some seem to be in transit to greener and larger pastures for their herd. The latter do not normally have land in these villages. Depending on the season of arrival some would like to linger on while scouting for other villages with adequate pasture areas as a next destination. *The major cause here, is nomadism.*
- Disputes between herders in different villages who identify common safety valves for pasture and water or both for their herds particularly during the dry season. Differences arise when one group seeks to dominate and subsequently drive away the other by force for reasons best known to themselves. *The major cause is absence of law and order. And,*
- Disputes between predominantly farming villages and predominantly pastoral neighbouring villages when the latter run out of adequate pasture and/or water. The cause is excessive herds of cattle holdings that need to be reduced to cope with the carrying capacity of the land.

ALL these disputes will only end where each individual recipient of land rights shall rely on his/her well determined and allocated land parcel for all his/her land-use requirements and, where need arises to use extra ground, shall seek appropriate permission from the landowner(s) of that parcel.

11. Tanzania agrees with the UN Economic and Social Council Commission (UN-ESCC) on the Status of Women that **“land rights discrimination is a violation of human rights” and equitable access to land is a prime means by which resources and benefits from those resources are distributed within society.** Women constitute the majority of the rural population in Tanzania and female-headed households are on the increase at 25% or more of the total rural households in certain rural areas. The male dominant structure of society governs nearly 80% of the rural population including succession and inheritance in Tanzania. The problems are deep-rooted in succession or inheritance of immovable property including land by the female gender. Custom, culture and certain religious practices have combined to produce a bias against this and other vulnerable groups. Women access to land empowers women smallholder farmers

to support long-term food security. It is also a way of tapping on the participation of women who constitute an underused resource.

Stakeholders have recommended spouses be treated as co-owners of land rights in all cases where one of the two is granted such rights. In particular, all certificates of occupancy and certificates of customary right to tenure ought to be granted in the names of the spouses unless one willingly opts out of such arrangement.

12. **Professional and technical staff of the land related disciplines constitute needed capacity for the success of the lands sector and its deserving performance in the economy.** The past three decades have placed unprecedented demands on the professions of the lands sector in the context of skills and qualifications expected of them. The future envisages the setting up of small institutions as part of **LAI** that will be distributed down to the villages, performing multi-profession functions and relying on high technology and **ICT**-derived tools in the performance of their day-to-day land administration duties. Existing professional and technical staff is single-profession biased and professional-egoists who are not ready for this task ahead without re-orientation. The same can be said about professional societies, which have not forged institutional linkage or collaboration. Even worse are the existing academic institutions that mount academic programmes for their own sake without peer review and vetting by the key stakeholders, such as Government departments/agencies and professional institutions.

Capacity building that will serve the aspirations of the lands sector, under existing constraints, must include joint lands sector academic degree (and diploma) programmes that are built on a solid base of common courses. Further, academic departments ought to design community outreach programmes to provide models to the public on standards expected of them and produce practical and relevant teaching aids for the various programmes. Capacity building for the implementation of the new land laws must take into consideration this reality in professional practice.

On the outset, capacity building for professional staff seems a formidable task especially where the current output stands at a dismal one hundred graduates per year from **UCLAS** and most District land offices have no professional staff at all. But, records also show that there are approximately 2,500 graduate professionals of the lands sector and about 1,800 graduate technicians in Tanzania. Figures also seem to indicate that as of 2000 the public sector employed 20% of the professionals and 30% of the technicians with the private sector employing less than the public sector. Pointers are that most lands sector graduates are not employed in their professions. This is a huge resource to capitalise upon in building capacity. There is also an apparent decay of professionals and technicians employed in the informal sector but also in the formal sector due to underemployment. Short refresher and technology courses coupled with on-the-

job training must be part and parcel of the capacity building exercise for the sector.

A key role in capacity building will be played by professional associations of the lands sector. Professional Associations are non-Governmental Organisations, linking professionals on a voluntary basis. Most Governments have found it useful to support and encourage the activities of such associations as they lay down codes of conduct and standards of performance that are non-sectoral and, in many cases, supported internationally. The professional associations supporting the land administration process in Tanzania are: The Institution of Surveyors of Tanzania (**IST**), Tanzania Institute of Valuers and Estate Agents (**TIVEA**), Tanzania Association of Town Planners (**TATP**) and the Institute of Architects and Quantity Surveyors. The very existence of such association and institutions provides firm cross-sectoral linkages at all levels and memberships in professional societies shall be mandatory prerequisites to professional careers and advancements in the provision of **LASS** by the private sector. The National Council of professional surveyors (**NCPS**) is the closest partner to the professional associations in the lands sector. **NCPS** must be strengthened and appropriately facilitated in this undertaking. **NCPS** and similar secretariats shall set and ensure standards of workmanship, enforce ethics and, generally, the law on professional practice.

KEY STRATEGIC OBJECTIVES:

The framework for the strategic plan for the implementation of the Land Laws, **SPILL** that is being developed, has been addressed within the principles enumerated above. The focus here is on the new land laws and ways and means through which the laws will attain operational reality in the daily operations of land users. Hereunder, is a list of strategic objectives that must be focused upon in the consideration of the principles adopted for the strategic plan and in making the land laws part of the daily lives of Tanzanians.

1. To deliver land to citizen of the United Republic of Tanzania, **URT** and guarantee their land rights so as to facilitate its use in economic empowerment of the people and the protection of Land, its resources and environment.
2. To promote awareness in the leasehold land tenure system that Tanzania has upheld over many years and has elected to continue upholding as a basis of land delivery and land administration to all citizens.
3. To prepare people's mindset for a new dispensation including a land distribution system that supports limited land holdings, encouraging productive land utilisation while discouraging land hoarding.
4. To draw the attention of Government on the need to, and necessity for safeguarding the sanctity of granted land rights as a *condition precedent* to peace in neighbourhoods and long-term investment in land and landed property development.
5. To prepare Government to undertake a complete mapping of its territory at functional scales as a necessary tool in supporting, among others, land-use and economic planning.
6. To develop a modern land administration infrastructure, **LAI** that is responsive to the needs of land users by:
 - setting up computerized land information systems,
 - building capacity,
 - constructing offices and registries and
 - providing technical equipment and transport.
7. To facilitate and support the growth of a formal market in land and recognise and regulate the existence of an informal one.
8. To encourage and support finance houses in giving loans for land development and housing activities and accepting land titles as collateral for all types of mortgage loans.

9. To undertake inter-sectoral dialogue aimed at giving land matters their rightful places in sectoral policies, strategies and programmes through an acceptance of its vitality as a platform of all socio-economic activities.
10. To undertake cadastral surveys and facilitate land delivery to an extent at which building plots will always be available on request to possible developers in all urban centres, whilst carrying out comprehensive land development control to curb unlawful land development activities.
11. To forge multi-profession teams and action groups in the implementation of regularisation schemes in urban settlements and address the question of adjudication and titling of land in substantially built-up but unplanned areas, that are likely to otherwise require hefty compensations, if existing settlement layouts and orthodox physical planning practices are followed.
12. To include environmental land management as one of the conditions for granting long – term leases in land. Land-owners in a leasehold system have the responsibility to put their land to good use which includes land and environmental management.
13. To appropriately finance the land administration machinery in setting up new land administration infrastructure, **LAI** and upgrading the existing one, in readiness for the implementation of the new land laws and lands sector policies, strategies and programmes.
14. To complete the survey of all village boundaries, whose databases will not only safeguard village land but also constitute a framework for all geo-referenced land surveys in the villages besides providing the needed basis for land information systems, **LIS**, geographic information systems, **GIS** and all national topographical mapping programmes.
15. To facilitate an affirmative action approach in land delivery that encompasses;
 - a. Streamline procedures for land access for all and vulnerable groups in particular.
 - b. Provide a greater scope for women to own land rights,
 - c. Set the ground for the use of land as a productive asset and collateral in mortgage loans
 - d. Provide a mechanism for enhancing property rights of low income households
 - e. Undertake tenure regularisation in informal settlements
 - f. Popularise the Land Acts through community education programmes to enhance the legal capacity of women and other vulnerable groups.

16. To encourage, empower and facilitate the drive towards a national spatial data infrastructure, **NSDI** through institutional building and promotion of **LIS/GIS** applications. Make irreversible commitments made towards **MLHSD**'s own initiatives in developing and using **LIS/GIS** for land administration to underpin all land administration functions and facilitate dependent sectors.
17. To consult with Government institutions of higher learning to respond positively to demands posed by the new reality in the lands sector for which they provide capacity by way of designing joint course curricula, providing outreach programmes to communities, participating positively in policy debates and undertake research and publication on topical issues.
18. To provide each small-holder peasant and herder with enough land to increase income levels and upon which land s/he can learn and practice modern agriculture and / or animal husbandry by setting minimum acreages for each peasant.
19. To facilitate land delivery to the landless i.e., to anyone with less than the economically viable acreage for the reduction of poverty and prevention of land degradation through land allocation or conveyance but predominantly through a deliberately established national village resettlement scheme (**NVRS**) for the landless.
20. To establish a Land Administration Infrastructure Fund (**LAIF**), with a setup similar to that of the Compensation Fund provided in Land Act No. 4, Section 173 to finance the development and maintenance of a proper land administration infrastructure for the country.
21. To decentralise land administration support services (**LASS**) to the Districts, but remaining part of the **MLHSD** functions, in a phased programme. The services include authority to: examine and approve town planning drawings, land-use plans, cadastral surveys, and valuation reports; signing certificates of title; undertaking title verifications, adjudications, transfers and transmissions; and keep copies of land records, land-use plans and approved layout designs pertaining to the specific Districts in a well-developed and maintained land information system, **LIS**.
22. To build capacity for the sector through the strengthening of institutions of higher learning and tapping of the huge reserve available in the informal private sector through short refresher and technology courses coupled with on-the-job training.
23. To build a culture of safeguarding tenure security as the only sustainable solution to land disputes.

24. To establish and facilitate District Compensation Funds (**DCF**), rather than a single national fund, in accordance with the provisions of the land laws with inputs sourced from levies that are built into payments for newly created land parcels.
25. To continue the old system of justice where the setting up of the land councils and tribunals has been delayed i.e., Primary and District Courts to continue to deal with land matters until the tribunals have been established.
26. To introduce a rotational system of ward tribunal sittings between villages in a ward to make it easier for the majority of misunderstandings about land matters to be brought before the system of justice.
27. To demarcate village boundaries with durable markers immediately upon completion of the delineation proceedings between neighbouring villages as a measure that aims at removing ambiguities that arise when teams of surveyors arrive on site for the final survey of boundaries.
28. To underscore the role of both formal education as conditionality for public service down to the villages - village operatives and members of land tribunals must have an agreed minimum level of secondary education and undergo regular training, through seminars, on the land laws.
29. To stiffen sentences for violators of granted and customary land rights as most fines and penalties are too small to save as deterrence against this crime and must be made to reflect the gravity of the offences in terms of poverty reduction and environmental degradation.
30. To call on the Government to be sensitive to actions of animals held in parks and conservation areas or any animal that is protected by conservation laws – villagers to receive lawful compensation for such destructive actions.
31. To ensure that certificates of customary rights of tenure, **CCRT** and Certificates of Occupancy (**CO**) for couples shall be registered in the names of both spouses unless one of the two willingly opts out of such arrangement.

THE END