

BRIEF REPORT ON BREAKFAST DEBATE – OCTOBER 2007: “MKURABITA: KEY QUESTIONS FOR LAND REFORM PROPOSALS?”

The Property and Business Formalisation Programme – MKURABITA is based on the fundamental premise of Hernandos De Soto: The failure to codify property rights and businesses stops the poor stuck in the so-called informal sector from accessing their 'dead capital'. De Soto has calculated that the value of dead capital in the developing world far exceeds the amount ever being disbursed through international development assistance. In the Diagnosis Report of the Property and Business Formalization Program in Tanzania, for example, researchers calculated that the value presented by dead capital in the country totals \$29bn, which is more than Tanzania has received in foreign assistance since independence. The suggestion here is that by entering into a programme of formalisation and registration, vast amounts of capital will be brought to life, helping the poor.

Currently, MKURABITA will complete its Reform Design Phase at the end of March 2008. Since its inception in 2005, MKURABITA has undertaken research, consultations and piloting to support the design of reforms, with the objective of building “an architecture of property and business rules that will bring together, standardize, and modernize 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”.

To better understand MKURABITA, specialists from the 'Reform Design Team', Mr. Stephen Rusibamayila and Dr. Elifuraha Mtalo presented a summary of various issues surrounding MKURABITA with special focus on land issues as they relate to MKURABITA. Dr. Ringo Tenga and Dr. Marcellina Chijoriga were the discussants for this debate.

Mr. Rusibamayila pointed to the fact that not many know about what exactly MKURABITA is or what has been done to date. There are many questions, issues and challenges surrounding MKURABITA. The diagnostic study revealed that the current legal framework is cumbersome, costly and unfriendly. The conceptual framework attempts to break the barriers/shortcomings, to harmonize, professionalize and formalize the extralegal archetypes from the bottom-up by building user friendly reforms. From the top-down, the framework needs to tailor existing legal institutions to suit the excluded, to simplify, prune and adopt current system to local needs.

With this there is need for a convergence analysis, a 'build as you design' approach with piloting of existing laws being tested such as the Handeni and Bagamoyo Land Registration Project. With this one has to look at land laws and policies and question if the laws are implementing the spirit of the policies. There are some clashes in the provisions of the law that take away some rights. The problem stems with our constitution that is based on UJAMAA but currently our government is pursuing a market economy.

Dr. Mtalo furthered this particular issue by pointing to the tensions and contradictions between laws and policies such as the conflicting provisions between the Land Act No.4 and the Village Act no 5. He stressed the need for security of tenure within the context of the conflict tensions between paying 'lip service' to socialist principles while developing a capitalist state. There is therefore need to harmonize the various policies and acts that relate to land. This is most evident with the contradictions and clashes evident in other acts such as the Wildlife Conservation Act of 1974, the Mining Act 5 of 1998, the Forest Act of 2002, National Parks Act, Ngorongoro Conservation Area and Marine Parks and Reserves Act. Dr. Mtalo emphasized the need to critically look at the provisions of the various laws, policies and acts but asserted further that the politics need to look at the majority of Tanzanian citizens instead of looking at what benefits only the few.

The first discussant, Dr. Ringo Tenda focused on the conflict of Law in Tanzania which traces roots in both German and British rule. Additionally the misconception of ownership and land rights as seen in the conflict between customary land law which is collectivist/inclusive and the concept of ownership which is exclusionary creating an ambivalence between customary law and the right of ownership was pointed to as a challenge. This is of particular significance in terms of MKURABITA as more homework needs to be done to ensure that the current conflict of law does not limit the implementation of this formalization. There is need for conceptual clarity (are we socialist or market based), need to lessen confusion between the government commitment to the market but the apparent limited practice in institutions that promote the implementation of a market based economy. We also need to be cognizant of the fact that with the 'clawback' provision, one cannot challenge the state. The state holds ALL land in trust so maybe in terms of private property one can aim to protect but will not achieve superiority over the state.

The second discussant, Dr. Marcellina Chijoriga's focus differed with her questioning whether

people are truly ready for formalization. She asked the question: Is everyone ready to be visible? She further questioned the methodology of the specialists in terms of their 'build as you design' approach labeling it 'muddling through' which is problematic as it essentially means there is no plan. Further, there is need to harmonize not only the laws but programs. For example MKURABITA and BEST appear to be striving for similar outcomes yet there is little harmonization and synchronizing. She suggested the need for a business expert on the team to look at the organizational form and procedures needed to formalize business. There is also a need for the team to look at the formalization part – what provisions are in place for those that have to register as companies?

During group and plenary discussion, the following general comments and observations were observed:

- Environment and Human Rights especially Property Rights – how is this being addressed by MKURABITA? It is pertinent that the concept of Rights be included in the planning and implementation process and be recognized as an important element.
- Gender Issues as it relates to Land Ownership and Protection – it is pertinent to look at the issue of gender as it relates to land and MKURABITA. Women are often most affected and neglected and there needs to be special provisions in place to protect the rights of women.
- Orphans: how are children and elderly recognized in law?
- Language used should be user friendly – currently the language is not easy to understand. When one says MKURABITA in of itself, majority of Tanzanians do not know what it means let alone the implications or the significance.
- Do villagers understand the value of land? Do they have the capacity to negotiate with investors? This is important because with the move to the market economy and big business coming to Tanzania, small farmers may get cheated and lose land due to inability to negotiate using the language and technical know-how of investors whose focus is profit maximization.
- Poverty Reduction – prioritization: Land is important but there are other things and issues that are important for overall poverty reduction.
- Top-Down Approach: lack of community development participatory approaches. How much information and participation is

coming from Tanzanians who do not have access to the forums such as the Breakfast Debates?

- Lack Knowledge Base of customary rights
- Program concentrating on results not participation
- Customary vs Modern – there are places where polygamy is common. what does this mean in terms of land rights and gender issues?
- Where does the law come from? Background/language? Needs to have direction based on Tanzanian language from within Tanzania, not external.
- Is March 2008 a realistic time line with the challenges faced? Concern is that the speed is too fast and the community cannot cope
- Lack of test cases – can look at pastoralists, fishermen, hunters etc to understand the different approaches
- What about the rest of MKURABITA? This focus in primarily on the land aspects, what about the other components?
- Economies of Scale: need to think of more than just land – look also at infrastructure such as roads and issues surrounding access to water to create an environment where this formalization process can be optimized.
- Harmonization of Laws, Policies and Programs is needed with strong linkages that serve to support the various provisions in place.
- Increase knowledge and awareness of MKURABITA is needed.

In their concluding remarks, Mr. Stephen Rusibamayila and Dr. Elifuraha Mtalo stated that they will take all the comments and recommendations back to their coordinator and revisit timetable. They will come with an outline by March 2008 that can be discussed in an open forum. They stressed the importance of looking at the law as it is the means by which business occurs. It is thus important to continue to question where these laws come from and to re-write them in our languages. It was acknowledged that this particular debate only focused on the land aspect of MKURABITA not suggesting that there are not other important issues to discuss with regard to MKURABITA. The other aspects of MKURABITA are a potential breakfast debate for 2008 once the team has completed this phase.