



**TOWARDS GOOD LAND GOVERNANCE IN TANZANIA? THE
CASE OF URBAN MBEYA**

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

CLO	City Land Office
DLHT	Housing District Land and Housing Tribunal
EU	European Union
FAO	Food and Agriculture Organization
GN	Government Notice
ISS	Institute of Social Studies
LRO	Land Registration Office
MLHSD	Ministry of Lands, Housing and Settlement Development
PMO-RALG	Prime Minister's Office-Regional Administration and Local
UNDP	United Nations Development Programme
UN	United Nation
USD	United States Dollar
WB	World Bank

Abstract

Good land governance is increasingly gaining prominence among scholars and practitioners. In Tanzania that may be seen from the both the land policy and Land Act 1999 that require good governance principles as guidelines for land administration. Unfortunately however, there have been signs of escalation of weak land governance rather than good land governance despite the laws in place. Using the FAO good land governance framework the study argues that weaknesses in land law, information and leadership can all be seen as obstacles to good governance in the urban land sector in Mbeya. This work found that establishment of good land governance was blocked by weaknesses in land laws, inaccessibility of information and examples of a lack of clear leadership in land management, in the context of urban Mbeya. By using documentary analysis, interviews, cases studies and reviewing relevant literature, the study explored these impediments to good land governance in an urban area of Tanzania, and sought to make some modest recommendations.

Relevance to Development Studies

The study explored land governance issues including gender dimensions, ownership, information access and leadership that are fundamental and core to development studies particularly in social justice perspectives.

Keywords

Governance, good governance, land governance, land information, land law, leadership and gender equality.

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I give thanks to ISS library staffs who helped me greatly access all necessary literatures for my research particularly for ordering a new book on ‘LAND AS HUMAN RIGHT : A HISTORY OF LAND LAW AND PRACTICE IN TANZANIA’ special for my research and ILLIAD for fixing my laptop.

Chapter 1: Introduction

1.0. The Problem of Land Governance in Tanzania

In recent years, good governance in land sector has been attracting the attention of many scholars and practitioners. The increasing call for good land governance is said to be a result of increased demand for investment in land, pressure from the drive to increase government revenues, requirement for careful protection of vulnerable groups such as women and the poor and greater governmental accountability (Deininger et al. 2010:250-251). In Tanzania, both the National Land Policy 1995 and The Land Act 1999 put good governance principles at the forefront (Tanzania 1999:5-7, MLHSD 1997:6, 42). Unfortunately however, there has been mounting evidence of weak land governance rather than good governance in Tanzania.

One of the evidence is the increasing land disputes. It is explained that land disputes in Tanzania have been increasing steadily from year to year (Askew et al. 2013:120-121). Discussing the state of land tribunals in Tanzania Massay indicates that 9,219 land cases were filed in 2009 while 12,643 cases were recorded in 2010. By December 2011 land tribunals in Tanzania admitted 10,428 land cases while in 2012 land cases had jumped to 12,074 (Massay 2013:6). Those records indicate a growing trend of land disputes. The work argues further that Mbeya region is among the top leading areas in Tanzania that are overwhelmed by land conflicts.

The growing illegal land developments and unplanned settlements is another commonly cited evidence of weak land governance. Studies show that about 75 percent of the general urban population in Tanzania lives in unplanned or hazardous areas (Lugoe 2010:4-5, Kyessi and Tumpale. 2013:1-4). In Mbeya urban area however, the figure is higher with about 80 percent population living in unplanned areas (Kyessi and Tumpale. 2013:1-4). Lugoe indicates that while the national population is growing for half million (0.5 million) people per year, only 6000 land plots are produced annually (Lugoe 2010:4-5). That means many people need land plots for settlement and other

economic activities while in fact there extremely few. Consequently, many people opt to build in unplanned or hazardous areas where there are poor social services such as water, electricity, schools and roads.

Large land acquisition is also explained as a good example suggesting existence of weak land governance. It is reported that land grabbing by both foreign and local companies have been increasing in Sub-Saharan Africa by 36 percent annually (Teeffelen 2013:33). And that in Tanzania alone about 4 million hectares of land had been requested while 640, 000 hectares were already allocated by 2009 (Teeffelen 2013:39). That had left many local communities landless or with insufficient land for both farming and settlement, making life even harder.

However despite the documented evidence suggesting the expanding trend of weak land governance, the obstacles against good governance in land sector are not yet clearly known. Thus to find out the study investigated on the key obstacles to good land governance by focusing on three areas; land law, information and leadership. The research was based on the assumption that weak land law, lack of land information and poor leadership could prevent good land governance particularly in urban areas.

Primary data was collected in Mbeya region, which is one of the areas in Tanzania highly affected by land disputes. Three land offices including City Land Office (CLO), the District Land and Housing Tribunal (DLHT) and Land Registration Office (LRO) were involved.

1.1. Research Question.

The study was based on following research question;

What are the key obstacles to achieving good land governance in Mbeya urban area?

Based on the main question above, the study was guided by the following four sub-questions;

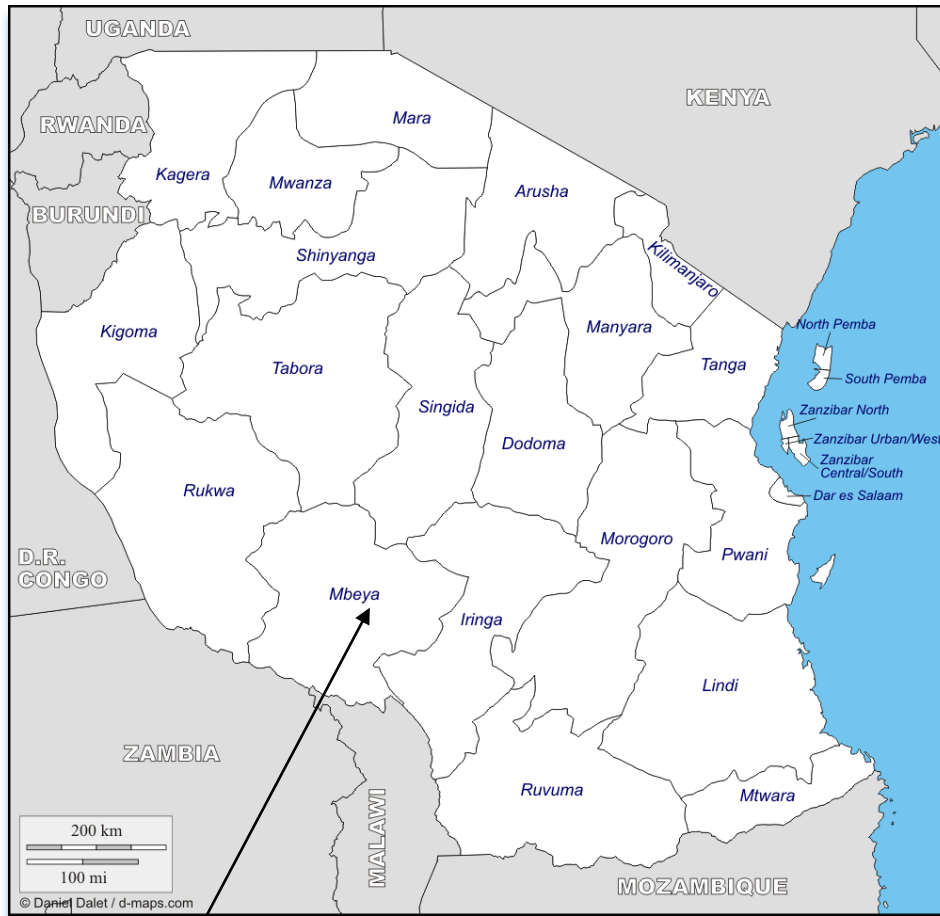
1. What kinds of information is available concerning land administration in Mbeya urban area, and to what extent is such information accessible and reliable?
2. What are the key land laws in Tanzania and what are their weaknesses? Are such laws accessible to most Tanzanians in Mbeya?
3. What is the current role of leadership in how urban land administration systems work in urban Mbeya in Tanzania?

1.2. The Study Area: Location, Land Cover and Population

Mbeya urban area is located in the South of the Tanzanian mainland. The area is part of ten administrative city councils in Mbeya which include Mbeya urban, Mbeya Rural, Kyela, Rungwe, Mbozi, Ileje, Momba, Tunduma, Mbalali and Chunya (see map 1.2). Mbeya region is located in the southern part of The United Republic of Tanzania and forms the border between Tanzania, Malawi and Zambia.

Mbeya City council covers 185 of the 63420 square kilometres of total land cover for Mbeya region. Mbeya is one of the largest regions in Tanzania comprising about 6.4% of the total land coverage in Mainland Tanzania. Most part of Mbeya region is a dry land which is estimated to be around 61,868 square kilometres (Report 1997:1-5). Only the remaining 57,000 square kilometres is arable land of which 1.757 square kilometres is covered by water. Fortunately, most part of Mbeya urban area falls within the small arable land explained above. That situation makes land in the area prone to competition both for agriculture and settlement.

Map 1.1: A Map of Tanzania Showing Regions

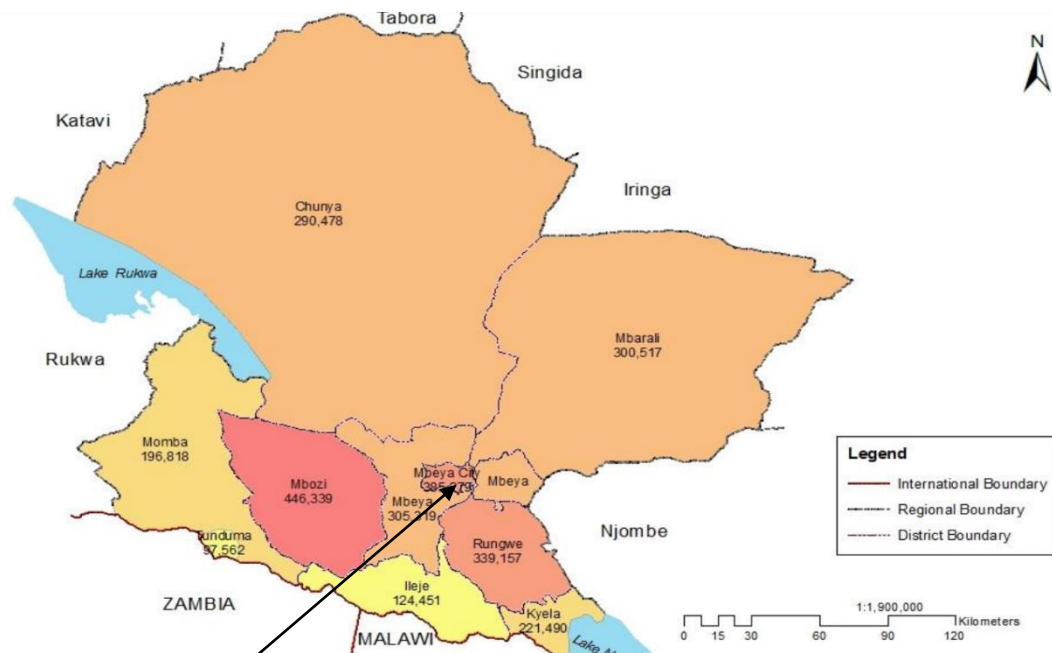


Mbeya Region

Source: Ministry of Lands Tanzania

The general population size of Tanzania is about 47 million people of which about 43.6 live in mainland Tanzania while 4.3 million live in Zanzibar. The population size of Mbeya region in 2012 was around 2.7 million people of which 385, 000 people lived in Mbeya city (see map 1.2) (Tanzania 2013:1-5). Whilst Mbeya city council covers 1% of total regional land it has a greater population than any other parts of the larger, surrounding District of Mbeya region. This means that land scarcity is acute and it calls for steps towards better land governance so as to contain escalation of land disputes and unplanned settlements. This pressure on land was clear to me from working as a judge in Mbeya, and this motivated the present study.

Map 1. 2: A Map of Mbeya Showing Research Area



Research Area

Source: Ministry of Finance-Tanzania

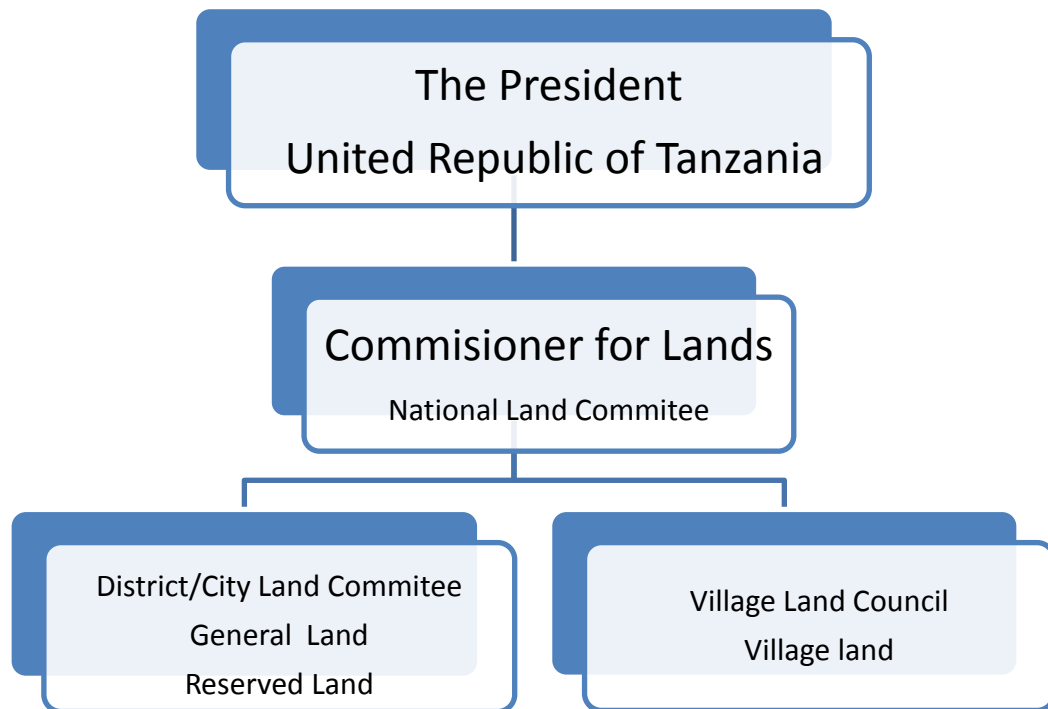
1.3. Land Administration System in Tanzania.

In Tanzania land is defined as "the surface of the earth and the earth below the surface and all substances other than minerals and petroleum....."(Tanzania 1999:3). All land is deemed as public property. It is held by the President in trust for all citizens of the United Republic of Tanzania for the present and future generations (Tanzania 1999:5). Day-to-day land administration activities in the country are delegated by the President to the Commissioner for Lands, who is responsible for determining and dissemination information about land ownership, value and use across Tanzania as a whole.

The land administration works under two separate ministries: The Ministry of Lands, Housing and Settlement Development (MLHSD) and the Prime Minister's Office- for Regional Administration and Local Government (PMO-RALG). This dual system coincides with the division between central government and local government. The village land council and City or District

land committees fall under local government control, while the Commissioner for Lands is accountable to the Ministry of Lands at central government level (see Figure 1).

Figure 1: Land Administration Hierarchy



Source: Research 2013

The Ministry of Lands provides technical expertise, policy and regulatory framework, while local government ministry deals with implementation of the law and policy. The Ministry of land has seven land departments. All the departments are located in Dar es Salaam, except the land tribunals, land registration and land commissioner services that have six zone offices, including in Mbeya town.

The local government ministry on the other hand has 21 administrative regions and 161 local government authorities in mainland Tanzania (Tanzania 2013:1-5). Each district has a land office providing limited land services. Land allocation depends on the type of land. In the case of village land, allocation is

dealt with the village land council, while for the general or reserved land, survey and allocation is done by the District land office.

It should be noted clearly here that land allocation in Tanzania is just one way in which a person may access and use land. There are also other ways including inheritance, clearance of virgin land, purchase and gift (Rwegasira 2012:93-118). However, land registration is not compulsory in the country.

1.4. Study Methodology: A Mixed Approach

This work used both qualitative and quantitative methods of data analysis. The qualitative method was used to analyze the contents of the documents as well as views of people during the interview and case study. The qualitative information extracted from the documents and interviews were then quantified generating numbers, frequencies and duration about the research questions. The reason for using this methodology was to maximize the strength of each method by enabling the researcher to gather more quality, highly dependable and authentic information using small sample size while mitigating the problems of credibility (O'Leary 2009:113-115) The discussion and reference to numbers in the analysis helped to create dialogue and add precision to the words as highly recommended by O'Leary.

In addition to that the qualitative study helped the researcher evaluate better the diverse public views on land administration system rather than using just numbers to arrive at the conclusion as it would be in the quantitative method alone.

1.5. Selected Research Techniques: Documents Analysis, Interview and Case Study

The study used both primary and secondary data. In collecting primary data document analysis, interviews and case study techniques were applied. The study used both online and ISS physical library as sources of secondary information.

1.5.1. Analysing Land Governance Documents

Document analysis was applied as a chief method of primary data collection in the field. As Bowen recommends, this involved a systematic procedure where as documents both in printed and electronic form were reviewed and evaluated (Bowen 2009:28).

Through this method an in-depth critical analysis of available official and non-official records related to the study problem was done. The researcher went through documents, land cases, legislations quotation and other organizational files extracting the meanings, gaining understanding and developing empirical knowledge on urban land governance. As O' Leary suggests document analysis helped the researcher to produce useful descriptive and exploratory information about the research problem (O'Leary 2009:174). In addition to that the methods enabled the investigator to relate theories to practice thereby helping the researcher to make a detailed assessment of complexities and dynamics of issues around the research problem.

In total, 43 documents were reviewed, of which 14 were selected for detailed analysis). This is reported on in detail in Chapter 3, 4 and 5.

1.5.2. Interviews: Officials and Complainants

Interviews were held for follow questions that arose during document analysis. Both land officers and members of the public were potential respondents for interview. The targeted respondents however were those directly or indirectly involved in specific land matters in Mbeya city. During the field work I spoke to 4 land officers and 6 individuals who were involved in land matters (both sides)

This technique helped the study to get clarification and additional information that could not be obtained in the documents. By involving the land officers and the public in the interview, the study was able to get views from both sides of the story and formulate unbiased opinion.

To access and contact the specific individuals the researcher used phone calls, personal visit and direct communication at the respective land offices.

The public officers and individuals were interviewed separately. The reason for that arrangement was to create space for either interviewee to express their opinion. That technique assisted the study to get detailed information without divulging confidentiality.

1.5.3. Case Study: Case 1, 2 and 3.

Three case studies were chosen from land case files during the field work. The chosen cases for analysis included Application Number 24 of 2012, Application Number 56 of 20012 and Application Number 27 of 2010. The case files obtained at the DLHT-Mbeya. The choice of the cases was based on relevance of particular case in elaborating the study subject matter.

Through the three studies the researcher was able to get new insights on and governance issues that were foreseen neither by this study nor by the FAO land governance theory. The news insights related to how an intersection between gender, class, position, social structure and power relation affect gender equality in land access and use in Tanzania. The cases are reported in detail in chapter 3, 4 and 5. For the purpose of identification the case studies are named as Case 1, 2 and 3.

1.6. A Purposive Sampling Method

The study applied purposive sampling approach in order to identify the study area, documents, interview participants and case studies. Mbeya urban was taken as a model for this study because it is one of smallest Councils but fastest urbanizing city with high rates of land disputes and unplanned settlements in Tanzania as indicated in the introduction above.

An earlier plan was to use case files at the DLHT- Mbeya only. But, the field work discovered that there was no centralized land information system at Mbeya. Land documentation was scattered and it was maintained by multiple land authorities, operating independently and without clear communication. That being the case, the researcher was not likely to get proper data if he had maintained an earlier plan.

On that basis, the study involved three different land offices including The City Land Office (CLO), The Land Registration Office (LRO) and District Land and Housing Tribunal (DLHT). All offices are located at Mbeya urban area. The choice of documents, respondents or a case was primarily determined by a research question and the quality of targeted information.

In the first question the study intended to explore available land laws and determine their weaknesses. The targeted documents were The Land Act 1999, The Village Land Act 1999, The Urban Planning and Development Act 2007, The Land Courts (Disputes Settlement) Act 2002, The Land Acquisition Act 1967 and The Land Registration Act 1967. The documents could be found at all three land offices. The targeted data included availability and accessibility of land laws, their weaknesses in terms of language, consistency, gender equality, currency and impartial land courts.

In the second research question, the study needed to determine kinds of available land information and in which language. The consulted documents were the Land Register located at the Land Registration Office (LRO), Land Notices and Publication File sited at City Land Office (CLO), Land Disputes Register found at DLHT and 2 land legislations namely; The Land Act 1999 and The Land Disputes Settlement Courts Act 2002. The statutes were found at all three land offices. The study applied five indicators examine availability, accessibility and reliability of targeted data. The indices included availability, language, security, currency and technology.

Finally, the third research question was looking at the role of leadership in influencing good urban land governance. The analysed documents included 3 land case files at the DLHT, the Land Complaints File at CLO, and High Court Inspection Report on DLHT 2010 at the DLHT, and Presidential Report on Land Disputes 2006 at CLO, Notices and Publication file at CLO, Land. On land cases, a total of 3443 files were recorded. Of 30 files reviewed in more detail, three were selected for more in-depth analysis. One case is presented in Chapter 3, another in Chapter 4, and the final on in Chapter 5. This helped to give a clearer picture of the realities of land governance in everyday life. Case studies were useful alongside the main targeted data, which was about information, law and leadership.

Using this sampling technique the researcher was able to select 43 land documents for review in which 14 documents including 3 land case files, 5 land laws and 6 other administrative files were selected for in-depth study. The three land cases chosen were interesting and highly relevant in that they revealed the importance of gender, class and power inequalities for land administration practices.

The reason for focusing on the 14 land documents was that the documents contained more relevant and interesting urban land governance issues, thereby providing more informative contents for the study. The concentration on 14 documents made it possible to dig into the key obstacles to good land governance in urban Mbeya.

In addition to document analysis, the study conducted a follow up interview. The interview was intended to get clarification and additional information on issues that could not be obtained in the documents. The interview involved four questions;

- i. Why was there no computerized information system both at the LRO and DLHT?
- ii. Whether the LRO had any mechanism to verify and update data in the register?
- iii. What was a general public opinion on performance of land officers and the cost of land information in terms of fees, travel, taxes, translation, legal counsels and copying?
- iv. What was the implication of conflicting definition of “general land” between the Land act and the Village Land Act?

The purposive sampling method helped the researcher to selected 4 land officers and 6 complainants for interview. The technique helped the researcher to get a good combination of interviewees who are well versed with land administration issues from different angles.

The researcher was based at DLHT, CLO and LRO located in Mbeya City. That setting allowed the researcher to have an intimate understanding of the nature of urban land governance system as it involved both the land officers and clients’ interaction. The study environment coupled by the familiarity of the researcher in the area helped in collecting useful, rich and

meaningful data using small number of samples. As O' Leary commends, this strategy helps minimize travel, cost, and increases efficiency because information are found in one place (O'Leary 2009:174)

1.7. Confidentiality and Professionalism: Ethical Issues

During this study, several ethical issues were considered by the researcher. Such issues included obtaining permission to access confidential land information, researcher's professional and official capacity.

In order to access classified confidential land information documents the researcher applied and obtained research permission from permanent secretary of Ministry of land through respective heads of the land offices in Mbeya city. The researcher used admission letter and student identification card to introduce himself as a student researcher in the application.

The researcher professional and official capacity as a lawyer and public officer posed an ethical challenge. Some land officers were hesitant to disclose information particularly those that are related to their professional conducts for the fear of incrimination. However, for other respondents the researcher's official position became as strength as they were relaxed and free to give information as they were talking to their fellow public officer.

To deal with those challenges the researcher explained fully and in detail to the participants the principles of confidentiality, anonymity, voluntary participation and withdrawal. Even though most respondents did not oppose disclosure of their names most of the names in the report have used pseudo names save those that were impliedly disclosed. The researcher clarified further that the aim of the study was purely for academic purpose.

1.8. Organization of the Study

This work is organized in six chapters. The first chapter has provided the general introduction and research methodology. The second chapter revisits scholarly works on the research problem and explains the theoretical framework guiding the study.

The third, fourth and fifth chapters deal with data analysis and come up with findings about each of the three research sub-question. Finally, the sixth chapter provides a short conclusion, in which some practical and theoretical challenges are noted, and a few recommendations made.

Chapter 2 : Good Land Governance: Theoretical Framework and Literature Review.

2.0. Introduction.

This chapter discusses a theoretical framework and it engages various scholarly works in relation to the study. The chapter is divided into two parts. The first part traces good land governance theoretical model which guided the study while the second area examines different literatures on land law, information and leadership. The study adopted good land governance model developed by FAO because it is the most relevant, extensive and widely referred to in the academic and policy literature on land governance. The author's engagement with literature in part two seeks to highlight the main views within the research topic.

2.1. Government and Governance Concepts

It is often remarked that the term good governance lacks clarity, demarcation and consistency. Thus, with this in mind, the study has sought to find the most relevant and least confusing definition of good land governance. This is in order to reduce the ambiguity of the concept by applying a good governance framework in a cautious and detailed (micro-level) manner. For this reason, the FAO framework, specifically designed for good governance in land administration, has been selected. In this part of the chapter, this choice will be justified.

The terms government, governance and good governance are related yet different. While governance comes from the word government, government is certainly not the same as governance. Government is sometimes defined as executive authority of the state (Nyerere 1998:1). Heywood explains government as all apparatus that enables well-organized rule, make joint decision and implement them (Heywood 2002:6, 26). The two definitions though different in language, both have something to do with authority, power and organization.

As is the case with government, governance is described differently by various people and institutions. Some simply say that governance is the expanded term of government (Heywood 2002:6,26) but others go into details to indicate that governance is the system in which a society is administered and conflicting interests resolved (Grover and Grover 2012:88). However the study views Heywood's depiction of government as ambiguous and leaves wider room for manoeuvre. The later definition though broad seems too academic and carries expert opinion on the term.

The UN-Habitat explains governance as a process and means by which the public and civil society express their interests. However the FAO defines governance as a process which enable the public whether individually or through civil societies to participate in decision making with the government. Both definition consider governance as a process and involve the public or society in the governance process. While the study found them to be more elaborative, the definition could be depicting the fine interest of UN organizations as opposed to the former expressions by politicians and academicians.

The EU defines governance as the state's capacity to provide services to the citizens. The World Bank however, explains that governance relates to the manner in which the public officials and institutions acquire and make decisions. One common feature here is that both definitions refer only to government in relation to the governance process, which in my view makes the definition narrow and even biased.

Nevertheless, even with these disagreements it would seem that governance is more than government. It can be defined as the process, procedures, and manner in which the public and organizations participate with government in decision making around various issues in the society – in this case land. Even though the list above is not exhaustive, it may be noted that there is no one agreed definition of governance or land governance.

2.2. Good Governance Defined.

Whether governance is good or weak it depends with existence of various factors. The factors however are subject to debate as is the term itself.

Nonetheless, the debate over good governance starts with unclear reverse of good governance. Is it weak, poor or bad?

In an effort to decrypt that question, the study examined literatures from major advocates of good land governance. The UN-Habitat for example says; ‘.....good governance... means the difference between a well-managed and Inclusive City and one that is poorly managed and exclusive...’ (UN-Habitat 2002:8). Thus in this case, poor land governance is used to indicate the reverse of good land governance.

However the FAO defined good governance as ‘well managed, inclusive and results in desirable outcomes’ (FAO 2007:6). To the contrary however FAO explains that ‘governance can be poor if the government is inefficient, incompetent and tyrannical’ (FAO 2007:6). Elsewhere FAO shows that ‘weak governance is ineffective, incompetent and inefficient’ (FAO 2007:10).

The Burns and Dalrymple for the World Bank explained that good governance seeks to avoid ‘ineffective, inequitable and poorly functioning land administration systems’ (Burns and Dalrymple 2008:7). By implication, a lack of good land governance may lead to: informal modes of service delivery, corruption, illiquidity of assets, limited land markets, tenure insecurity...’ For ‘there are numerous direct and indirect negative impacts as a result of poor governance in land administration’ (Burns and Dalrymple 2008:7). The World Bank explains good governance as sound public sector management with characterized by efficient economy, privatization, civil service reform and distribution of power (WB. 2013:1). DFID considers good governance is made up of ‘state capability, accountability, and responsiveness’. (DFID 2011:6) in policy making and service delivery and respect to rule of and human rights.

Similar to DFID, UNDP explains good governance as consisting of public participation in decision making, accountability, efficiency and equitable governance and rule of law (UNDP. 1994:2-3) while the FAO includes avoidance of corruption, accountability, political stability government effectiveness, regulatory quality and rule of law in its definition (FAO 2007:6).

From these various definitions, the study considers that good governance implies both processes and outcomes. The most common features of all the above definitions are: transparency, accountability, participation, rule of law and efficiency.

2.3. Good Land Governance Theory

Good governance in land administration cannot strictly be differentiated from other sectors. However, while there are many institutions and scholars promoting good land governance in their works, there are three distinctive frameworks specifically developed for good governance in land administration. The frameworks include the UN- Habitat, World Bank and FAO good governance principles on land administration.

2.3.1. The UN-Habitat Good Land Governance Framework.

The first framework was developed by UN-Habitat in 1999 and compiled later in 2004. Based on Amartya Sen's concept of development as freedom, the UN-Habitat developed five good governance principles in land administration. The principles are effectiveness, equity, accountability, participation and security (UN-Habitat 2004:14). UN-Habitat developed the Urban Governance Index (UGI), to lay down key principles geared towards promoting good urban governance around the world (see APPENDIX 3). Unfortunately, whilst the UGI was found to be useful in understanding better good land governance issues, it does not explicitly include land. It also lacks the clarity needed for this study of a specific urban context.

Secondly this framework has problems related to the notion of development as freedom, as advocated by Amartya Sen¹ which would require more space to discuss than there is room for in this study .

¹ While Amartya Sen advocated for freedom in the market (in this case total liberalization of land) his ideas were questionable given the historical point of view where for example Karl Polanyi in the Great Transformation argued that market economy was not free in its origin and could therefore not be left free to operate without the control by the state.

2.3.2. World Bank Good Land Governance Framework

The second framework found was from the World Bank. On instruction by the World Bank Burns and Dalrymple developed a Conceptual Framework for good land governance with eight (8) principles in 2008 (Burns and Dalrymple 2008:7). The principles include fairness and equity, market justified land management control, transparency, good land information, clear procedure in land disposition, recognition of social land rights, and market based valuation of land and good land disputes settlement system.

This World Bank approach makes an important contribution to expanding knowledge about good land governance. However, the researcher was of the view that the framework was also biased towards the Washington consensus and a market-oriented approach in ways that make it inappropriate for the more customary and less marketized land context in Tanzania, which affects the situation in the case study of urban Mbeya.

2.3.3. FAO Good Land Administration Framework

The third framework was devised by the FAO in 2007. The FAO developed twelve (12) good governance principles including efficiency, responsiveness, competence, transparency, consistency, accountability, equality, sustainability, participation, security, integrity of land officials, and locally responsive land administration system (FAO 2007:9). It is notable that marketization is not part of the FAO framework. This makes it more appropriate to the Tanzanian context, where as explained, land is held in trust by the President.

As opposed to the former two theories the FAO framework was found to be broad, neutral and fitted in well with data collection methods adopted in this study. That influenced the researcher to adopt the FAO model specifically as the guiding framework for this study.

2.4. The FAO-Good Governance Principles in Land Administration.

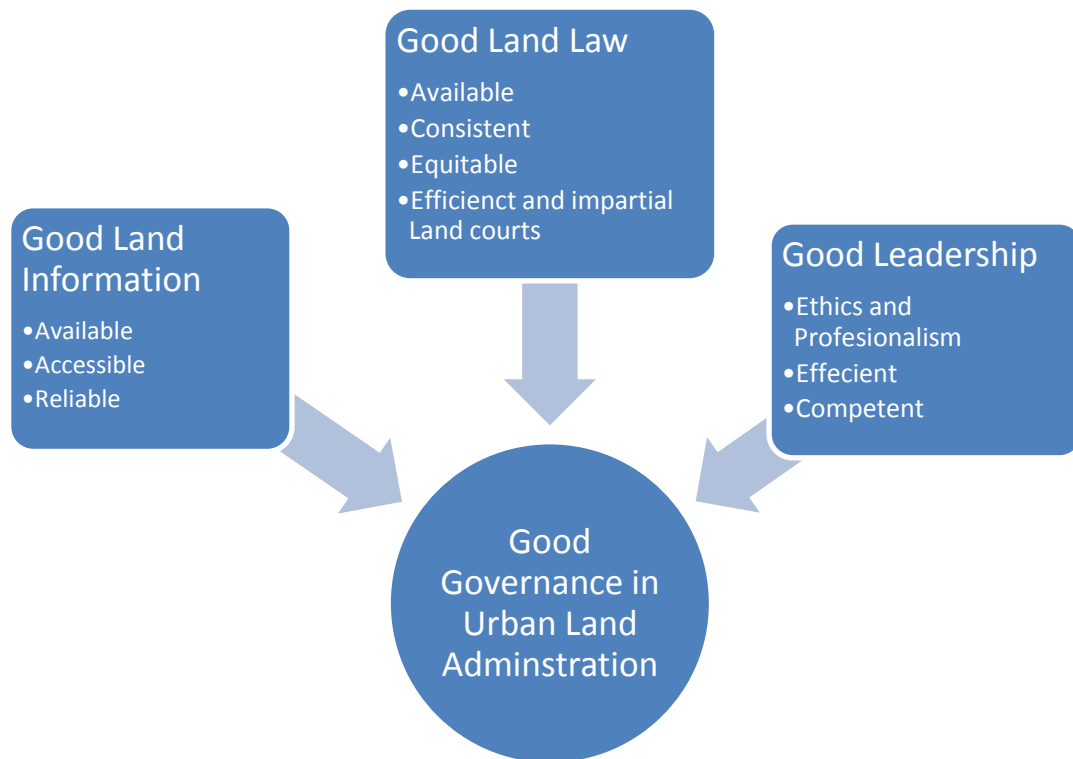
Although the FAO good land governance approach includes twelve principles, for the purpose clarity and consistency, these were abridged into

three categories (See Figure 2). The categories are: (1) good land law, (2) information and (3) leadership.

To start with, a land law contains five features. The features include consistence, justice, land tenure security and impartial land disputes settlement system (FAO 2007:9). Laws and policy are central to decision making by the government. Consistency and predictability of law helps smooth decision both by the judiciary and land officers. Good land law promotes public security through secure land tenure, impartial, efficient and amicable disputes resolution.

Land legislation must adhere to non-discrimination principles. Different groups in the society such as poor and the rich, men and women must be able to access land service equally. In that respect the FAO requires land legislations to be locally responsive by locating services closer to the users either geographically or technologically and keeping law and regulations in local language (FAO 2007:9).

Figure 2: The FAO Good Governance Model on Land Governance and Administration



Source: FAO 2007:9

The second aspect is good land information. For that purpose land information should be available, accessible and reliable. That enables public participation, transparency and it mitigates costs of land services (FAO 2007:9-12). A good land information system must be locally sensitive in terms of language and costs of the land service including taxes, data, travel and copies.

The final aspect is good leadership. Good leadership entails less cases corruption among land officials, efficient and competent land officers (FAO 2007:9-10). The study trimmed governance to leadership aspect of good governance theory given an earlier experience that 'governance' is more neutral term and that if not properly guided could mean almost anything.

The three principles are interrelated. While both land information and leadership are regulated by law, the laws alone cannot be enough for good land governance. The system needs an overall interplay between good land laws,

information and leadership to ensure better land governance. However the absence of one or two of the three basic principles does not necessarily mean the system is totally crippled. Good governance may still exist; only that the quality level could be jeopardized.

All that said therefore, good land governance is not absolute. Rather it is a continuum from good to weak governance and vice versa. The point is that the more the land governance system fulfils the three principles the more it improves governance and the more weaknesses there are in these three respects, the greater the likelihood of weak land governance.

2.5. Land Law, Information and Leadership

Good land law, information and leadership are key and central aspects in order to establishment good governance in land administration. Land laws define what constitutes land, accessibility and use both by the government and public in urban areas. The laws and regulations provide land authorities and elaborate on their core functions. Therefore, weakness in the land legislation can be an obstacle to good governance while strength of the law is likely to improve land administration.

Land information on the other hand includes all the records on land. Generally, land information refers to physical, legal, economic or environment data that provides details about land registration, transfer, ownership, mortgage, land disputes and others. Good land information is important to good land governance because it helps the government and the public in day today planning, decision and evaluation. That being the case the absence or weakness in land information system will cripple the performance of the land governance system.

Leadership is another area of great importance in urban land governance. Leadership involves decision making by those who are entrusted with power to provide land services. Good and efficient leadership can improve land services while poor leadership may cause provision of poor land service and governance generally.

An interaction between the three concepts determines the nature of governance in land administration system. Many scholars have laboured to show an interrelationship between the concepts and good land governance.

Strength or weakness in land legislation may be influenced by various factors. One of the factors is clarity and consistency of the law. To the contrary, ambiguity and inconsistency in land law may cause misinterpretation both by the land officers and the court (Burns et al. 2007:15-20, Deininger et al. 2010:75-77). Stringent legal procedures and the use of unfamiliar language particularly in land disputes resolution can easily block people to access land services (Kironde 2009:23). In my view that risks justice delivery in land sector and it could be a tough challenge to good governance.

The other factor is multiplicity both of land authorities and laws. However, there are divergent views on this. Burns et al and Deininger argue that such situation creates a breeding ground for patronage, corruption and informal fees (Burns et al. 2007:15-20, Deininger et al. 2010:75-77). In support on that argument Cotula explains that pluralism 'creates confusion and tenure insecurity, which in turn foster conflict, discourage investment and enables elites to grab common lands.'(Cotula 2005:3). To the contrary however, Adams and Turner argue that 'tenure dualism needs to be recognized as a resource not an obstacle' to good land governance. And that what is most important is its legal recognition through legislative initiatives (Adams and Turner 2005:6-7).

So while the first set of literatures discourage land authority and legal multiplicity, the later author tries to show otherwise that pluralism can be helpful to good land governance and thus needs to be encouraged.

In a more moderate way but cautiously Ben Cousins argue that multiplicity in land laws is a complex matter. In dealing with it legal and administrative reforms should consider the widespread legitimacy of customary land practices among the local communities (Cousins et al. 2005:12-18).

The differing views above on multiple land regimes and laws are important to understanding the existing complexities in land governance. However, it is my considered opinion multiple land tenure regimes and or legislation creates a danger of duplication, minimizes security of tenure and increases costs especially when there is minimal coordination and lack of

necessary technology. Even though that is not a popular view among land governance scholars, it could pose challenges to good land governance.

Weakness in land law may have many implications in relation to land governance. Some scholars have shown that broken land laws often lead to broken land governance, social instability and sometimes even lie behind civil wars (Byamugisha 2013:97, Elhawary and Pantuliano 2013:25-69). Examining land governance in Ghana, Roth et al adds that weaknesses in land legislation were to blame for property rights uncertainty, land conflicts and high litigation costs (Roth et al. 2012:83). Nevertheless, it is my opinion that fractures in the land legislation could more easily be mitigated by regular amendments.

While the contents of good land remains subjective in my view, McAuslan argues that good land laws must adhere to basic constitutional norms such as justice, protection of private property and gender equality (McAuslan 2006:2). Experience indicates however that sometimes law alone is not enough, for there are limits of legalism and strategies to bypass them (Woodiwiss 2006:34, Askew et al. 2013:120-122). In that case I would say there is no one rule fits all, it depends with the case.

Land information is vital ingredient of good urban land governance. Good land information can help the public participation in decision related to land matters. Thus land being a public property in Tanzania cheaply accessible land information is vital for the public to manage their property. To that end sound land information is one of the main principles of the Land Act 1999 in Tanzania (Tanzania 1999:15).

Three factors determine good land information. The factors are availability, accessibility and reliability land data (Koroso et al. 2013:423). However, whether land data is available, accessible and reliable depends on various indicators. Yet the indexes vary from one literature to another.

Derby argues that a functional land information system should be complete, accurate and consistent (Derby 2002:6). Ciparisse expands the list by explaining that good land information should consider security, simplicity, completeness, accuracy, cheapness and suitability to local circumstances (Ciparisse 2003:96).

In contrast however, Enemark indicates that good land information is not necessarily about accuracy. Rather it should be concerned much more with completeness, adequate identification and credibility of the data (Enemark 2013:10). And that land information should be flexible enough to fit the purpose of the particular area than simply copying from one place to another. Both Hespanha et al and Zevenbergen et al agree with Enemark on lesser necessity of accuracy for good land information (Zevenbergen et al. 2013:597, Hespanha et al. 2013:1-19). However good land recordation should fit within eight principles. The principles are citizens and state affordability, preventive justice, systematic, recognition of existing land rights, transparency, inclusive and equitable, flexible and co-management (Zevenbergen et al. 2013:597).

Absence or weakness in land information may have many implications on land governance. Examining land governance in China Koroso et al found that publicly available and accessible land information helps for well functioning land markets (Koroso et al. 2013:423). Costly and unreliable land records could cause uncertainty; promote corruption and nepotism in land transactions (Deininger and Feder 2009:236-237). Clearly documented land rights could reduce fraud and land transactions cost.

It is suggested however that good filing and modernization of land information system could improve availability and reliability of land data (Margulis et al. 2013:4-5). To be particular, Haldrup and Stubkjaer clarify that that maps and land registers must be freely available for public scrutiny (Haldrup and Stubkjær 2013: 1,663). Nevertheless the study is of the opinion that there should be considerable efforts to balance between accessibility and confidentiality of land data.

Finally, good leadership play an important role in influencing good land governance. Leadership is defined as an ability to influence other people and achieve goals (Hughes et al. 1996:1029). The qualities of a good leader include but not limited to avoidance of corruption, efficiency, competence, ethical and professionalism (Hughes et al. 1996:1029).

Literatures show that corruption among land officers is a biggest challenge to good land governance (Møller-Jensen 2010:5, Tuladhar 2007:1-5). Examples from Netherlands, Tanzania, Pakistan, India, Sri-Lanka, Bangladesh,

Kenya, Vietnam, Lithuania and other countries indicates that corruption is common among land officers (Tuladhar 2007:4-5). It is added that some public servants manipulate or ignore land law in their own interests or their families and friends (McAuslan 2002:36)

Several studies have shown that corrupt practices and other forms of misgovernance may result into double allocation, misallocation, land disputes, forced eviction (McAuslan 2002:36, Report, 2012:34). All those in my view, obstruct good land governance. However, while the studies above imply that corruption is a challenge to land governance both in Tanzania and around the one world, it does not necessarily mean that land profession is totally dominated by scoundrels.

In addition to that, inefficiency and incompetency could be related to poor leadership. For it is argued that poor leadership particularly in African countries is attributed to lack of technical capacity, human resources (Burns et al. 2007:19-20). However, it is worth noting that lack of technical and human capacity may not be the only causes of poor land services. Meagre monetary resources could also play a role in thwarting good land services.

2.6. Conclusion.

From the discussion above one can note that defining governance and good governance is not an easy task. There are many descriptions with differences, commonalities and complexities. While there are three influential frameworks on good on good land governance, the study opted for FAO theory because of its neutrality, broad coverage and relevancy to data collection method chosen by the study.

However, regardless of disagreement over what specifically constitutes good governance, most reviewed literatures indicated that good land law, information and leadership are important for good land governance. That is to say weaknesses in the three key factors are likely to foil good land governance.

Chapter 3 : Land Laws in Tanzania.

“Laws can be passed or inappropriate laws upheld by those who control land policy to help them benefit from this policy rather than meet the perceived ends of society” (Kironde 1994:1-2).

3.0. Introduction

In line with literature conclusion good land laws are important for good land governance. But as Kironde quoted above, not all laws are appropriate for the benefit of the society. On that basis therefore, this part identifies and examines land laws applicable in urban governance in Tanzania. The intention is to critically analyse the legislations by highlighting potential cracks that may jeopardize good land governance.

Clarity, consistency and responsiveness to local language are imperative features of good land laws. For it is argued that better land governance thrives not only where land legislations are readily available but also in a condition where the law is consistent, clear, just, equitable and supported by impartial courts (FAO 2007:12). The question is whether land laws in Tanzania fits within that standard?

To find out, five indicators were devised by the researcher to assess key legislations that govern land sector in urban areas. The indexes included availability of the land laws, consistence, language, gender equality and efficiency and impartiality of land court system. Seven land legislations were indentified during the study. But only five (5) legislations were chosen for analysis due to time limitations and relevance for the study. The analysed laws included the Land Act 1999, The Urban Planning and Development Act 2007, The Village Land Act 1999, The Land Acquisition Act 1967 and The Land Courts (Disputes Settlement) Act 2002.

3.1. Availability of the Land Legislations

During the field work, the study found that most land legislations were physically available in the three land offices that were visited². The identified legislations included The Land Act 1999, The Village Land Act 1999, The Land Registration Act 1967, The Urban Planning and Development Act 2007, The Land Courts (Disputes Settlement) Act 2002, The Land Acquisition Act 1967 and The Unit Titles Act 2008.

Most of the identified land legislations were found in a large collection of legal instruments known as JUTA. The JUTA collection was available both at the City Land Office and at the Land Registration Office. While the DLHT was found to have no JUTA collection, the individual pieces of legislations were available for public use³.

Nevertheless, the study learnt that none of the identified legislations was kept in soft copy either at the DLHT, CLO or at the LRO. All legislations were in hard copies only. That situation suggested that unless an individual visited the office and makes the copy or reads it personally, it was hard to access and shares them. A follow interview revealed that the legislations were at the public disposal for consultation or copying⁴.

3.2. Language of the Land Legislations.

After identifying the land statutes, the study went on to examine a language used in the particular laws. The literatures indicated that good land law must be responsive to local conditions which include official language applied in land legislations, policy and regulations.

The study exposed however that both land policy and legislations were written and available only in the English (foreign) language⁵. That included The

²² The DLHT, CLO and LRO

³ Personal review on the National Land Policy 1995 and legislations.

⁴ Personal Interview with Kastor, the city land officer and Sadick on 22nd July 2013.

⁵ Personal review on the Land Act 1999, The village Land Act 1999, Land registration Act, Land Acquisition Act 1967, Urban Planning and Development act 2007 and the Land Disputes Courts Act 2002 done on 24th July 2013.

Land Act 1999 which section 3 and 181 clearly stipulates that the law should be translated into Kiswahili so as to make it accessible to all citizens (Tanzania 1999:5, 151). However, the Swahili version of the Act was not at least readily available in the visited offices.

The finding above coupled by the fact that about 95% of the total population in the country do not understand English language⁶, it is likely that majority urban inhabitants is denied to know the contents of the laws on their own due to language barrier. In that case, unless one hires the commonly expensive translators and legal counsels for land dispute settlement, land information and other land transactions it is unlikely that he/she will get the necessary land service.

3.3. Consistency of the Land Laws.

Consistency of the land laws refers to uniformity and clarity in the legal provisions. Scholarly evidence in chapter two indicated that ‘legal clarity contributes to compliance, reduces the possibility of arbitrary interpretation of the law by government officials and facilitates the task of the judiciary’ (FAO 2005:25). However, the study noted that some land legislations contained inconsistent and ambiguous provisions.

One of the conflicting provisions was section 3 of The Land Act and Village Land Act 1999 that define ‘general land’ and ‘village land’. While the Land Act 1999 explained a ‘general land’ as all ‘public land’ which is not ‘reserved’ or ‘village land’ including unoccupied’ or ‘unused⁷ part of the village land, The Village Land Act 1999 describes ‘general land’ as all public land which is not ‘reserved land’ or ‘village land’. In that case The Land Act 1999 includes village land into general land while the Village Land Act 1999 excludes it.

The inclusion of unused or occupied part of the village land into general land by the Land Act 1999 contradicts the Village Land Act 1999. In an

⁶ Personal experiences as a lawyer, public officer and citizens of the United Republic of Tanzania.

⁷ Personal review of section 2 of the Village land Act 1999 and the Land Act 1999.

attempt to find clarity, the study found that both acts do not elaborate what constitutes unoccupied or unused village land.

The cited contradictions may attract confusing interpretation from both land officers and judiciary. Such standoff could cause injustice, delays in land services or illegal land use contrary to good governance requirements.

To gain more understanding on the general implication of the above contradiction, the study consulted the city land officer for interview. The interview revealed two possible consequences. Firstly, is that a confusing interpretation of the general land by urban land authorities could cause land authorities to survey and allocate unused or unoccupied part of village land for urban use. Secondly, is that it may cause land disputes between City and Village land Authorities over boundaries⁸ and/or between urban and rural population.

The study found the presidential power to acquire and transfer land is another grey area in the law. The Land Act 1999, The Village Land Act 1999 and The Land Acquisition Act empower the President to acquire and transfer any land from anybody, anytime and anywhere in the country in public interest (Tanzania 1999:8-9). To quote, the President may “transfer any area of village land to general or reserved land’ as long as it is in the ‘public interest” (Tanzania 1999:8-9).

Analysis on that provision learnt that the power conferred to the President in the land laws is so wide that it may result into injustice and insecurity of tenure. Examining the powers of the President over land Shivji indicated earlier that the enormous power placed in the central government through the President has been source of uncertainty and all sorts of problems related to corruption, nepotism and unconscionable allocation (Shivji 1999:4). In case of village land it could be employed against the general purpose of the Village Land Act 1999 (Mousseau and Sosnoff 2011:10) to deny the villages autonomy over their own land.

⁸ Personal Interview with Kastor, the City land officer who cited misunderstanding between Mbeya city council and Iwambi, and Itende villages as some examples, on 22 July 2013.

Furthermore, the structure of land courts in Tanzania was also found to pose great challenge on land governance;

Briefly, the law establishes five land courts. The courts are the village land councils, the ward tribunals, the DLHT, the High Court and the Court of Appeal of Tanzania (Tanzania 1999:137, Tanzania 2002:5). The aim was to facilitate administration of justice in land disputes fairly, inexpensively and timely. However, the study found that the court structure defeats establishment objectives for two reasons;

First is that the land courts fall under three different ministries. The Village councils and ward tribunals are under Prime Minister Office, Regional Administration and Local Government Ministry (PMO-RALG). The DLHT on the other hand are within the Ministry of Land, Housing and Settlement Development (MLHSD). Yet the High Court and the Court of Appeal of Tanzania are under the Ministry of Justice and Constitutional Affairs (or Judiciary so to speak).

Given that administrative order, the High Court does not have administrative control over the DLHT, nor do the DLHTs have power over the ward tribunals and village land councils. In that situation there is little or no accountability by the village land councils and ward tribunal to the District Land tribunals. Nor do the DLHT accountable to High Court. That situation reduces accountability of the court officers, could cause inefficiency of the court and defeat of justice in general.

The chairpersons particularly at the DLHT and ward tribunals are rarely accountable anywhere for whatever they do in the name of justice⁹.

Second, is that the DLHT chairpersons are paid both per session and monthly salary. They are employed on three years renewable contract. In the absence of money the study found that the DLHT are rendered useless because the members cannot sit without being paid daily. Unfortunately

⁹ Personal analysis on High Court Inspection Report on DLHT 2010, where delayed decisions, corruption and unfair treatment of clients were among the noted issues against DLHT chairpersons. Sometimes the ward tribunal chairperson/secretary refuses to bring cases files when ordered to do so by DLHT.

however, the study also revealed that when there is money members like adjourn cases rather than hearing so as to prolong cases to increase payment at the expense of disputants¹⁰. Thus on those reasons the study was of the view that the system is likely to create more land conflicts, chaos and ultimately weak land governance.

3.4. Gender Equality in Land Access and Use in Tanzania.

As seen in chapter two, it is advised that land law should consider basic constitutional norms including gender equality. In this case, gender equality refers to the equal opportunity between men and women or between men and men or any other gender category to access and use land.

A careful analysis on the land laws found that in theory the land laws in Tanzania claim gender equality in land access and use. However neither males nor females have the right to own land at Mbeya or elsewhere in the country because land belongs to the public. Gender equality in land rights is reflected in four main aspects in the land laws. That is equal access to land between men and women, spousal consent in case of disposition, co-ownership and equal representation to land decision bodies.

To that effect the National Land Policy states categorically that ‘in order to guarantee women’s rights to land and security of tenure women will be entitled to acquire land in their own right’ (MLHSD 1997:12). That is cemented both in the Land Act 1999 and The Village Land Act 1999 where it is provided that ‘the right of any adult woman to acquire, hold, use and deal with land shall be equal as right of any man’ (Tanzania 1999:14, Tanzania 1999:8).

Similarly the study found that the land laws were carefully crafted to accommodate both men and women in land decision bodies such as land committees, village land council, ward tribunals, District Land and Housing Tribunals¹¹. Although gender equality goes beyond men and women,

¹⁰ Personal analysis on Land Disputes Register, land cases and the Land Disputes Courts Act 2002.

¹¹ See section 11, 5 (1) 26, (1) of the Land Act 1999 and sections 3, 53 (3) and 20 of the Village Land Act 1999

recognition of inclusive decision making bodies is certainly the commendable part of the law.

However, through the case study, interview and literature review the research found that despite the above declaratory provisions on gender equality, realizing equal land rights between genders in practice was far from being attained. To learn better in this aspect the study examined land inheritance, allocation, co-occupancy and purchase as the main ways of land access in Tanzania.

3.4.1. Customary Land Rights and Gender Inequality in Tanzania.

In Mbeya and Tanzania in general land can be accessed through six ways. The methods are allocation by the state, inheritance, purchase, clearance of virgin land, gift and co-occupancy (Rwegasira 2012:93-118). The large part of land however is held under customary rights. Those rights are transferred from one individual to the other through inheritance or sale. Recognition of customary property rights is depicted under the Land Act 1999, The Village Land Act 1999 and National Land Policy 1995 where it is stated that 'inheritance of clan land or family land will continue to be governed by customs and traditions' (MLHSD 1997:12) in place.

So even though the study had intended to analyse the land laws only, it was found compelling to examine partly laws of inheritance so as to cast light on how they affect gender equality in land matters. Land inheritance is guided by three laws; statutory, customary and Islamic law (Kudo 2012:6-7, Rwegasira 2012:220-225). The application of the law depends on ethnicity and religious affiliation of the deceased.

The statutory law applies to all people who are of none-African decent and of African descent who abandoned customs and tradition. The law allows both the widow and children of the diseased to inherit equally the deceased land except illegitimate children (Rwegasira 2012:221). However Tanzania has more than 120 tribes each with its own customs and traditions. In that case it is unlikely for any native person to abandon customs. Thus statutory law though is the most laudable is rarely applied in inheritance and it is hard to prove its

application in court¹². Thus law applies mostly to people of European origin and Indians leaving majority population subject to either customary or Islamic law.

Nevertheless, statutory law inheritance was found to be gender biased in land access because it precludes illegitimate children from inheriting.

The next law of inheritance is customary. This applies to all people of African origin who proclaim local customs and traditions and are not Muslims. In the absence of a will the law identifies the heirs in three categories. The 1st, 2nd and the 3rd degree heirs (Rwegasira 2012:224). The 1st degree heir is a first born male from the 1st house and he gets a larger share than other males and females. The 2nd degree heirs are all other men heirs and they get smaller share than the 1st degree heir but larger than the 3rd degree heirs. The 3rd degree heirs are all the daughters and they get a smaller share than all the male heirs

The law does not allow a female to inherit the clan land. It does not also allow a woman to inherit her father's land except for use with no right for sale. Similar to statutory law, customary rules do not allow illegitimate children whether male or female to inherit anything. Widows are not allowed to inherit except to stay in the deceased husband home or stay with their children until remarriage or death regardless of how long they had been in marriage or how much they had contributed towards the acquisition of landed properties in question.

The study found the customary law of inheritance was gender biased because it apportions inheritance in three categories with females getting smaller shares as compared to males. Widows and illegitimate children are discriminated from inheritance. Yet customary law is the most applied in land inheritance in Tanzania.

The last set is an Islamic law of inheritance. This law applies to Muslims. Worse still females get lesser share during inheritance using Islamic rules. A son is entitled to apportion equal to that of two daughters (Rwegasira 2012:233). When there is only one son, he will be entitled to two thirds of the

¹²At least I know only of one case where it was successfully proved to be applicable to a native person of African origin since 1977 to date.

whole estate. So, the study came to the conclusion that the law created gender inequality in land access.

3.4.2. Land Allocation, Co-occupancy or Purchase and Gender Inequality.

Apart from customary land rights discussed above, land may be accessed through allocation by the state, co-occupancy or purchase in Tanzania. By the wording of section 3 the land acts (Tanzania 1999:14, Tanzania 1999:8), it was expected that land allocation by the state, purchase and co-occupancy would promote gender equality as opposed to customary land rights, by allowing all genders equal opportunity to land access.

However, the study learnt that only 16% of the total registered land at Mbeya urban area was allocated to women¹³. That finding was corroborated by an earlier study in Dar es Salaam, where as only 13% of women showed to be owners of registered land (Ali et al. 2013:3). While co-ownership enabled equal land rights to matrimonial properties between spouses by default, the study revealed that 23 of the 30 reviewed land cases at the DLHT-Mbeya related to matrimonial land disputes where as women were complaining against men on unlawful disposal. That is also cemented by a recent study which indicated that less than 50% of surveyed men could obtain women consent as required by the law before land rent, sale or mortgage and that 70-75% of all matrimonial land registration is done with one male name as opposed to co- occupancy rule that requires both spouses to appear on the land title (Ali et al. 2013:3, 5). The data above suggested that women are still under represented in land ownership as compared to men.

A case study of Seta Mwambene was taken as good example to demonstrate how women land rights particularly under co-occupation could be jeopardized.

¹³ Personal analysis on land register showed that land plots registered since 1984 to June 2013 was 7463 in which only 1194 were allocated to women.

Case Study 1: Land Application Number 24 of 2012

Esta Mwambene versus 1. Musama Auction Mart. 2.NMB Bank 3.

Kikondya Mwakilasa.

In this case Mwambene, who is the wife of Kikondya Mwakilasa, was suing the three respondents including her husband for selling the matrimonial home. Esta, who had married Kikondya Mwakilasa for 14 years, was disputing the sale of their house located at Plot Number 13 at Majengo area in Mbeya was unlawfully by Musama Auction Mart. But in response the second respondent claimed that he had been given the house to sell by NMB Bank. In the reply the Bank's lawyer explained that the house in dispute was mortgaged by Kikondya Mwakilasa and he defaulted to repay the mortgage.

While the bank maintains that both spouses including Esta Mwambene signed the mortgage contract, Esta disputed the matter in court. Her husband on the other hand sided with the bank and admitted that his wife had given consent.

While Esta Mwambene in that case was a co-owner by the law, her husband seems to have colluded with the bank and land officers to facilitate mortgage, sale and may be later transfer. That indicated that though the law provided women protection in matrimonial lands, it was quite hard in practice given male dominance mentality in my view. The data show that land rights by allocation or co-occupancy was equally discriminative against women as the customary. The law was still less helpful to salvage gender equality already crushed by discriminatory customary land rights particularly against women in Tanzania.

While the study could not obtain the primary data on land acquisition by purchase as land market data was one of the missing information reported in chapter four, the secondary data indicated that women economic disempowerment prevented them to purchase land from the market as opposed to men (Rwegasira 2012:280). And that land purchase subsidies targeting women could increase the chance for women land access (Ali et al. 2013:26).

That said the study came to the conclusion that despite good provision, gender inequality was still a challenge to land governance at Mbeya and Tanzania at large. As Shivji said; 'equality between with men is necessary but not sufficient to ensure equitable access to land' (Shivji 1999:7). For inequality emanates not only from the bad law but also from an intersection of various factors like power relation between men and women, class (poor or rich), gender and others.

3.5. Impartial and Efficient Land Courts.

Presence of impartial and efficient land courts refers to two things; First, that they are free to perform their duties with due regard only to law and evidence. Second, that they decide land disputes timely, fairly and inexpensively.

However, study found that efficiency and impartiality of the land courts was affected by two factors;

First, is complex administrative structure of land courts. As indicated earlier under part 3.3 above the land courts fall under three separate ministries. The Ministry of Lands, Local Government and Ministry of Justice. That arrangement could cause overlapping powers, complicate administration, reduce accountability and efficiency as suggested by literatures (Palmer 1999:4, Maoulidi 2004:29).

Second, is poor security of tenure for chairpersons and tribunal assessors. The chairpersons and tribunal assessors are appointed by the minister for only three years (Massay 2013:3-5). They are temporary employees where as the minister can renew the contracts at will. That creates insecurity of tenure and their work is likely to be influenced by political pressure. That condition, coupled by poor leadership as it will be seen later, could reduce efficiency and if not properly checked can instil corrupt practices.

3.6. Conclusion.

Based on both land legislations analysis and interview the study established that various land legislations were conveniently available for public consultation at the three land offices that were visited. However all legislation were written in English (foreign) language as to local language which is recommended by FAO good land governance theory. The majority people at Mbeya were not in position to understand the law unless they hired translators or legal counsel. It was further learnt that some land law provisions were contradictory.

The study came to the conclusion also that gender equality in land access and use was far from being achieved despite of legal declaration to that effect. A combination of issues like class, customs, traditions and gender were preventing gender equity in land access and use.

While good governance principles require an efficient and impartial land courts, the study observed that the established land disputes settlement system fell short of efficiency and accountability due to complex administrative structure. Therefore, the findings suggested existence of weaknesses in land law which was likely to frustrate good land governance.

Chapter 4: Land Information

4.0. Introduction

This chapter investigated land information system. The literatures in chapter two had indicated that good land governance requires availability, accessibility and reliability of land data (Koroso et al. 2013:423). Therefore, building on those basics the study developed five criteria to determine land data quality. The indicators included availability, language, currency, security and the cost of obtaining land data and other services.

Availability determined physical presence of data while language and cost measured accessibility of the land information. Currency and security on the other hand weighed reliability of the land information. Three (3) administrative files, two (2) legislations and interview as indicated in chapter 1 were involved for extracting, analysing and assessing the data from three land offices that were visited for a month.

4.1. The Availability of Land Data.

The study found that various types of land information were available in the land documents that were analysed. The information included identification of land parcels, name and addresses of owner, and plan of a specific plot. The study on the land register indicated that some encumbrances and restriction (if any) over registered properties were recorded. Furthermore, the register showed other interests that affect registered land such as leases, charges, mortgages, covenants and easements were shown¹⁴.

However, the study revealed that land records in at the LRO office were kept and maintained manually. There was no computerized land information. Following that revelation, the researcher was interested to know the reasons behind lack of computerized land information system despite of having computers in the office. An interview with land registration officer indicated

¹⁴ Personal analysis on the land register obtained at the land Registration office, Mbeya.

that human resources and technological strain were some of the reasons behind that situation. During the interview the land officer had this to say:

“Our office has no internet connection or a computer specialist to maintain the electronic land registration. For that case it is not possible to conduct land registration using computers”¹⁵.

The officer quoted above suggested that two reasons lack of computerized land records was because of lack of necessary human resources and financial constraints. Thus while good land governance principles recommended computerization of land data to boost availability and accessibility (FAO 2007:53), evidence collected at the LRO, indicated the contrary.

A study on land documents obtained at the DLHT revealed that from 2004 when the tribunal was established a total of 3443 land cases were recorded in the Land Disputes Register. While 2057 had been determined by June 2013, a total of 1386 cases were still pending in court for determination during this study.

Other land information that were documented at the DLHT included the land disputes settlement procedures, court orders, fees, parties to the cases, type of land matter, land category and location of the disputed property¹⁶. As was the case at the LRO, all records at the DLHT were done manually only. There was no computerized land information. As opposed to land registration office however, the DLHT had no computer for that purpose for land recordation. An interview with the Chairperson of the tribunal indicated that the office lacked both monetary resources for that purpose¹⁷.

Finally the study examined information in the Land Notices and Publication File obtained at the City land Office (CLO). Land information on land allocations, land notices, property taxes and compensation were found. The study learnt that the radio, newspapers and notice boards, were used as major means of land information publication at Mbeya urban area.

¹⁵ Personal interview with Sadick, the land registration officer in the office of land registrar in Mbeya, dated 26th July 2013.

¹⁶ Personal analysis on the Land Disputes Register, The Land Act 1999 and Land Disputes Courts Act 2002. The register is kept and maintained by the DLHT, Mbeya.

¹⁷ Personal interview with Murirya Nyaruka who said that the office had only one old desktop computer that cannot be able to run the bulk land law software and the office was financially crippled to purchase new computers.

The filed indicated that 30 land notices had been published since January to 30th June 2013. A close look on the notices showed that 19 notices were put on the notice board, 5 published through Mbeya city radio while 6 were published via newspapers.

While FAO good land governance recommends availability and accessibility of land market prices and public land information the study found that none of the three visited land offices had records to that effect. The study finding confirmed earlier observations in Tanzania where as Deininger working for the World Bank had described the situation as follows;

“an inventory of public lands and their geographical location does not exist. No information about availability of public lands is accessible to the public. The lack of information not only encourages informal occupation of public land by squatters, but also makes it very difficult to assess the efficiency of the public institutions that manage such lands” (Deininger et al. 2011:8)

The study was of the opinion that absence of such information could encourage illegal land development, prevent tax collection and hinder necessary developments in land sector.

The remarkable finding however was that there was no centralized land record at Mbeya urban area. Land information was scattered at multiple independent land offices. That had no coordination or established communication on how to collect, use and maintain land data. Each department collects records and maintains its own land data.

Given that finding, the study was of the view that The LRO, CLT and DLHT collecting, maintaining and using its land data the land governance system ran a great risk of data duplication and high cost of data management. That situation spelt a greater problem that could be facing land governance in Tanzania given the fact that there seven 7 land registries, 128 District/City councils and uncountable land offices countrywide¹⁸. With each office, district/city council and registry collecting and maintaining its own land records manually it could be costlier, chaotic and it made an environment where land clashes are more likely.

¹⁸ Based on researchers own experience and knowledge as a Tanzanian.

4.2. Land Information Language

The literatures in chapter two recommended that land records should be responsive to local environment. Thus language being an important tool for communication in the society land records needs to be in local language so as to help the local community understand land information and other services better and inexpensively.

However the field study found that most of the records at the LRO, DLHT and CLO were recorded and maintained exclusively in English language¹⁹. Only the Land Notices and Publication File recorded land information both in Kiswahili and English language. The double language entry in that document was adopted by neither necessity as majority people at Mbeya and Tanzania at large nor much Kiswahili and less English language²⁰. None of the analysed documents was exclusively in Kiswahili (local) language.

The study revelation coupled by the fact that very few people, probably elites only know English language in Mbeya, implies that the majority population cannot access land information and other land services unless they engage translators or legal counsels that are commonly expensive.

4.3. Currency and Security of Land Information

Currency of land information in this case refers to land data up-to-date while security explains safety and guarantee from tempering. The study examined whether land information was updated to reflect the reality on ground and secure enough to insure reliability.

The study found that the land register records were recorded on daily working days basis. New land data were recorded as it comes in²¹. An interview with land registration officer however revealed that land registration office was not verifying or updating previously recorded data either physically or electronically²². The absence of computerized documentation suggested that there was not electronic back system. That posed a great danger to data

¹⁹ Personal review and analysis on the Land Register, land Legislation, 3 land case files, Land Disputes register and Land Notices and Publication file.

²⁰ Personal Interview with Kastor, a City Land Officer on 26th July 2013.

²¹ Personal analyses on the Land Register

²² Personal interview with Sadick, a land Registration officer at the LRO

security in case of natural disaster such as fire as the data could be completely untraceable.

The study found that the data at the DLHT were largely current because the register and case files were updated as information come in. However the land information system at the DLHT had poor security given lack of a security officer, dilapidated office and computer backup system for the land files that were observed during the study.

However an investigation on land at the CLO established that most land files were kept both electronically and manually. The office was good shape suggesting that the data were secure. The notice board information contradicted the actual contents in the file²³ in which case however, the study thought that it was a minor issue.

4.4. Cost of Obtaining Information and Other Land Services

The cost of obtaining land information and other land services is an important aspect of good governance practices (Deiningger and Feder 2009:236-237). The study found that there were various costs in obtaining land information and service in terms of taxes, fees, travel and copying land documents. The question however was whether the costs were reasonable to maintain the service and reasonable enough to afford for common men?

An interview with 4 land officers and 6 lands revealed that most majority people thought that land current fees were high as compared to the general economic condition. While it is argued that land tax reform must consider land policy, fiscal, social and ecological aspects (Kötter and Friesecke 2011:11) the respondents explained that the land fees gazetted by the MLHSD on 28th August 2012 were high and unaffordable by the majority such that some clients were failing to access land services particularly at the DLHT. After perusing the a list of the newly gazetted land fees the study found that merely obtaining an application form cost approximately 3 usd while filing a case goes up to around 100 usd. In a situation where 33 percent of general population of

²³ Notice board was found to be the main method of land information publication. 19 out of 30 notices and publications that were made by Mbeya City Council from January to June 2013 used the notice board as a means of publication.

Tanzanians live less than 1 USD per day, and 89 percent live under abject poverty²⁴ the fees were likely to hinder access to land service for many.

A case of Pili Mohamed attracted an attention of the researcher during the field work;

Case Study 2: Application Number 56 of 2012

Pili Mohamed versus Uswege and 4 others.

Sometimes in September 2012, Pili Mohamed who is a widow living at Uyole area in Mbeya was evicted from her home by the relatives of her deceased husband. Pili whose husband passed away in 2010, sought to challenge the eviction against Uswege who was representing the family. However, on arrival at the DLHT Pili was required to pay 124,000/= Tanzanian shillings (about 80 USD) being the cost for obtaining an application form and filing the case. Pili could not afford to pay the fees but a land case number 56 of 2012 was opened for her. Hearing was adjourned pending payment of the required fees. Pili could not afford paying the fees despite a month extension by the court. The case was later struck out for lack of legal compliance²⁵.

The case depicts that Pili was denied hearing because of higher costs and fees required by the law. The case provided additional information that on how a combination of issues such as law, class (rich/poor) and status in society can play a role on injustice and inequality in land access²⁶

Apart from the direct land taxes and fees to the government, the study investigated on travel costs in land incurred by individuals to pursue land services. Taking an example of DLHT and LRO, it was that the DLHT serves entire Mbeya region except for Rungwe and Kyela. Some district is located 200 kilometres from the tribunal. The Land registration officer on the other hand caters for six regions of Iringa, Mbeya, Katavi, Njombe, Songea and Sumbawanga with 35 Districts. Some regions and districts are located more than 600 kilometres away from the office. That means most land users had to

²⁴ See <http://data.worldbank.org/country/tanzania>

²⁵ Personal analysis on Application Number 56 of 2012 and interview with Pili Mohamed, Zamda Tagalile the clerk of the Tribunal and Nyaruka chairperson of the tribunal.

²⁶ See chapter three on gender equality.

travel hundreds of miles in order to access land services as there was no online services as indicated earlier.

The large area of coverage both for the tribunal and the land registration office affected not only the rural population but also urban Mbeya dweller because it meant that many people were seeking services while few office and resources were available thereby leading to longer time to get a service.

Furthermore the study examined translation and legal counsel fees. As hinted above, land documents, laws and other data are kept in English language. Court proceedings and judgement are also issued in English language. So that required majority people to hire lawyers for land cases and other land services. That suggested increased cost.

4.5. Conclusion

Briefly, the study found that various land information were available at the three land offices that were surveyed. Some of the valuable information included land allocation, registration, law, taxes, fees and others. However, land data was found to be scattered, uncoordinated and in English language suggesting that it was costly to maintain for the government and expensive to access by the public. Even though most information particularly at the City Land Office was found to be reliable and secure, most land data at the DLHT and the LRO were unreliable because of insecurity that was observed.

Chapter 5: Leadership and Land Administration Structure

5.0. Introduction

Leadership is defined ‘an ability to influence others and achieve goals’ (Hughes et al. 1996:1029). It involves both an individual person and an act of leading others in an office or activity. Therefore, in this case leadership referred to land officers evolved in providing land services in their capacities as public officers.

Good leadership in land administration as in other sectors is important for good governance. However it depends heavily on credibility and quality of the leader. Ethics and professionalism by the land officers reflects good leadership while corruption and other unethical behaviours depict poor leadership (Hughes et al. 1996:1029). Thus the study examined corruption, efficiency and competency among land officers at Mbeya so as to determine the role of leadership in good land governance.

In addition to that the chapter examined the implications of duality land administration structure on good land governance. In doing so, the study used land documents, a case study and interview mentioned in chapter 1 at Mbeya.

5.1. Corruption and Unprofessionalism by Land Officers.

The study found that public concerns against corruption and other unethical behaviours among land officer were high. The concern was not only among ordinary members of the public but also among the top leaders of the country.

Given the public outcry against rampant corruption and unethical behaviours among land officers for example, the President of United Republic of Tanzania formed an inquiry committee in 1994 that did a thorough research on corruption among land officer throughout the country. The study analysis on the committee report particularly for Mbeya urban area showed that the committee came out with overwhelming evidence on corruption, and extreme

erosion of integrity and professional ethics among land officers (Report, 1994:97-100).

Twelve years later, the problem seemed to persist and the president formed another inquiry committee on land conflicts in 2006. After carefully analysis on that report for Mbeya urban area, this study revealed that corruption and unethical behaviours existed among land officer. To wit, part of the report read as follow; ‘kuwa malalamiko mengi yaliyopokelewa na kamati yalitokana na rushwa na utendaji mbovu wa watumishi wa sekta ya aridhi’: that means that ‘many complaints received by the committee were due to corruption and mismanagement of land sector servants’²⁷.

Apart from the two reports above, the study analysed the High court Inspection report on DLHT 2010. Similarly, corrupt practices were raised by the High court against DLHT officers. Part of the report read as follows; “Unnecessary delays of decisions and corruption were raised during the inspection calling for special attention”²⁸. That experience was also reiterated by the Minister of land, Professor Anna Tibaijuka who was quoted recently by Kasim of the Guardian news papers saying that; ‘The president has already made clear that he won’t tolerate people who acquired land through dubious means. We shall start dealing with those in Sinza and later those involved in similar cases elsewhere in Dar es Salaam and the rest of the country’ (Kassim 2013:1)

The Minister’s remarks though do no specifically mention names of alleged land officers, confirmed the presidential and High Court Inspection reports that had indicated earlier that corruption and other unethical behaviours among land officer existed and posed an administrative challenge in land sector. Indeed that finding is further cemented by recent study, which shows that corruption and failure to observe code of conduct by land officers

²⁷ Extracted from Presidential Report on Land Conflicts in Mbeya 2006 on 16th August 2013.

²⁸ Page 16 of the High Court Inspection Report 2010 at Mbeya District Land and Housing Tribunal reviewed on 16th August 2013.

was a major obstacle to smooth land development in Tanzania (Magigi 2013:153)

During the follow up interview, two questions were pursued among six (6) respondents. First related to corruption parse while the second needed to find public opinion on general unethical behaviours among land officers. One (1) respondent agreed that there were unethical behaviour among land officers but rejected corruption. Another (1) respondent said that she was not sure of existence of either corruption or unethical behaviours among leaders in land sector. The rest four (4) respondents agreed that both corruption and other unethical behaviours were an issue among land officers.

Thus the majority respondents affirmative response to existence of corrupt practices among land officers supported documentary finding indicated above. However, the study went on with a case study so as to get more details. The case of Francis Mwakajonga who was one of the respondents was found suitable for the study;

Case Study 3: Application Number 27 of 2010

Francis Mwakajonga versus Mbeya City Council and Mwakyusa Gwakisa

In this case Francis Mwakajonga (male) was suing Mbeya City Council claiming legal ownership of a piece of land at plot Number 58 at Iyera area in Mbeya City. Briefly the facts on the case were that Francis Mwakajonga purchased a surveyed land from Adam Mwandembo sometimes back in 2009. However, when he started building a house on it, Mwakyusa came up and claimed ownership. Upon consultation, both Francis Mwakajonga and Mwakyusa Gwakisa (male) showed land titles over the same plot. Both had title deeds. Francis Mwakajonga took the matter to court seeking redress against Mbeya city council and asking the court to pronounce him legal owner over the land. In 2011 Francis Mwakajonga won the case. When Mwakajonga took the court judgement to the city land officers so that they initiate cancellation process of the second title over the same plot, after a year, the City Land Office had still not acted on the court's decision.

In that case, the city land officers issuance of two separate ownership documents to two different individuals over the same plot indicated a typical case of double allocation. The inaction exhibited by the land officers against the judgement of the court granting right to Francis Mwakajonga suggested leadership unethical or corrupt elements that plagued land governance system. Both double allocation and unethical whether they were intentional or not posed a clear challenge to good land governance at Mbeya.

5.2. Efficiency and Effectiveness in Land Service Delivery

Efficiency and effectiveness in land services delivery can be measured in various aspects. In this case however the study chose to look at building plots production because it is one of the main responsibilities of land local authorities in Tanzania.

The study found that at total of 7, 463 plots had been surveyed, allocated and registered from 1984 to June 2013 in at Mbeya urban area²⁹. Assuming that plot survey and allocation was consistent; the figure translates into an average of 257 plots each year in a span of 29 years. Given the high population growth rate as indicated in chapter one and the time taken, the study was of the view that the plots produced were few as compared to demand. High population in this case was taken as an indication of high demand of land both for settlement and agriculture. Slower plots production could be a sign of weak service delivery translates into weaker leadership (Magigi 2013:156).

On the land disputes however, the study found that a total of 3443 land disputes were registered since 2004 when the DLHT was established in Mbeya. A total of 2052 cases had been decided by June 2013. And a total of 1386 land cases were still pending in tribunal³⁰. The figures explain that the DLHT was only able to dispose off an average of 205 land cases annually since 2004.

The study revelation both on plot production and pending cases suggested that very few land plots were being surveyed annually and that many cases

²⁹ Personal review on the Land Registers at the LRO.

³⁰ Personal analysis on Land Disputes register at the DLHT

were still pending at Mbeya District Land Housing tribunal. Apart from poor leadership, many other factors like human resources, technology and insufficient resources that were observed in earlier chapter could play a role for that finding. However that does not relinquish the dangers created by the situation against good land governance.

On the other hand the perusal of land complaints file at CLO, found that there were 18 of 30 land complaints related bureaucracy and delays in building permits and land cases³¹. The case of Francis Mwakajonga above gives more voice to the finding. The High Court Inspection report on delays on land cases cements the above story. All those findings had been noted before in the Presidential Report on Land conflicts 2006 which was analysed by this study.

Based on the figures found on land plots production from since 1984 and the pending cases at the DLHT 2004, could suggest that land administration at Mbeya face low of efficiency by land officers. For it is argued that good leadership is result oriented and ability to achieve goals (Hughes et al. 1996:1029). Given the scarcity of buildable land plots, The scarcity of land the growing population could forced to build in open spaces, hazardous areas and blocking infrastructure (Lugoe 2007:6-7) for settlement purpose.

5.3. Competence of the Land Officers.

Finally, the study examined competence of land officials at Mbeya. To test competence the study looked at education levels of land officers at the DLHT, CTO and LRO.

The study found that the DLHT had six officers, two with degree level and four (4) with certificate level including a driver, secretary, and messenger and tribunal clerk³². At the LRO, there was only officer with a degree (1) while four (4) others had only certificates³³. The CLO however, had four (3) land officers with a degree level while 17 others had diplomas and certificates³⁴.

³¹ Personal analysis on the land Complaints file on 27th august 2013.

³² Personal Interview with Murirya Nyaruka, Chairperson of the DLHT

³³ Personal interview with Sadick, Land registration officer at LRO

³⁴ Personal interview with Kastor, a City Land Officer.

Based on those finding, the study was of the view that the fewer number of professional land officers depicted low level of competence in the services delivered by majority certificate holders. Even though education level does not necessarily translate into competent service, higher or low education level would be a good indicative factor to determine competence of an officer. In this case higher number of ordinary certificate land officers observed in the data suggests greater incompetence that could be a challenge to good land governance. For it is argued that lack of competent land officer is a sign of weak land governance (FAO 2007:18).

5.4. Land Administration Structure and Its Implications.

As reflected in chapter 1 land administration system in Tanzania works under duo system. The system is mainly tied to central and local governments through the Ministry of Lands and Prime Minister's Office respectively. Yet some land services such as land disputes settlement seem to extend to the Ministry of Justice and Constitutional Affairs (Judiciary)³⁵. That is to say, one could even state that the land administration operates under tripartite system!

The study found that such administration structure coupled by poor coordination among various land offices and ministries and lack of modern technology as seen in chapter 4, causes overlapping roles. The overlapping roles may lead to laxity among land officers, and delay in land services.

An interview with the land officer at Mbeya city council revealed that the duality mode could create confusion in land governance service. Citing himself as an appointed authorized officer to represent the commissioner for lands he said that he is responsible to both the Ministry of Lands and Local Government³⁶. Being a double agent therefore creates a challenge in accountability, complicates decision making and delays land services.

5.5. Conclusion.

While the good land governance principles demanded ethical and corrupt free leadership in land administration the study learnt that there was good

³⁵ See Chapter 3 part 3.5

³⁶ Personal Interview with Kastor, land officer at Mbeya.

evidence suggesting misconducts by the land officers at Mbeya. The presidential reports, High court and ministers of lands expression indicated that the public concerns over corruption and other unprofessional behaviour were real.

Both the case study and follow interview cemented the idea that inefficiency was reigning in land sectors. The revealed incompetence at the three land offices explained partly the literature concerns over poor land services commonly offered in land offices. The general study finding in my view indicated elements of poor leadership which could possibly protract good land governance. For it is said that that inefficiency, abuse of power and low level of education are possible causes of poor leadership (Wehrmann 2008:10).

Chapter 6: Conclusion, Challenges and Recommendations

6.1. Conclusion.

Good governance in land administration is an important aspiration instituted in Tanzania National Land policy, the Land Act 1999 and the Village Land Act 1999. Unfortunately however, there have been increasing signs of weak land governance, particularly in urban areas of Tanzania.

In urban areas, some signs of weak land governance and administration include high rates of land disputes, illegal land developments and in the rural areas, also land grabbing as reflected in chapter 1. In chapter 2, the study explained that the FAO good governance theory which was found to be the most useful, for the research methodology adopted by this study. Based on this analysis, the problematic land situation in urban Mbeya was explored. The study was interested to find out more about what was possibly preventing good land governance by in this area, and focused on three key issues. The issues were (i) land law; (ii) land information and (iii) leadership in the land sector, issues adapted from the FAO framework. To collect primary data from the field, three separate research techniques were applied by the researcher. The methods included document analysis, interviews and a case study method, looking into individual disputes around land. The field study was conducted in urban Mbeya in Tanzania during the months of July and August 2013. Based on an analysis of the data collected both in the field and through documentary research the study came up with three key findings;

Firstly, that weaknesses in some key land laws could be one possible obstacle to good governance in the land sector in Mbeya, Tanzania. In Chapter 3 it was established that while several land laws were available for public consultation in the respective land offices, the laws themselves were not accessible to most members of the public, because they were written in English only, whilst the majority of Mbeya's population are educated and speak and read only in the Kiswahili language. Related to this were contradictions between the Land Act and the Village Land Act 1999 about what exactly constitutes 'general land'. This was found to be another contributing factor, making for loopholes in the land laws. It was further found that an unclear,

poorly accountable and inefficient land court administration system coupled with use of English language in all proceedings for land cases made the matters worse, since this required lawyers to act as intermediaries at all times.

In addition the study found that the insurmountable powers of the President, particularly over village land, reduced the autonomy of villagers in managing their own lands and planning for the future. The indisputable authority of the President to acquire land from anybody, at anytime and anywhere, in the name of public interest under both the Land Act 1999 and Land Acquisition Act 1967, reduces security of tenure and leads to uncertainty. The study also found that while the land laws have sought to promote gender equality in land access and use, more often than not women - and some poorer men as well as children considered illegitimate - were discriminated against in terms of land allocation. Another weakness in the land laws was that it allowed application of customary laws in land matters and this had huge implications especially for women, since most customs and traditions in Tanzania do not allow women to inherit and use land equally with men. Remarkably the case study helped to realize that women in Tanzania were likely to be secluded from land access and use due to the intersection of factors like gender, class (poor/rich), education, power structures and social conditions (e.g. being a widow).

Secondly, the study established in Chapter 4 that there were weaknesses in land information systems, and that these were potential obstacles to good land governance. While some land information and resources like land allocation, registration, leases, mortgage, laws, taxes and fees were available, two important types of land data were not officially documented. These included the market prices for land and detailed information on public lands. The study learnt that most land data was also recorded in English only, which is contrary to the Land Act, Section 3, which follows FAO guidelines and requires that land records should not only be computerised but also translated into Kiswahili. The records were not translated, which prevented accessibility and increased cost as the majority of users were compelled to seek translators or legal counsel service simply to order to access the data. It was found that land information at both the District Land and Housing Tribunal and the Land

Registration Office was not computerized. That made the information prone to natural disaster damage and made the information difficult to share.

In line with this, it was discovered that there was no consolidated land information system at Mbeya. Instead, land information was scattered in multiple, independent and uncoordinated land offices, which had no established communication with one another about how this body of data should be maintained, updated, stored and shared. Not surprisingly, the study concluded that the cost of obtaining information and other land services for the public is high. Given the generally poor economic conditions of the population, this resulted in data not being accessible. This conclusion was supported by interviews with land officers and individual complainants, whose views corroborated what was observed by the researcher on the ground.

Thirdly the study found that there were weaknesses in terms of leadership, reflected in weaknesses of land administration. These leadership issues made good land governance difficult to achieve in Mbeya town. In the first place, corruption and other unethical behaviour among land administration officers were pointed to by interviewees and in Presidential land commission reports, to be one potential causes of weak leadership in Mbeya. It was found that the surveying and allocation of land plots in the urban area was significantly lower than demand. This signalled that leadership can be seen as inefficient and weak, in delivering services. Human resource data collected from all three land offices visited during fieldwork, indicated an acute shortage of professional land officers, as discussed in Chapter 5. There were only 6 graduates in the 3 land offices visited. This situation left the land administration services to be handled by officers with relatively little professional training. These kinds of leadership weaknesses tended to work against efforts to make the land administration system more accountable and more effective. Finally the duality land administration system coupled by lack of coordination, poor technology increased the challenges against land governance at Mbeya.

6.2. Study Experience and Theoretical Challenges

Throughout this study there have been a number of theoretical as well as practical challenges. One of the theoretical challenges experienced during the study was the ‘elasticity’ of good governance theories. As hinted in Chapter 2, good governance was found to be such an elastic concept that its definition could include almost anything (e.g. efficiency, human rights, fairness, accountability, rule of law etc). Consequently, the study found that whilst there are many different definitions of good governance, definitions which have similarities as well as differences, each definition depends very much on which institution or individual is defining the term, and with which intention. This problem exposed a risk of researching and applying good governance theory in this study. If the researcher does not take care, the concept is so broad that the researcher found there was a need to take care not to adapt the theory simply in order to fit the data collected in the field. Instead, an effort was made to relate data to theory not otherwise and to see how closely they corresponded. Given this experience the study tried as much as possible to be specific, to be consistent and to avoid ambiguity. That may be seen for example in how the problem was defined in Chapter 1, where the study clearly and specifically mentioned three aspects that would be considered in relation to land governance and management (law, information and leadership). The researcher decided to focus on these three after a careful review of different approaches to good land governance.

The result of this was that the title and approach in Chapter five was narrowed from the much broader ‘Governance’ to ‘Leadership and Land Administration Structure’, a departure from earlier plans. The researcher decided to narrow down Chapter 5 in this way because of the experiences in chapter two that ‘governance’ as a concept was found to be simply too broad and all-inclusive, to be usefully analysed through collected data from the field. In addition, the study found the FAO good governance approach to land administration had some theoretical weaknesses as well. Whilst this theory suggested that gender equality in land ownership could be achieved and maintained by good land laws, the study reached less optimistic conclusions. It was found that good land laws alone are not enough to achieve gender equality

in land access and use. Despite the law declaring that gender equality in land access and use in Tanzania is one of its objectives, the study disclosed that gender inequalities persist in this respect.

Finally, the role of customary law and cultural practices was found to be more significant than expected. Customary law was not originally a central concern of the study. Yet after analysis of both the Land Act and the Village Land Act 1999 and consideration of case studies 1 and 2, which were presented in Chapters 3 and 4, this view changed. In relation to gender inequality in land access and use, it seemed that the key factor was not necessarily the weaknesses in land law, but perhaps more the impact of a combination of other factors, including social structures, land allocation and use customs, community and family traditions, class, power relations, gender discrimination and the variable economic conditions of women, men and children. In future studies therefore, it is suggested that the use of an intersectionality tool as framework of analysis may be helpful, since it would allow better analysis of the interaction of different categories of disadvantage and entitlement, at various levels (municipality, neighbourhood, community, family) (Winker and Degele 2011:64). This would enable the research to better understand why gender inequalities in land access persist in spite of legal provisions for equality, and in contradiction with good governance principles.

6.3. Recommendations.

In view of the above findings, the study came out with the following recommendations so as to promote good land governance;

1. In view of the observed weaknesses in the land law, the study recommends regular amendment of main land legislation particularly the Land Act, Urban Planning and development Act, The Village Land Act and others. The amendment could target to reduce the cited weaknesses.
2. It is advised that the laws of inheritance and customary land rights should be taken seriously and possibly both customary and Islamic laws of inheritance be amended to give equal rights on land access between men and women.
3. It is also advised that land laws be translated in Swahili and allows the records and proceedings in land courts to take place in Kiswahili

language so as to allow the general public in Mbeya and Tanzania in general to access land information and other land services easily and cheaply.

4. Land records in different land offices should be consolidated so as to increase accessibility, reduce cost of maintenance and avoid duplicity.

5. It is recommended that security and currency of the land information should be considered for review so as to increase reliability. It is thought that while taxing people for land service is good for national economy, taxes and other land fees should be participatory and considerate to general economic condition of the people

6. The study recommends that rules of ethics and professional integrity by the land officers should be put into operation, and monitored. The system should consider awarding highly efficient land officers and take corrective measures against officials found to have been involved in malpractices. The study recommends further detailed studies particularly on land administration structure and the land disputes settlement system in Tanzania so as to find out how to rectify the observed challenges.

7. Finally the study recommends on job training to land officers at Mbeya so as improve their competence in land service delivery give the low level of education observed during the study.

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Appendix 1: List of Respondents

Murirya Nyaruka	Chairperson -DLHT
Kastor	City Land Officer
Sadick	LRO
Zamda Tagalile	Land tribunal Clerk
Francis Mwakajonga	Complainant
Pili Mohamoud	Complainant
Kikondya Mwakilasa	Respondents
Esta Mwambene	Complainant
Hosea Isote	Complainant
Samwel Ngandu	Complainant

Appendix 2: List of Documents

2.1: Land Legislations

The Land Act 1999
The village Land Act 1999
The Urban Planning and Development act 2007
The land Acquisition Act 1967
The Land Courts (Disputes Settlement) Act 2002

2.2: Administration Files

High Court Inspection Report on DLHT 2010
The Presidential Inquiry Commission on Land Conflict 2010
Land Disputes Register
Land Registration Book
Notices and Publication File
Land Complaints File

2.3: Land Case Files

Application Number 24 of 2012
Application Number 56 of 2012
Application Number 27 of 2010

Appendix 3: UN-Habitat Urban Governance Index 2004

Can be accessed on the following link:

http://www.unhabitat.org/downloads/docs/2232_55927_Addendum%20-%20Methodology%20Guidelines.doc