

## 1. Background Information

Property and Business Formalisation Programme (PBFP) is an initiative of the Government of the United Republic of Tanzania, aimed at economically empowering the poor majority in the Country, by increasing their access to property and business opportunities, towards development of a strong expanded market economy.

It mainly targets property owners in the informal sector, whose entry into the formal market economy will enhance their opportunities in using their assets to access capital and thus improve national economic growth and reduce individual household poverty.

The Programme is conceived within the National Strategy for Growth and Reduction of Poverty, MKUKUTA, and specifically seeks to facilitate transformation of property and business entities in the informal sector, into legally held and formally operated entities in the formal sector of the economy. Its Kiswahili translation is Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania, shortened as MKURABITA.

### 1.1 Goal

The goal of the Programme is to empower the target groups and individuals, especially in the informal sector, so that they can participate effectively in the modern formal market economy.

### 1.2 Objectives

The following are the specific objectives of the Programme:

- To build an architecture of property and business rules that will bring together, standardise, and modernise the prevailing local customary arrangements dispersed throughout the Country, so as to create one Tanzanian property and business legal system that incorporates all sectors of the society.
- To foster national integration by enabling the Government to bring the informal sector into the legal system in order to govern the Nation's market activities more effectively.
- To ensure that assets of the poor, which are held and exchanged outside the existing legal system, are adequately documented and standardised into universally accepted property records that can be used to create liquidity.
- To develop means to achieve broad-based support for change, for both traditional community leaders and the poor, towards a national property framework that can help realise the potential of a modern market economy.
- To enable overall economic policies and supporting mechanisms such as monetary and fiscal stimuli, to actually work once most people are inside the legal market economy.

**PBFP** is a community empowering initiative that aims to facilitate transformation of property and business entities in the informal sector, into legally held and formally operated entities in the formal sector of the economy

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### 1.3 Rationale

"Tanzania's macroeconomic performance has continued to improve consistently in recent years. The economy has, in macroeconomic indices, stabilised, which, among other things, explains its growth and sustainability, its attractiveness to foreign direct investment, and improvements in the monetary sector. The decline in the inflation rate from 30 percent (in 1995) to 4.3 percent (by 2003) has been of great benefit.

Unfortunately, persistent income poverty has meant that the benefits of low inflation are mostly enjoyed by those few in the urban money economy and only partially among the majority of our population with low purchasing power." President Benjamin Mkapa (July 30, 2003)

The poor and the middle class in Tanzania, like those in many developing countries, are faced with legally prohibitive environment that makes it difficult for them to realise their full potential for economic empowerment and self-improvement.

While the Government has made much effort to adjust laws to encourage and regulate foreign private investment by providing large entrepreneurs with a friendly and well-organised business environment, a lot more needs to be done to integrate the poor into the formal economic sector. A vast majority of the population owns property (land, housing, livestock and other agricultural products) outside the parameters of the official law, and operate their businesses informally. Their property and business activities are mainly based on the informal community systems that give rise to rights, which are neither incorporated into the legal property titles nor registered in the official registers.

Although legal mechanisms required to transform the customary rights into statutory rights do exist, majority of Tanzanians are yet to be integrated into the formal legal system, in order to enable them enjoy similar rights as those who are already in this system. This is particularly necessary because banks and investors still perceive rights acquired through traditional community systems as inferior and inadequate as collateral for credit and investment.

Therefore, even though the poor owners and small entrepreneurs collectively have substantial wealth in terms of property and businesses informally held and operated, their assets are "dead capital" which cannot be used to generate more wealth. They have limited access to capital and cannot function to their full capacity in the modern market economy.

Subsequently, the Government of the United Republic of Tanzania has initiated the Property and Business Formalisation Programme, to enable it to address these economic and legal imbalances, and develop a property and capital formation system that is tailored to the circumstances of the disadvantaged.

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## 2. Key Steps

The Programme is based on a specific model developed by the Institute of Liberty and Democracy (ILD) of Lima, Peru. It has four phases, namely: Diagnosis, Reform Design, Implementation, and Capital Formation and Good Governance

### 2.1 Diagnosis Phase

The Programme is designed to begin with a complete diagnosis of the size and nature of the Country's extralegal and customary sectors, as well as a preliminary overview of the reasons why the informal sector continues to thrive. The general objectives of the Diagnosis Phase are to:

- Define, map out, and assess the extralegal sector and determine its magnitude; identify the different kinds of extralegal business and real estate assets; locate the geographic areas and sectors where extralegality is most active; determine the relevant links between the legal and extralegal sector where possible; and identify the process where the Government has already successfully dealt with the extralegal sector. Extralegality includes economic activities and property rights reputed to be legal yet strictly not, as well as practices “illegal” or “lawless” but not criminal.
- Identify the main institutional constraints that create legal, administrative, and economic obstacles to the integration of the poor into the legal economy.
- Build awareness and develop strategies that allow the Government to obtain support for real estate and business property reform and the establishment of the rule of law, thus bring the Government closer to its constituency
- Lay the groundwork for re-engineering of the current legal system to achieve the objectives of the Programme.

### 2.2 Reform Design Phase

The general objective of this Phase is to provide the Government with detailed policy and institutional proposals, as well as an implementation strategy; to integrate extralegal real estate and businesses into the legal system in order to boost economic growth, reduce poverty, and eventually expand the tax base. The Reform Design will:

- Build on well-established local legal and extralegal practices that Tanzanians identify with and respect.
- Create a single organisation whose responsibility is to integrate all Tanzanians into one legal economic system and whose over-riding goal is to enable people to generate capital
- Reduce the time and cost to enter and operate in the legal sector
- Eliminate wasteful procedures used by the citizens to avoid sanctions for sidestepping the law
- Streamline rules and procedures which govern real estate and business activities
- Lay the groundwork for a massive formalisation campaign
- Provide a basis for the Programme to additionally facilitate capital formation, personal identification system; national security; collection systems for credit, rates and taxes; housing and infrastructure; insurance and other value added information services during the Implementation and Capital Formation stages.

The Programme's four main phases are Diagnosis; Reform Design; Implementation; and Capital Formation and Good Governance.

Diagnosis Phase aims to establish the size and nature of the Country's extralegal and customary sectors, and why the informal sector continues to thrive.

Extralegality includes economic activities and property rights reputed to be legal, yet strictly not, as well as practices “illegal” or “lawless” but not criminal.

The primary objective of the Reform Design Phase is to provide the Government with detailed policy and institutional proposals, as well as an implementation strategy; to integrate extralegal real estate and businesses into the legal system, in order to boost economic growth, reduce poverty, and eventually expand the tax base.

## 2.3 Implementation Phase

In this Phase, the Programme will progressively bring the extralegal real estate and businesses into the new legal order through a national campaign. The main components of the Implementation Phase include:

- Proactive Formalisation Campaign, which will involve establishing procedures, recruiting and training personnel, preparing manuals, and opening and equipping offices that enable the Government to reorganise and process individual property rights to private homes as well as businesses coming from the extralegal sector (adjudication, documentation, recording and issuing of title certificates).
- Consensus Building by sharing customised information through various media channels to demonstrate the benefits of capitalisation to various social groups including the extralegal sector, business community, traditional authorities, government officials, and any other group that might tend to resist change.
- Establishment of a Feedback Mechanism to enable the legal systems to stay in touch with the evolving needs of the poor, and remain relevant.
- Establishment of a National Database and Record Keeping Organisation, thus re-engineering record keeping and registration processes so that the Country can pull together all the economically useful descriptions about extralegal assets into one data/knowledge base, and keep it up to date.

## 2.4 Capital Formation and Good Governance Phase

This Phase will involve formulation and implementation of recommendations for connecting the newly legalised property to larger national and international markets, and allow the property to be leveraged to create capital and generate more wealth. The process will involve:

- Setting up of credit and mortgage systems, and collection systems for credit, rates and taxes
- Provision of housing and infrastructure
- Provision of insurance and information services
- Development of individuals identification systems
- Use of property to enhance accountability.

The recommendations will also facilitate good governance by providing reliable information about market behaviour, property status, and the extent of the rule of law; all of which are necessary conditions for sustainable development.

Implementation Phase will focus on proactive property and business formalisation campaign; consensus building; and establishment of feedback mechanisms as well as a national database and record keeping organisation.

Capital Formation and Good Governance Phase will involve formulation and implementation of recommendations for connecting the newly legalised property to larger national and international markets, and allow the property to be leveraged to create capital and generate more wealth. The recommendations will facilitate good governance by providing reliable information about market behaviour, property status and the extent of the rule of law; all of which are necessary conditions for sustainable development.

### 3. Progress To-Date

The Programme started with Diagnosis of the Country's extralegal Sector in mid October 2004. The Diagnosis was planned to take a total of 9 months, to be followed by the Reform Design Phase envisaged to take at least 22 months, Implementation Phase, and ultimately the Capital Formation and Good Governance Phase.

#### 3.1 Key Milestones of the Diagnosis Phase

Main activities already carried in the Diagnosis Phase include:

- Training of Tanzanian professionals involved in the Programme
- Visits to informal areas and meetings with community leaders, informal householders and businessmen.
- Visits to public agencies and meetings with public officials (those who run the legal procedures and deal with people)
- Comprehensive legal research on real estate and business issues.
- Detailed analysis of relevant legal procedures
- Preparation of Detailed case studies
- Focused economic surveys to assess the impact of the existing laws and regulations.
- Analysis of findings and compilation of a preliminary report.

The study covered 11 regions of the country namely Dar es Salaam, Dodoma, Mwanza, Arusha, Kilimanjaro, Morogoro, Iringa, Mbeya, Pwani, Lindi and Mtwara.

#### 3.2 Findings from the Diagnosis

Preliminary findings from the diagnosis indicate that economic activities by the majority of Tanzanians take place outside the law and are limited by the law. The current laws and regulations governing business and real estate transactions either do not provide them with the necessary mechanisms to generate capital, or make it too difficult for them to enter the system. However seeds of a modern legal and economic system have been found all over Tanzania Mainland. The table below summarises the key findings.

Diagnosis Area	Key Findings
a.) Size of the Extralegal Sector	<p>Most economic activities take place in the extra legal sector:</p> <ul style="list-style-type: none"> <li>■ 86% of all urban property (real estate assets) valued at US\$9.4 billion, is extralegal. About 26% of the extralegal real estate assets are in Dar es Salaam (11% are in planned areas and the rest in unplanned areas).</li> <li>■ 97% of all businesses in urban areas, valued at US\$2.2 billion, are extralegal. About 21% of the extra business assets are in Dar es Salaam.</li> <li>■ The replacement value of the both extralegal urban property (real estate and business assets, is 11.6 billion (dead capital). The US\$11.6 billion is equivalent to:               <ul style="list-style-type: none"> <li>- 50 times foreign direct investment into the Country in 2002</li> <li>- 57 times the concessional and non concessional net financial flows from multi lateral institutions in 2002,</li> <li>- 15 times the market capitalisation in the stock market in 2004</li> <li>- 13 times the investment in infrastructure projects in 1990-2000</li> <li>- 10 times gross internal reserves in 2001</li> </ul> </li> </ul>

## Findings from the Diagnosis in Tanzania Mainland Continue...

<p>b.) Extralegal Arrangements</p>	<p>Seeds of the modern legal and economic system indicate that:</p> <ul style="list-style-type: none"> <li>■ Tanzanians have created their own version of indispensable legal and economic institutions of a modern economy.</li> <li>■ In the "shadows" of legality, there is a multitude of entrepreneurial and ingenious Tanzanians. The system is wide-spread though dispersed and disconnected, running parallel to the legal economy.</li> </ul>
<p>c.) Institutional Framework Regulating Business</p>	<p>There are 49 administrative offices involved in business procedures, and legislation is dispersed in 59 Ordinances and Acts. This makes business procedures at various levels (entry, operation and expansion) very costly:</p> <ul style="list-style-type: none"> <li>■ To incorporate, register and start operations of a private company in Dar es Salaam, the process entails 95 administrative steps in 24 government offices over 283 days, at a total cost of US \$ 3,916</li> <li>■ To incorporate, register and start the operation of a private company in Mbeya involves 103 administrative steps in 24 government offices over 379 days at a cost of US \$ 5,506</li> <li>■ To incorporate, register and start the operations of a sole proprietorship entails 28 administrative steps in 13 government offices over 86 days at a cost of US\$ 234.</li> <li>■ To object a tax matter (commissioner's decision) 76 steps should be carried out over 378 days at a cost of US\$ 1,378</li> <li>■ When a creditor wants to execute a pledge (movable guarantee) it will face 64 days with a cost of US\$ 1,674</li> </ul>
<p>d.) Institutional Framework for Real Estate</p>	<p>Two legal systems are used to formalise property ownership: Statutory Law (Land Act of 1999) and Customary Law (Village Land Act of 1999). There are 41 other laws and regulations governing property rights in Tanzania, and a host of public entities involved in allocation, recognition and registration of the property rights. The cost of real estate procedures is enormous:</p> <ul style="list-style-type: none"> <li>■ To obtain a secure, registered legal title over a piece of property, 68 bureaucratic steps are involved and would take up to 8 years, at a total cost of US\$ 2,252 (first to obtain legal title and register it, and second, to obtain a building permit.)</li> <li>■ To have a plot surveyed to gain formal access to land, 22 administrative steps are involved and would take some 84 days to complete, at a cost of US\$ 932.</li> <li>■ To transfer and register rights of occupancy, 19 administrative steps are involved, and would take about 380 days, at a cost US\$ 1,443.</li> <li>■ In the rural areas, formalization of 10 cases involving some 5,700 families takes 1.5 years (application of the village land Act).</li> </ul>

## 4. Expected Benefits of the Programme

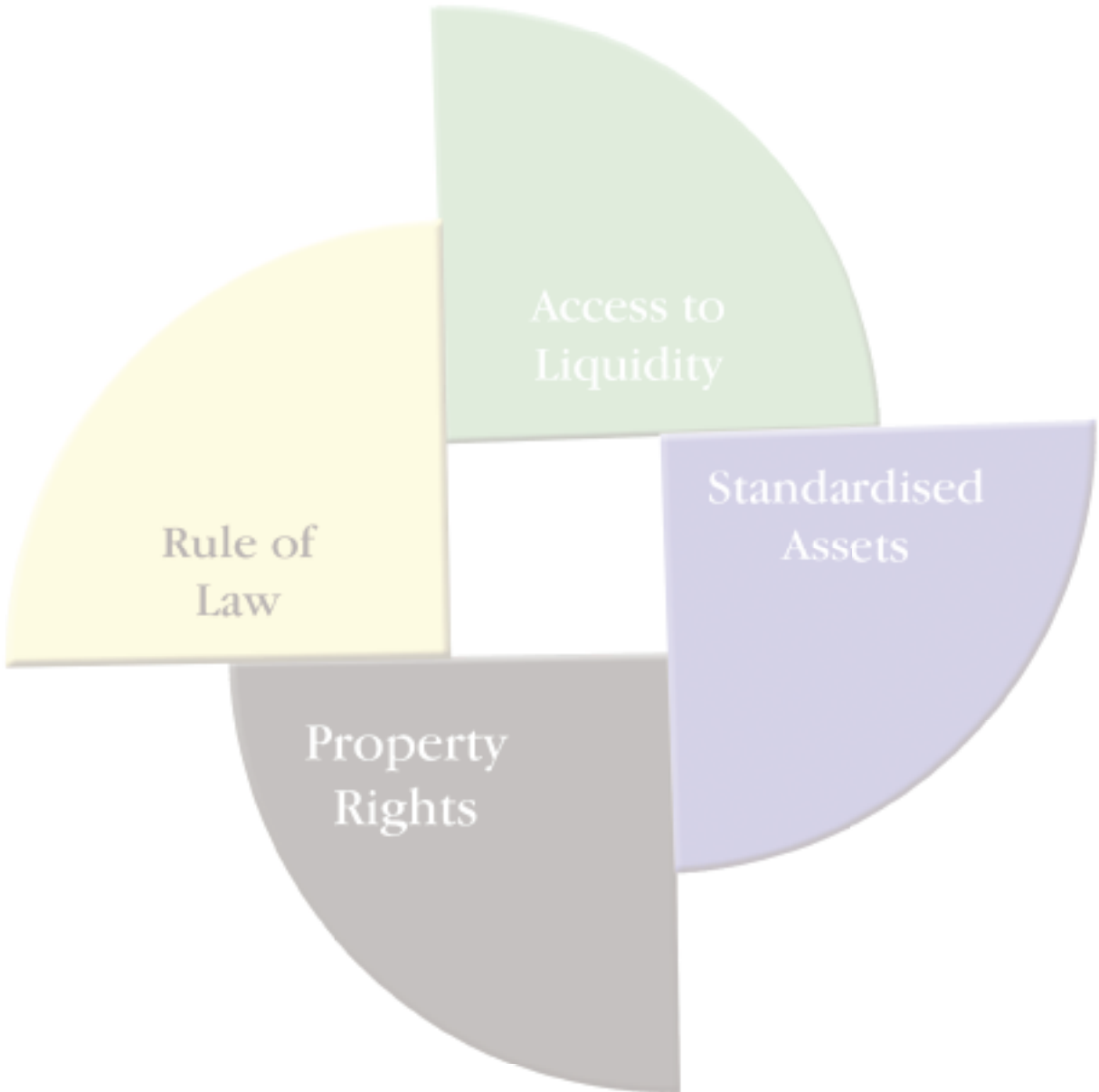
The Property and Business Formalisation Programme is expected to make a major positive impact in the Country's economy. Evidence from other countries where a similar programme has been implemented, point to major economic gains and improvement of welfare of the poor. For example:

- With an investment of USD 18.2 million in the Property and Business Formalisation in Peru between 1982 and 1996, the poor obtained US\$ 9.4 billion in net benefit between 1991 and 2002, which is equivalent to an average annual rate of return of 173%.
- The results of the 1946 reforms in Japan designed to provide poor citizens with property, far exceeded even the most optimistic projections. Within four years, approximately 50% of land was formalised, and by 1952 (6 years later), farmer income had increased by 80%.
- In Taiwan, newly titled rice farms increased their production by 60% between 1953 and 1963, while the income of their owners increased by 150%.
- In South Vietnam, where between 1993 and 1998 the government granted rights of 20 and 50 years for annual and multi-annual harvests, respectively, annual production increased by 3.4% where farmers had these rights, and the overall percentage of the population below the poverty line decreased dramatically from 58% to 37%.
- In China, property formalisation carried out between 1980 and 1990 helped to increase the gross agricultural output by 86%. This extraordinary success does not include the benefits of technical reforms, such as the green revolution.
- A recent three-year survey of a commune in the Ukraine has shown that 3 million members who were given title to their land earned an income 81% higher than that received by the 3.7 million people in the commune who were not titled.
- In Russia, only 5% of the agricultural land has been titled in favour of the holder over the same period. Yet, today this same 5 % produces 50% of Russia's agricultural output, while the remaining 95% of the untitled land produces the other 50%.

In Tanzania, the following benefits are expected from implementation of the Programme:

- Improved business environment
- Increased legal ownership of property and access to capital by property owners
- Expansion of the legal economic sector by reducing the size of the extralegal sector through empowerment of its stakeholders to use their assets to accumulate capital and participate fully in the expanded formal market economy, both locally and internationally.
- Increased income for the Government from the new tax payers
- Economic growth and reduced individual household poverty through participation of a large number of citizens in the formal sector of the economy.
- Good governance through provision of reliable information about market behaviour, property status and the extent of the rule of law.

"No matter what source of evidence one considers, business and property reforms that incorporate the extralegal economy into the rule of law should increase economic growth and raise a people's welfare."  
(ILD Report, February 2004)



Access to  
Liquidity

Rule of  
Law

Standardised  
Assets

Property  
Rights