

Mid Term Review of the Reform Design Phase of the Property and Business Formalisation Programme Tanzania

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Norad collected reviews

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MID TERM REVIEW OF THE REFORM DESIGN PHASE OF THE
PROPERTY AND BUSINESS FORMALISATION PROGRAMME

TANZANIA

FINAL REPORT
February 2007

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ABBREVIATIONS

BEST	Business Environment Strengthening Tanzania
BRELA	Business Registrations and Licensing Agency
CLEP	Commission on the Legal Empowerment of the Poor
CRO	Certificate of Rights Occupancy
GOT	Government of Tanzania
ILD	Institute for Liberty and Democracy
JAST	Joint Assistance Strategy for Tanzania
MDG	Millennium Development Goals
MLHSD	Ministry of Lands and human Settlements Development
NOK	Norwegian kroner
NPA	Norwegian People's Aid
PBFP	Property and Business Formalisation Programme
PO-RALG	Prime Minister's Office: Regional Administration and Local Government
SMOLE	Sustainable Management of Land and Environment
SPILL	Strategic Plan for the Implementation of the Land Laws
T.Shs.	Tanzanian shillings

0. EXECUTIVE SUMMARY

This is a Mid-Term Review (MTR) of the Property and Business Formalization Programmed (PBFP) in Tanzania. Peruvian consultants, the Institute of Liberty and Democracy (ILD), have been contracted by the Government of Tanzania to undertake the first two phases of a planned 4-phase formalization programmed. The first two phases are a Diagnosis Phase (completed, reviewed and approved in December 2005) and a Reform Design Phase. The Reform Design Phase is due to run 22 calendar months from January 2006 to the end of October 2007. A next Progress Report is due in June 2007. This Review was carried out by a 4-person team in November/December 2006. The Mid-Term Review Report, originally submitted in January 2007, has been revised and amended in accordance with comments received from the Program Management Unit (PMU), from ILD, from the Norwegian Embassy in Tanzania, NORAD and the Business Registration and Licensing Agency (BRELA).

The Consultants have produced a Progress Report on the Reform Design Phase after 9 months (in November 2006). The Progress Report is lengthy, amounting to over 500 pages of text in 5 main volumes. The Report examines the conceptual basis for reform and then presents the results of its fieldwork in 43 villages/mtaas/shehias in 30 representative districts in 14 regions of Tanzania. The Progress Report then sets out its proposed Outlines of Reform or proposed Reform Packages. A total of 12 basic reforms are described. One example of these is: "Contracts and agreements related to business issues in Mainland Tanzania". It is emphasized that these are preliminary proposals and will be expanded substantially in subsequent work. An additional 31 "Second Phase Reforms" are also presented in the Progress Report.

The purpose of this Mid-Term Review is to determine the extent to which the Program is attaining its objectives and to assess its performance, outcome and sustainability. This is to be done using the Progress Report as a basis. The Mid-Term Review therefore examines the Progress Report in the light of the Terms of Reference for the Reform Design, the Agreement between Tanzania and Norway, the minutes of the Annual Meeting between Tanzania in Norway (October 2005), the Work Plan for the Reform Design phase and the Review of the First Phase.

The Review finds that the Progress Report has tried to meet the requirements of the documents mentioned above and has deepened the analysis and begun outlining the reforms as required in the Work Plan for Reform Design. However the Review finds that the Progress Report is badly edited and unwieldy. It is difficult to find one's way about the Report and this could certainly give rise to misunderstandings. In addition the Review team is of the opinion that the Progress Report should contain information on the professional effort in terms of person-months which has gone into the first 9 months of the Reform Design phase and the production of the Progress Report.

The Review finds that the consultants have carried out a situational analysis as required and have produced 12 relatively detailed reform outlines and a further 31 proposals for a second phase. It is not at all clear how easy it will be to implement these proposals and this is a major issue, although it may be unfair to judge at this relatively early stage.

The Review finds that, in order to achieve sustainability it will be important to pick up and implement simple, straightforward and well thought out reform proposals like the standardization of formats.

On the economic potentials of the proposed reform outlines it is considered that it is perhaps too early to judge these --- the reform proposals themselves are somewhat provisional. However in the Final Report it will be important to specify the expected. macro-economic impacts of the proposed reforms.

Under the consideration off Relevance, the Mid Term Review is of the opinion that the reform outlines proposed so far do not take sufficient account of other formalization legal institutions (e.g. the Ministry of Lands and Human Settlements Development) and programs being undertaken by the Government of Tanzania e.g. SPILL, BEST, BRELA etc. Nor do they seem to take account of national policies e.g. MKUKUTA or of academic research in Tanzania on formalization topics. However ILD maintain these will be taken full account of in the finalized Reforms due in the Final Report.

The Mid Term Review maintains there is greater need for awareness-raising, consensus building and stakeholder participation as recommended in the review of the previous Diagnosis phase. However the Work Plan which dictates that only one quarter of the consulting work is actually carried out in Tanzania makes it difficult to raise awareness or build consensus. This will certainly affect the implementability of the reforms and needs urgent attention.

The Mid-Term Review sets out a series of findings, conclusions and recommendations and the principal of these are:

- The situational analysis has been deepened and carried out*
- A total of 12 reform outlines and 31 Second Phase reforms have been described*
- There is a need to know how much consulting effort has been put into the Progress Report*
- There is greater need for Tanzanian ownership and stakeholder involvement in the entire MKURABITA process which is not yet well known or understood in Tanzania*
- There is little evidence of progress on formative research although the PMU maintains that work is on hand on this*
- It is recommended that a larger proportion of the consulting work be carried out in Tanzania (only 25% is currently carried out there)*
- It is recommended that the proposals for a land register for rural areas be reconsidered because of the complexity and size of the problems likely to be encountered*

1. INTRODUCTION

1. The document which follows is a Mid Term Review of a Property and Business Formalization Program (PBFP), in the United Republic of Tanzania. It was prepared in November/December 2006. It is due for submission on 7 January 2007.

2. With financial assistance from the Government of Norway, the Government of Tanzania (GOT) has contracted a Peruvian consulting company, the Institute of Liberty and Democracy (ILD) to undertake the first two phases of an envisaged four phase program of property and business formalization as follows:

1. Diagnosis
2. Reform Design
3. Implementation
4. Capital formation and Good Governance

3. The entire program is to be executed under the direction of the Tanzania Property and Business Formalization Authority, known by its Swahili acronym of MKURABITA. This remains to be established, and at the time of writing the program is executed by the Property and Business Formalization Program Management Unit (PMU).

4. ILD's work started in October 2004 and its Diagnosis Report was submitted to GOT in September 2005. An independent Review of the Diagnosis Report was undertaken in October 2005¹, and the Diagnosis Report was approved by GOT in December 2005. The Second Phase, the Reform Design, commenced in January 2006 and is due for completion in October 2007.

5. The Financing Agreement between the Governments of Norway and Tanzania allows for the carrying out of a Mid Term Review of the Reform Design phase. It has been pointed out by ILD that it is a pity that this Review has been carried out only one third of the way along the road, and it is difficult to disagree with this sentiment. However it is also a requirement of the Financing Agreement. This document therefore constitutes a review of the work carried out under the contract by ILD between January 2006 and September 2006 i.e. the first 9 months of the Reform Design phase. This work has been presented by ILD in the form of a five volume Progress Report.

6. The Review Terms of Reference (see Annex 1) are comprehensive. The purpose of the review is to determine whether the work in progress will lead to the establishment of an institutional framework that fosters an inclusive framework under the rule of law. More specifically the review will determine whether the proposed situational analysis has been carried out, whether the outlines of proposed institutional reforms have been prepared and the extent to which progress has been made on Formative Research. It is important, however, to be aware that this Review bases itself primarily on a thorough-going examination and analysis of the texts of the Progress Report produced in November 2006 by ILD. The review's scope of work sets out the following tasks for the review:

○ ¹ Nordic Consulting Group AS /Jens Claussen et.al), "Review of the First Phase (Diagnosis) of the Property and Business Formalisation Program (PBFP) in Tanzania".
○ Oslo, October 2005

- Determine sustainability of the outline reform packages
- Determine the outline reforms' compatibility with economic modernization
- Determine the capacity of key sectors to respond to a massive formalisation program
- Assess the Strategic "fit" of the outline reform packages
- Assess relevance to on-going reforms
- Assess adherence to the Work Program
- Review progress on formative research and participation by civil society

7. This report is structured so as to present the findings of the review team on each of these aspects.

8. The review was undertaken between Thursday 23 November 2006 and Friday 8 December 2006 by a four person team as follows:

- Michael Fergus (Nordic Consulting Group, Oslo, Norway) – Team Leader
- Dr. Mohammed Khalfan (Bank of Tanzania, Zanzibar)
- Haavard Steinsholt (University of Life Sciences, Ås, Norway)
- Dr. Sylvia Temu (Faculty of Commerce and Management, University of Dar-es-Salaam)

9. Apart from its work in Dar-es-Salaam the review team visited Bagamoyo District in Pwani Region and Zanzibar during the course of their work. The team had meetings with about thirty institutions concerned with land and business registration, local government reform, revenue collection, law reform, land reform, surveying and mapping as well as PMU and ILD staff in Dar-es-Salaam. In addition a 2 hour video conference was held giving the review team the opportunity of a face-to-face discussion with the various ILD consultants in Lima, Peru on Friday 1 December 2006. One member of the review team also attended sessions of the Commission on the Legal Empowerment of the Poor (CLEP) held in Dar-es-Salaam on 29 and 30 November 2006. The team made a preliminary presentation of their findings to the Norwegian Embassy on Wednesday 6 December and to the MKURABITA Secretariat on Monday 11 December. A full list of the review team's meetings and activities are shown in Annex 2.

10. Apart from ILD's Progress Report itself, the review team also had the benefit of a large volume of documentation from many agencies involved in the formalisation process in Tanzania. The most important elements of this documentation is described in Annex 3. Information was generally readily available, although as it was voluminous it was not always easy to obtain adequate copies during the brief period of the Review. It should be noted that the Progress Report gave very much the impression of being a work in progress. It was not well edited and there appear to be some gaps in the text, several inconsistencies and a lack of supporting information where it would be expected. This does not make the work of a review any easier. However the ILD consultants themselves have pointed out that the Progress Report is indeed an interim document, one of whose purposes is to present proposals for discussions and dialogue with various stakeholders.

11. The review team has tried to make its report as brief as possible so that it can be digested and used for the next annual meeting between the Government of Norway and the Government of Tanzania to be held early in 2007.. This Report is structured to follow the requirements of the

Mid Term Review Terms of Reference. Chapter 2 which follows this one attempts to assess progress to date made by ILD since the start of the Reform Design. Because the Progress Report is lengthy and complicated, it has been necessary to try to summarise it in this Chapter. This is followed by Chapter 3 which examines the sustainability of the outline reform packages. Chapter 4 then looks at the extent to which the proposed reform packages are compatible with the economic modernization strategy. Chapter 5 looks at the relevance of the proposed reforms to all sectors whilst Chapter 6 examines the strategic “fit” of the reforms to other national program e.g. MKUKUKA and MKUZA. This is followed by Chapter 7 which examines how the Reform Design phase follows on from the Diagnosis phase and how the reform packages conform with other on-going reforms initiated by GOT. Chapter 8 relates to what progress is being made on formative research and the participation of civil society in the reform design. The Report is rounded off by Chapter 9 on Conclusions and Recommendations.

2. PROGRESS TO DATE

The Progress Report

12. The Progress Report is lengthy --- it is well over 500 pages of text and diagrams. It also needs a good index as it is often somewhat confusing to read, because of the many sub-divisions into which the Report is separated. For example, the section on the “Implementation and participants” involved in the Outline Reform Proposal for Records and Filings on Zanzibar is to be found in Chapter IV.6.3 (iv) on page 113 of Volume III of the Progress Report. This may be clear to those who are used to reading legal texts, but it makes it difficult for the ordinary reader to find his/her way through the proposed Outline Reforms. It would also have been of benefit to the reader and the reviewers if a list of consultants had been provided, indicating their professional background and the length of time they spent working on the project in Tanzania and in Peru. This is a weakness in the Progress Report as this would give the reviewers a better basis for assessing the Progress Report.

13. The Progress Report consists of the following documents:

Executive Summary (14 pages)

Volume I

- Chapter I: Contents of the First Progress Report: (5 pages)
- Chapter II: Overviews and Outputs: (47 pages)
- Strategic and Operation Road Map for Reforms in Tanzania: Main Laws and Stakeholders (Box II-7)
- Strategic and Operational Road Map for the Reforms

Volume II

- Chapter III: Findings: Analyzing the Archetypes for Reform Purposes (198 pages)
- 7 text boxes on Sample Contracts

Volume III

- Chapter IV: Outline of Reforms: 135 pages + Appendices with 21 proposals, 60 pages
- Chapter V: Research on additional reforms and next steps in the program (19 pages)
- Annex: 29 Proposal Documents plus Index (81 pages)

Volume IV:

- Annex 1: Extralegal Investigation Guide (a form). (13 pages)
- Annex 1: Fieldwork Questionnaires 46 of them (total about 450 pages)
- Annex 1: Fieldwork Research Guidelines (4 pages)
- Annex 1: Index (3 pages)

Volume V:

- Annex 2: Tanzania Institutional Reform: Project Selected Regions (18 pages)
- Annex 3: Estimation of Cost-effectiveness evaluation (15 pages)
- Annex 4: Update legal research (27 pages)
- Index Annex 4 (2 pages)

14. In Volume I (Chapter I) the Progress Report first recapitulates the findings of the Diagnosis Report and thereafter (in Chapter II) goes on to examine the conceptual basis for reform i.e. the objectives, the two-fold approach, the convergence analysis, the initial reform issues, the 17 archetypes and the six categories of reform emerging from the archetypes. The archetypes are defined as:

“ fundamental patterns of social interaction that could be developed into a market order and rule of law for Tanzania that is actually embedded in local culture”

15. In Chapter III (in Volume II) the Consultants go on to analyse the Archetypes already identified for reform purposes on the basis of fieldwork in 43 Tanzanian villages/ mtaas/shehias in 30 representative districts in 14 regions of the country, visited by the consultants between March and June 2006. For each of the six categories of reform e.g. Contracts and Agreements, the category is described in general and then cases from the fieldwork are used to illustrate the different types of contracts and agreements prevalent in Tanzania and then a legal and institutional analysis is made for each category both for Mainland Tanzania and Zanzibar.

16. It is difficult to conclude otherwise than that the Consultants have identified the 17 Archetypes and 6 categories of reform from universal experience of patterns of social interaction and have sought to modify or confirm these from their field studies in Tanzania. In fact in its comments on this Draft Report, ILD refutes this interpretation and say that the archetypes were identified and are in line with the actual situation in Tanzania.

17. Chapter IV of the Progress Report (in Volume III) is the most important part of the Report as it sets out the proposed Outlines of Reforms, or the proposed Reform Packages. A total of 12 basic reforms are described. These are:

- Contracts and agreements related to real estate issues in Mainland Tanzania.

- Contracts and agreements related to real estate issues in Zanzibar.
- Contracts and agreements related to business issues in Mainland Tanzania.
- Contracts and agreements related to business issues in Zanzibar.
- Dispute resolution related to real estate issues in Mainland Tanzania.
- Dispute resolution related to real estate issues in Zanzibar.
- Dispute resolution related to business issues in Mainland Tanzania.
- Dispute resolution related to business issues in Zanzibar.
- Documentation of residence and personal background in Mainland Tanzania.
- Documentation of residence and personal background in Zanzibar.
- Records and filing in Mainland Tanzania.
- Records and filing in Zanzibar

18. For example, the Outline Reform proposal for Records and Filings on Zanzibar are described in terms of its objective, main problems (14 are identified) to be addressed, proposed reforms, legal viability, legal means required, stakeholders and cost-benefit analysis in 11 pages of text.

19. The most important element of the Outline Reform proposals would appear to be the proposals for “*Legal means required*”. In the case of the Outline Reform proposal for Records and Filings in Zanzibar, the Report proposes 5 modifications to the Regional Administration Authorities Act, and describes the process which will be required to make these proposals law.

20. Chapter V (in Volume III) rounds off the Progress Report. This is a brief chapter (18 pages) on "Research on Additional Reforms and Next Steps in the Program". This proposes an additional 31 "Second Phase Reforms" which will be detailed in the consultants' subsequent work. It is pointed out that the next Progress Report will be presented in 7 months time (say the end of June 2007), and the Final Report appears to be due six months after that.

The Review Methodology

21. In order to determine progress on the Reform Design phase between January 2006 and September 2006 it is necessary to assess the Progress Report as produced by the ILD consultants against the following six documents which describe the PBFP process and define what is required of the Reform Design:

- The Terms of Reference for the Reform Design
- The Agreement between the Government of Tanzania and the Government of Norway
- The minutes of the Annual Meeting between the Government of Tanzania and the Government of Norway of 28th October 2005
- The Work Plan for the Reform Design stage, March 2006
- The Review of the First Phase (Diagnosis), October 2005

22. All of these documents provide advice and guidance on the preparation of the Reform Design phase. In addition the Progress Report has to be read in conjunction with the Diagnosis Report produced in September 2005.

23. To what extent has the Progress Report presented what it was required to present at this stage of the Reform Design process?

24. The Terms of Reference for the Reform Design requires that ILD provides GOT with:

“.....a set of clear, practical and sustainable written recommendations for reforming business and real estate property laws and institutions to facilitate the inclusion of the poor into the mainstream economy. The said recommendations will include a package of legal proposals and a communications strategy”

25. The Agreement between the Government of Tanzania and the Government of Norway is relatively general and it is not of great value in assessing the current Progress Report.

26. The Minutes of the Annual meeting between the Government of Tanzania and the Government of Norway of 28 October 2005, on the other hand, are fairly specific in their expectations. It highlights:

- The need to link and align the formalization process with other on-going reforms
- The need for greater Tanzanian ownership and stakeholder involvement, perhaps through the use of workshops and the need for formative research
- The desirability of involving institutions like the University of Dar-es-Salaam and Sokoine University of Agriculture (SUA)

27. These Minutes take account of the findings of the Diagnosis Report and the Review of that Report, and clearly expect that the Reform Design will take account of these points.

28. The Work Plan for the Reform Design concerns itself largely with the conceptual framework and approach, that is the use of the archetypes, the bottom-up and top-down approach and the convergence analysis to be used in the formulation of the Reform Design. The strategic principles in the Work Plan for the Reform Design are: a flexible and gradual approach, the building of awareness and consensus about MKURABITA and the direct involvement of GOT at the highest level. The Work Plan visualizes three phases for the Reform Design i.e.

- Deepening the analysis
- Outlining the reforms
- Designing the proposals

29. After 9 months the Outline of the first group of reforms is described as a deliverable and this is presumably what is contained in the Progress Report. One minor problem which has arisen in relating the Progress Report to the Work Plan is the fact that the Work Plan provides for the

use of 460.5 person-months consulting time. The Progress Report contains no information on what consulting time has been used so far on the Reform Design. The Review Team did not consider it part of their work to extract this information --- it should have been presented either in the Progress Report or in the background documentation made available to the Review team.

30. The conclusions and recommendations of the Review Report of the Diagnosis Phase have also to be borne in mind. It calls for greater inclusiveness and awareness of capacity constraints in the Tanzanian system. It calls for better linkages to on-going reforms e.g. various components of the BEST programme. The Review also recommends that Norway consider financing a Formative Research programme associated with the Reform Design. The Review Report says “..... *a specific challenge will be to ensure that services ... from the external consultants is giving full value for money in Phase II of the programme*”

31. The Programme Concept Document of February 2006 which was produced by the MKURABITA Programme Management Unit (PMU) was also examined by the Mid-Term Review team. . It describes the entire MKURABITA process. However it has not yet been approved by Government and so has no standing as yet.

32. Given all these requirements, some of them conflicting, it would be surprising if the Progress Report by ILD had managed to satisfy all of them. It is clear that, in producing the Progress Report ILD has followed its own conceptual framework using the Archetypes, the Categories for Reform, the Convergence Analysis and they have produced 12 Outlines for Reform, as required. However this team thinks there are some issues raised by the Progress Report in its attempts to meet the requirements suggested by the Governments of Tanzania and Norway and the previous Review. In fact some of these issues were discussed by the review team with the ILD consultants in the video-conference of 1 December 2006. The main areas where the review team discerns a need to discuss these issues are as follows:

- The Mid-Term Review Terms of Reference require that the Review ascertains whether the consultants have “..... *conducted a situational Analysis to deepen and extend the gathering of information obtained during the Diagnosis in order to determine the type of reforms that need to be drawn up*”. There does seem little doubt that the analysis has been deepened since the production of the Diagnosis Report and that reforms have been outlined and proposals designed. It can therefore be said that some of the major deliverables, in the form of outline reforms and proposals have been produced. On the other hand, the logical connection between the deepened situational analysis i.e. the findings from the field work presented in Chapter III and the Outlines of Reforms presented in Chapter IV is not entirely clear. Little reference is made in Chapter IV, in the design of the reforms, to the empirical findings presented in Chapter III. In other words it is difficult to see how the Outline of Reforms build empirically upon the findings presented in Chapter III.
- It is also difficult to understand how the Archetypes and Categories of Reform as described in Chapter III (“Finding: Analyzing the Archetypes for Reform Purposes”) emerge from fieldwork done in Tanzania. It appears that the fieldwork has been employed to confirm the existence of the Archetypes and the Categories of Reform, rather than these emerging from the empirical data. This may well be a problem of presentation, but it

leaves the impression that the reforms are not entirely based on Tanzanian reality. ILD, however, make the point that the reform outlines proposed do derive from Tanzanian reality in that they were first identified in the Diagnosis phase. However a very similar point was made in the original Appraisal Document which said: “... *A problem is that Tanzania seems almost incidental to it. It is very much the imposition of a ready-made template of reforms onto a new setting*”. This would have an impact on the nature of the reforms proposed. For example, “Identification” (within the Archetype of the Expanded Market) is one of the 17 identified Archetypes upon which the six Categories of Reform are based. The fieldwork, described in Chapter III reveals that a large number of “extralegal” forms of identification are prevalent in Tanzania, and some 40 concrete examples from the field are given as evidence. However how these relate to the proposals for Documentation of residence and Personal Background proposed in chapter IV is not clear from the text of the Progress Report.

- The review team gained the impression from several Tanzanian institutions implementing or planning legislation on formalization that they were either unfamiliar with or uninterested in the work of ILD. This is important as ILD is proposing extensive changes in legislation which will have a direct bearing on the work of these institutions. Some legislation e.g. the Business Activities Registration Act 2007 being promoted by the Business Registrations and Licensing Agency (BRELA) is actually in the pipeline and can hardly be abandoned or revoked. There is thus a need for ILD to work more closely with existing formalization ventures. On the other hand ILD maintains that they have kept contact with BRELA and with BEST and have incorporated their views into the reform proposals.
- Although expectations are high, the MKURABITA process does not seem to be well known. Some people are surprised nothing is happening yet on the ground. There is also some confusion. In some quarters it is thought that the recent removal of Machinga street traders from the centre of Dar-es-Salaam was an initiative by MKURABITA towards greater formalisation. This, of course, is not the case. There is therefore a great need to create awareness about the process and to present the results of the diagnosis and the initial results of the reform design to the widest possible public.
- There appears to be a heavy reliance in the Reform Design Phase on empirical data derived from ILD’s work in the field. This data is obviously used to support the formulation of the different Categories of Reform put forward in Chapter IV. In fact many of the questions in the fieldwork relate to specific categories of reform such as dispute resolution. The review team has the impression that the answers from the fieldwork are largely used to confirm preconceived categories of reform. On the other hand, ILD maintains that the basic reforms proposed by them for Tanzania have no parallel in any similar project in which ILD has taken part. What does seem to be lacking is use of other empirical data from other studies of formalisation in Tanzania. A great deal of socio-economic research has been undertaken in Tanzania over the past 40 years on all aspects of poverty reduction, formal and informal business, formal and informal land rights etc. The Government of Norway is currently supporting some of this research at the three main public Universities i.e. the University of Dar-es-Salaam, Sokoine University of

Agriculture and Mzumbe University. Unfortunately the Progress Report appears to ignore this body of research in its entirety and makes no reference to it. This seems to be a serious omission, even although it is understood that the ILD consulting team did benefit from several briefings and lectures from Tanzanian experts --- but this is not reflected or referred to in the Progress Report. The Progress Report could therefore be criticized for a failure to ensure greater Tanzanian ownership and stakeholder involvement. Reference is made in Volume V to an “Update of Legal research” but this is a review and synthesis of on-going legal and administrative work affecting the formalisation process.

- Given the ambitious nature of the results expected from the Reform Design process, the Review team is concerned that the consultants have not come sufficiently far in their first 9 months of a 22 month phase. It is not easy to see how the consultants will be able to produce sufficiently detailed reform proposals in the remaining 13 months.
- The Review of the First Phase (Diagnosis) recommends that, in order to track the improvement of practices for the beneficiary, a programme of Formative research should be established and supported by the Government of Norway. The Progress Report makes little reference to it, although the PMU points out that some groundwork has been done and the modus operandi of the Formative Research has been agreed upon. Agreement still has to be reached on the first set of subjects (topics) for research, the budget and funding modalities.
- Several of the problems/issues mentioned above may well arise from the fact that the Progress Report is in fact an account of work in progress and the work is by no means complete. On the other hand the report is confusingly edited --- it gives the impression of being a very hurried work --- and it is difficult for the outside reviewer to discern the logical thread in the argument. The major impression gained is that a great deal of empirical research has been conducted, although more or less independent of, and isolated from similar researches being done by others in Tanzania, but that there is no clear logical connection between the fieldwork results and the reform proposals and reform design. These seem to emerge independently from the empirical research. This may be a problem of presentation at this preliminary stage. However it is a problem which must be addressed in the Final Report. The Consultants must convince the readers that their proposals are soundly founded in Tanzanian reality. So far they have not done so. They could help their case by drawing on at least some of the excellent research already done in Tanzania on formalisation issues.

33. The remainder of this Review report will concentrate on the proposed Reform Outlines which are described in some detail in Chapter IV (Volume III) of the Progress Report.

3. SUSTAINABILITY OF THE PROPOSED REFORM OUTLINES

34. As stated above, a total of 12 Outline Reform Outlines are presented in Chapter IV. In addition a further 21 drafts for Outlines for further reforms are presented. The Outlines of Reform

are presented in considerable detail. No less than 38 pages of text are devoted to the proposed Outline of Reform for Contracts and Disputes. This is sub-divided into real estate issues and business matters separately for Mainland Tanzania and Zanzibar.

35. This section examines the potential sustainability of the Outlines of Reforms which are presented in the Progress Report. However, as pointed out elsewhere the Progress Report is largely a report of “work in progress” and it is very difficult to assess the sustainability of “work in progress”. It is not completed yet. However to illuminate the issue of sustainability in the Progress Report we have chosen to look at a concrete reform proposal presented by the consultants.

36. Three main reforms are proposed to be implemented to formalize contracts and disputes within business matters in Zanzibar (see pp. 33-41 of Chapter IV). Zanzibar is taken simply for sake of example, and examples from Tanzania Mainland would be equally relevant. These reforms are (i) the provision of standardized forms (ii) the facilitation of legal certification of contracts and agreements (iii) facilitation of registration of certified contracts and agreements. These reforms are designed to address five problems, identified by ILD, pertaining to business contracts and agreements on Zanzibar. The reform proposals are thoroughly discussed in the report and the consultants describe in detail the practical implications of their proposals, their legal viability, the legal means required to implement them, the detailed implementation of proposals and the role of other stakeholders. It is clear that this discussion is based on a thorough study of today’s situation in Zanzibar.

37. However, despite the admirable amount of detailed thinking produced by the consultants it is still very difficult at this stage to assess the extent to which the three reform proposals here are “sustainable” in Zanzibar. This will depend largely on the political willingness and receptivity of the Zanzibari business community. The proposals to standardize forms seem very praiseworthy and would certainly be an improvement on today’s situation and would be sustainable. However there are many unanswered questions as to whether the legal proposals would be politically acceptable, and if they were, whether there would be legal and political willingness to devote time, resources and capacity to implementing them. The review team had occasion to visit Zanzibar during their work and had a meeting with the leading officers in the Zanzibar National Chamber of Commerce, Industry and Agriculture. The Chamber remarked that they had not been consulted on the MKURABITA process and would have liked to be engaged.

38. What this example from Zanzibar does show very clearly is that, whatever the political acceptability or the legal practicality of the Reform Proposals are, it will be important to pick up and implement simple, straightforward and well thought out proposals like the standardization of formats. It also shows very clearly that it will be quite essential for the final reform proposals (due in October 2007) to be presented to and discussed in detail with all involved stakeholders so that the whole proposals or parts of them can be implemented within the political realities of the country. To be acceptable proposed systems must have the confidence of its users and be demand driven and in common use. Land holders are mainly concerned with primary effects of land titles i.e. lower control costs, fewer conflicts and better security for investment. Credit access is important but most Tanzanian credit institutions are not yet ready to serve new groups. A system designed to satisfy credit functions alone can create major conflicts of interest, whereas a solid demand-driven system will function for credit purposes as well.

4. ECONOMIC POTENTIALS OF THE PROPOSED REFORM OUTLINES

39. The Review Terms of Reference require the review to examine how the proposed reform outlines as described in the Progress Report are compatible with economic modernization, and how key sectors of the economy can respond to the changes envisaged.

40. It is clear from the Progress Report that it is too early to assess the economic potentials of the proposed reform outlines as these outlines are not yet described in sufficient detail to make such assessments. But we do note that little mention is made of how to involve credit institutions in Tanzania and how to extend their reach so as to support the proposed reform outlines. Nor is there any strategy proposed to prevent corruption or land-grabbing.

41. However, as with the “Sustainability” issue it is useful to look at one set of proposed reform outlines to try to assess economic impact. If we look at the reform outline for “Records and Filings” (pp.95-116 in Chapter IV of the Progress Report) we shall see that it is proposed to create decentralized public document registry systems for Mainland Tanzania and Zanzibar. This reform outline will address at least 7 different types of problems identified in the field work and associated with disorganization and loss of information, lack of basic rules for filing, and the general lack of proper registry of documents throughout the country. From what the review team can see the creation of such registry systems would imply considerable amount of administrative work and possibly training and capacity strengthening at the grass-roots level, as well as the passing of enabling legislation and regulations.

42. The Progress Report then performs a “cost-benefit analysis” of Records and filings without reform and with reform. The methodology employed is not easy to understand. The detailed workings for the costs of the Records and Filings for Mainland Tanzania, *with* the reform and *without* the reform are set out in Table 5 in Annex 3 (contained in Volume V of the Progress Report). Here it is stated that the social costs with reform will be TShs. 21,583,461.99 (or about NOK 108,000). And the social costs without reform are estimated to be TShs.23,686,380 (about NOK 118,000). The report assumes that all necessary training costs (and these must be very substantial) would be borne by the Local Government Support Program and the Local Government Training Centre. Has anyone asked them?

43. If we take the figures presented at their face value then it seems the Progress Report is arguing that implementing its proposed reform outlines would be more economically beneficial to Tanzanian society than not doing so. However the Progress Report at this stage, and its reform outlines, simply do not provide any information on the possible economic impact. The assumption appears to be at this stage that, once the proposed reforms are in place, there will be some sort of “trickle-up” effect. For example, once a decentralized public document registry system is in place at local level, it is assumed that this will greatly facilitate credit institutions, banks and others wishing to invest in poorer areas of the country. Title to property and other items will be secure and investment will flourish.

44. It is thus perhaps too early to try to assess the economic potentials of the reform outlines, but it is recommended that the Final Report specifies very clearly the expected macro-economic impacts of the proposed reforms for the different sectors e.g. financial sector, industrial and commercial sector support services and energy supply. This would be a very useful yardstick for assessing the efficacy of the proposed reforms.

5. RELEVANCE OF THE PROPOSED REFORMS TO ALL SECTORS

45. The Review team is required by the Terms of Reference to: “ *assess the capacity of key sectors of the economy and to adequately respond to demands of owners of envisaged massively formalized property and business rights*”. This is interpreted here to mean the relevance of the proposed reforms to all sectors and, in particular to on-going reforms elsewhere in the Government of Tanzania in property and business formalization.

46. In fact it would appear that it is decided at an early stage in the Progress Report that the approach adopted, that is the Conceptual Basis for Reform (also described as Overview and Outputs) in Chapter II of the Progress Report, is in fact relevant for the Tanzanian situation. The fieldwork described in Chapter III appears to be used to validate the relevance of the approach to the Tanzanian situation.

47. Chapter II states that five principal findings on the extralegal sector in Tanzania identified in the Diagnosis Phase, form the basis for 17 archetypes or patterns of social interaction. Through the process of Convergence Analysis these 17 Archetypes are grouped into six categories of reform viz. contracts and agreements, dispute resolution, personal identification, records and filing, family and property rights issues and internal business management. As described earlier in this report these archetypes will be used to develop a market order and a rule of law for Tanzania, embedded in the local culture. It is therefore assumed *a priori* that the archetypes and categories of reforms (and so the reform outlines themselves) are relevant to the Tanzanian situation, and this is subsequently confirmed by the fieldwork in Tanzania.

All Sectors

48. It appears from the Progress Report that the most promising aspect is that of business registration and for small personal or family-owned businesses such as handicrafts or small traders. But of course these have to be integrated into existing institutions. Property registration seems most promising in the registration of assets in areas of straightforward land use patterns a considerable land value – in urban and semi-urban areas such as shanty towns and squatter areas. In agricultural areas where production consists largely of cash crop farming where dependency between users is low, the reform outlines proposed are probably relevant. There is therefore a need for further discussion on land management and registered rights in agricultural areas. This emerged from discussions with the Ministry of Lands, Housing and Human Settlements Development charged with implementing the SPILL programme.

49. In areas of subsistence agriculture with interdependent farming systems with pastures, tree products and field crops in the same area, with complex patterns of interaction, it is uncertain

whether the reform outlines proposed are relevant. This view was also put forward by the Ministry of Lands, Housing and Human Settlements Development. It is important to recognize that in subsistence agriculture which is the predominant form of rural livelihood in Tanzania, people's main interests in secure rights is so that they can better conditions for management. It will create less trouble and conflict costs will be reduced if rights are secured. Secure rights also give security for investments in land and production. Yields and land values will be increased but not to the point where commercial banks will accept rural land as acceptable collateral. Credit to small farmers will be given on the basis of future yields or within a cooperative framework and not on the basis of rural land values. On the other hand ILD maintains that their proposals do not suggest that granting credit using land as a guarantee is the only solution. . They maintain that documentation and registration of transactions are fundamental to obtaining "secure rights".

Other Initiatives

50. However in considering relevance it is also essential to examine the activities of other institutions in Tanzania pursuing similar property and business formalization objectives. The consultants claim that their reform outline proposals are compatible with, and/or complementary to GOT initiatives, but this is not always confirmed by GOT itself.

51. The review team interviewed four institutions attempting to promote property and business formalization in Tanzania today. These were:

- Ministry of Lands and Human Settlements Development (the Strategic Plan for the Implementation of the Land Laws (SPILL))
- Government of Zanzibar (Sustainable Management of Land and Environment Programme (SMOLE))
- Business Environment Strengthening for Tanzania Programme (BEST)
- Business Registrations and Licensing Agency (BRELA)

52. A principal objective of SPILL is to promote poverty reduction ".....by providing all other actors with safe ground for their activities" and to ".....promote an increased security of tenure to the benefit of Tanzania Land owners and users" ². The Ministry of Lands and Human Settlements Development has over the past five years been carrying out a country-wide land survey and registration exercise similar to that proposed by ILD. So far the boundaries of 6,000 of Tanzania's 10,500 villages have been surveyed. About 6,000 individual Certificates of rights occupancy (CROs) had been issued. As there are probably several million properties in Tanzania it can be seen that the process is very slow. The main bottleneck appears to have been lack of land surveying capacity. SPILL seems to include a major surveying component, and much greater than is actually needed for registration purposes. It should be noted that the Norwegian legal title register contains no surveyed data at all. Whether MKURABITA can speed this process up has yet to be seen. It may become more responsive to demands or it may be able to introduce simpler, cheaper "barefoot" surveying systems. However it is clear that the existing SPILL programme is undertaking activities parallel to those proposed in the Progress Report, and that there will need to be considerable collaboration between MKURABITA and SPILL on the implementation of the

○ ² Ministry of Lands and Human Settlements Development (MLHSD), "Strategic Plan for the Implementation of the Land Laws", Dar-es-Salaam, April 2005

proposed reform outlines. The Progress Report (Chapter IV, Volume III p.103) maintains that there is no contradiction between the two proposals.

53. SMOLE is a comprehensive programme designed to contribute to sustainable land and environment management on Zanzibar (Unguja and Pemba). It is building a Zanzibar Land Information System (ZALIS) to create a national land register. A major component of the programme will be land registration in informal settlements supported by computer aided land registration and digital mapping. SMOLE is currently receiving technical assistance from the Finnish Government. As far as the Review team can see, no mention of the SMOLE programme is made in the reform outline proposals on Dispute Resolution: Real Estate Matters on Zanzibar (see p.57 of Chapter IV) or on Records and Filings (see p.113-114 of Chapter IV), although it is referred to in the Diagnosis Report. The on-going implementation of SMOLE could thus easily invalidate the reform outline proposal being put forward in the Progress Report.

54. Two components of the BEST programme are similar to the work described in the Progress Report. These are Achieving Better Regulation of Business and Improving Commercial Dispute Resolution. These will improve and extend the present system of business registration and licensing in Mainland Tanzania and in Zanzibar, and improve the current system of commercial dispute resolution. The reforms will consist of an enactment of a Business Activities Registration Bill and harmonization of the regulatory business licensing system, removal of complex adjudicatory frameworks, and reforms in case backlogs. Eight second phase reforms for Mainland and Zanzibar are proposed in the Progress Report for formalization of business. These include harmonized business registries whose purpose and content seem to be very similar to that of a proposed Business Activities Registration Bill which is currently under debate in Parliament. The proposal in Progress Report appears to duplicate the Bill being promoted by BEST, and it is difficult to see the Bill being abandoned in favour of an entirely different system of business registry, termed the New Business Registry (NBR) in the Progress Report. On the other hand there was positive interest in the MKURABITA process within BEST. One important tool is Best's ability to adapt and change legislation which hinders the modernization process. MKURABITA can perhaps get some of its reform proposals implemented by close cooperation with BEST.

55. BRELA is a Government executive agency established in 1999 and one of its specific roles is: “ *to regulate business by administering business and industrial licensing laws*”. It maintains registers of companies, business names, patents, industrial licences and trade and service marks. To date BRELA has registered over 59,000 companies and 16,000 business names. The second phase reform proposals on the formalization of businesses (see pp 125-126 in Chapter IV, Volume III) refer to the proposed Business Activities Registration Bill being promoted by BRELA in Parliament, but no mention is made of BRELA's current work (and powers) to register businesses and companies. This seems to be something of an omission, and it is clear that no reform proposal put forward by ILD can work without the close collaboration of BRELA. BRELA recommend very strongly that existing Government sensitization programs be employed to publicise and promote the proposed reform outlines being put forward by ILD.

56. It can therefore be said that many of the reform outline proposals in the Progress Report are very relevant to what is going on in other sectors in Tanzania. However in examining the Progress Report and meeting with officials of the Tanzanian Government involved in similar on-

going formalisation exercises, the Review Team considered that, in formulating the reform outlines, ILD has not yet taken sufficient account of work being pursued by Tanzanian Government institutions in land and business registration. ILD, however, are not in agreement with this interpretation. The Review Team however feel this aspect will have to be rectified if ILD's work is not to become irrelevant. It can be argued, and it often is by ILD, that there is a need for the consultants to isolate themselves to some extent from the bureaucracy. ILD have often maintained that bureaucrats may see their interests threatened by new ideas and concepts. However at some stage, the Tanzanian side has to be brought into the process and that point has now certainly been reached.

6. THE STRATEGIC "FIT"

57. Numerous strategies for Tanzania's socio-economic development have been prepared in the past three years and the purpose of this section is to examine how far the reform outlines as proposed in the Progress Report are compatible or fit with these strategies.

58. "Vision 2025" is a policy document presented by President William Mkapa at the beginning of the new millennium. Its main targets are:

- High quality livelihood.
- Peace, stability and unity.
- Good governance
- A well educated and learning society
- A competitive economy capable of producing sustainable growth and shared benefits

59. The National Strategy for Growth and Reduction of Poverty (NSGRP) or MKUKUTA was published in June 2005. Its main expected outcomes are: (i) growth and reduction of income poverty; (ii) improved quality of life and social well being; and, (iii) good governance and accountability. Each of these main outcomes has a series of operational targets or indicators for assessing success or failure e.g. scaled up participation of the informal sector and SMEs (including cooperatives). One of the strategic actions proposed by MKUKUTA is very relevant to MKURABITA and is: ".....*Implementing the BEST programme and maintaining a predictable business environment and protecting property rights....*" The Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA) has similar anticipated outcomes for Zanzibar as are proposed in MKUKUTA for Mainland Tanzania. Joint Assistance Strategy for Tanzania.

60. A Joint Assistance Strategy for Tanzania (JAST)³ was published in December 2006. It is a national medium-term framework for managing development cooperation between the Government of Tanzania and the development partners

61. There can be little doubt that the reform outlines put forward in the Progress Report are in line with the major socio-economic strategies for the country. For example the reform outlines --- if implemented --- will undoubtedly support the development of a competitive economy capable of producing sustainable growth and shared benefits as required in "Vision 2025". Similarly the reform outlines --- if implemented --- will certainly contribute to some if not all of the outcomes foreseen for MKUKUTA and MKUZA.

o ³ Ministry of Finance, "*Joint Assistance Strategy, Tanzania*", Dar-es-Salaam, December 2006

62. However one common feature of all the strategic thinking on Tanzania's socio-economic development is the need for Tanzanian ownership. This is a common theme throughout all of these documents. It is difficult to see this requirement reflected in ILD's "Progress Report". Virtually no mention is made in the Diagnosis Report or the Progress Report to the Tanzanian policy and strategy context. There is no mention of Tanzanian Government policies and how they could have shaped or influenced the reform design or the proposed reform outlines.

63. There is still an outstanding paradox surrounding the aspect of Tanzanian ownership of the Programme. On the one hand ILD's Work Programme for the Reform Design phase does call for extensive Tanzanian participation in the reform design process. Provision is made for a comprehensive communications strategy, for the holding of workshops and briefings, and budgets were set aside for these purposes. ILD also maintain that they have taken full account of the Tanzanian policy environment. On the other hand, ILD report that they had been unable to persuade the Tanzanian Government to engage more Tanzanian staff. It is also a fact that most of the consulting work carried out by ILD is carried out in Peru and not in Tanzania. In addition the Review Team did encounter Tanzanian institutions which were not aware of, or were in disagreement with ILD's approach. Whatever the reasons for these things, there is a lack of "Strategic Fit"

64. Thus in order to achieve a greater "Strategic Fit" there is a need for greater Tanzanian ownership of the process being undertaken now by the consultants. This Annual Meeting between the Governments of Tanzania and Norway of 28th October 2005 is also very emphatic on this point, and the Embassy underlined the need for enhanced national ownership. A system "delivered from on high" will simply not work in Tanzania because of the nature of political debate in Tanzania. This issue will be discussed in the Findings and Conclusions.

7. ADHERENCE TO THE WORK PLAN

65. The Work Plan for the Reform Design stage was produced in March 2006 and is ambitious. The Plan is based on five strategic principles as follows:

- A flexible and gradual approach
- Building awareness and consensus
- Direct involvement by GoT at the highest level
- Active involvement with stakeholders
- Covering Mainland Tanzania and Zanzibar with separate provisions

66. A conceptual framework and approach is presented, and the Reform Design shall be organised into a deepening of the analysis, an outlining of the reforms and designing the proposals.

67. The first question which arises, of course, is whether these five strategic principles, the conceptual framework and approach and organization have in fact been observed in producing the reform outlines presented in the Progress Report? It is agreed that a flexible and gradual approach has been taken, and that the analysis undertaken in the first Phase (Diagnosis) has been deepened and relatively detailed reform outlines have been produced for consideration in the Progress Report.

68. However as indicated earlier in this report there appear to be considerable problems with awareness and consensus building and with stakeholder involvement. The Review team gained the impression that the work of the consultants on the formalization process was not well known and was frequently misunderstood and this was due to a direct lack of awareness and consensus building. Feedback from field suggested that the consultants were not fully aware or cognizant of what was taking place in property and business registration in Tanzania, and those responsible in other parts of Government were not aware of what the consultants were doing. There was therefore a need for much more collaboration and the initiative should come from the ILD consultants.

69. The Review team is not convinced that the reform outlines proposed in the Progress Report emerge from a thorough-going stakeholder involvement. To be fair, it is very difficult to achieve such stakeholder involvement for such comprehensive and wide-ranging reforms. ILD lists over 900 individuals they have consulted in the 43 communities they visited in their fieldwork. However these individuals cannot be considered as stakeholders or partners in a dialogue on reform. These were informants who informed ILD researchers of existing practices. ILD then appears to have used the information derived from the field to design the reform outlines. Little mention is made in the Progress Report of central Tanzanian policy documents, although these are referred to in the Diagnosis Report and the impression gained is that the reform outlines were designed without taking account of these, and that they were designed in a something of a vacuum.

70. The strategic principle requiring the involvement of GoT at the highest level does not appear to be substantiated from Tanzanian reality. It may well be that in some cases Presidential intervention is required to break up bureaucratic “log-jams” or to combat entrenched interests (often big land-owners). However in the Review team’s experience the Tanzanian democratic process does not work that way and responsibility and authority has always been distributed widely through the Civil Service. This means that if you want a proposal to receive acceptance within the Government of Tanzania it is often wise to start from the “bottom up” rather than the top down. There is an intrinsic hierarchy of decision-making. Thus a “top-down” approach may make it difficult to get reforms implemented and accepted. If the consultants depend too much on a “top-down” approach they may become very frustrated as proposals may be relegated down the system and get stuck there, and only proper awareness raising and consensus building can rectify the situation.

71. Otherwise it appears as if the ILD consultants have followed their approach and strategy set out in the Work Plan. The Work Plan is divided into four parts, the first two of which are reported on in the present Progress Report, that is:

- (i) Programme planning and definition of scope
- (ii) Deepening the analysis, evaluation and outlining of alternative reforms

72. It is fairly safe to say that most of the activities described under these two parts have been carried out and the deliverables promised have been provided (although how implementable these deliverables are is an entirely different matter). However the Work Plan makes frequent reference to consultation, to discussions and meetings with stakeholders, to a communications strategy etc.

There is little evidence in the Progress Report that such consultation has actually been undertaken, and this lack of contact may explain why the reform outlines appear to have been evolved within a vacuum. In addition in Annex 5 it is indicated that only 25% (50 person-months) of the ILD staff time was to be used in Tanzania. With such a large professional team (19 persons) this might have made it difficult to organize a proper system of consultation in Tanzania. The problem here may well be that ILD has failed to document adequately its consultation and communications process. ILD states that the results of its extensive consultation process will be set out in their next Progress Report, and that extensive consultation took place during the Diagnosis phase. It is therefore perhaps premature to judge the communications efforts made by ILD.

73. In the Work Plan a total of 201.5 person months of ILD consultants is allocated for the Reform Design phase over a period of 22 calendar months. Of these 51.5 person months is to be used in Tanzania and 149 person months is to be used in Peru. This means that, on average, there will be 2.5 ILD consultants in Tanzania at any one time, whilst there will be 7.5 ILD consultants on average working in Peru. Since the bulk of the work is planned to be carried out in Peru and there is a minimal presence in Tanzania it is hardly surprising that there is not much evidence of stakeholder involvement or Tanzanian ownership in the Progress. With only two ILD consultants in the country at any one time it would be difficult to raise awareness and build consensus. It appears that ILD, in its Work Plan, sought greater Tanzanian participation in the reform design process, but that it was not possible to obtain authorization or budget for the Tanzanian team requested.

8. REFORM DESIGN, FORMATIVE RESEARCH AND CIVIL SOCIETY

74. The Review Terms of Reference require that the team examine progress made on formative research and plans for civil society's participation in the Reform Design process.

75. It has to be pointed out that the Terms of Reference for the Reform Design do not mention the requirement for formative research or the participation of civil society in the Reform Design. Six main activities shall be carried out in the Reform Design phase i.e. conduct a situational analysis, prepare outlines of institutional reforms, design legal reforms, estimate net positive costs and benefits, outline a communications campaign strategy and prepare an action plan for the implementation stage. There was therefore no formal contractual requirement to work on formative research or the participation of civil society. Nor does the consultants' Work Plan for the Reform Design phase, of March 2006, mention these aspects. This may now be viewed, in hindsight, as a weakness of the contract and/or the consultants' Terms of Reference. It can also be said that the Agreement between the Government of Tanzania and the Government of Norway regarding the project makes no mention of formative research or the participation of civil society.

76. However the Review of the Diagnosis Phase of 16 October 2005 strongly supports the establishment of a formative research programme which would track progress in formalization for a baseline group of potential beneficiaries. It was recommended that Norway consider supporting this. As far as we have been able to find out this has not been implemented, and the reasons why not, are not clear. This proposal was also taken up in the Annual Meeting of 28th

October 2005 referred to above. The PMU does report that there is progress on initiating a programme of Formative Research and the work is progressing to establish and fund a programme.

77. There is no formal requirement in ILD's Terms of Reference or in the Agreement between the Government of Norway for the participation of civil society in the Reform Design process. Again this may have been an oversight but that cannot be attributed to the ILD consultants. It is understood that ILD has consulted with various Tanzanian NGOs in their work on the Reform design viz. in microfinance (PRIDE), in agricultural marketing (Technoserve), in rural land rights (CORDS) and urban land rights (WAT-Human Settlements Trust)

78. On the other hand as the Government of Norway is financing the Diagnosis and Reform Design phases of the MKURABITA process, there has been considerable interest in the on-going work by Norwegian non-government organizations. It is understood by the Review team that the Government of Norway has funded the Norwegian People's Aid (NPA), a Norwegian NGO to promote an initiative to facilitate civic engagement in the reform design phase of MKURABITA. This may be due to an omission in earlier stages of the process.

79. NPA aims to do two things i.e. to provide information to enable people to engage with the reform design phase and to provide relevant evidence to support poverty-reducing reform design. Thematic guides to the Diagnosis Report and a popular guide to the MKURABITA process are being produced with the help of local firms. In addition NPA has been organizing seminars to raise the awareness of concerned businesspeople and politicians. NPA is also initiating participatory research programs in three locations to test selected reform proposals against local conditions for implementation. NPA has also been invited to assist in the Handeni village Land Act No.5 piloting exercise which is being organized by the Program Management Unit of MKURABITA. The purpose of this piloting exercise is to provide inputs into envisaged reforms for fast track titling for rural land.

80. Although the approach to the preparation of the Reform Design does not include provision for the inclusion of civil society, it is considered that the potentials offered by NPA's work are substantial. If the reform proposals now being formulated by the ILD consulting team are to have any hope of being implemented in reality they must involve extensive participation by civil society. NPA's work offers such an entry point to civil society.

9. MAIN FINDINGS AND CONCLUSIONS

81. The following are the Review team's main findings and conclusions regarding the extent to which the Property and Business Formalisation Programme (PBF) is obtaining its objective and the Review team's assessment of the Program's performance, outcome and sustainability. The basis for these findings and conclusions is the Progress Report produced in November 2006 after 9 months of the Reform Design phase.

- The situational analysis which was proposed to deepen and extend the gathering of information obtained during the Diagnosis phase has been carried out

- A total of 12 reform outlines have been prepared and a further 31 Second Phase reforms are described as proposed in the Reform Design Work Plan, and in the Diagnosis Report
- The Progress Report is badly laid out and structured and it lacks an index so that it is difficult to find one's way around. This could easily lead to misunderstandings. Some important text boxes (e.g. IV-2) referred to are missing. The cost-benefit analysis is very confusing and difficult to understand so that it is very difficult to judge its quality. In other words the report is not "user-friendly"
- There is a need to know how much consulting effort has been put into the Progress Report. A total of 460 person-months is allocated for the entire Reform Design phase of which 201 person-months is allocated to ILD. The amount of person-months used to date and by which experts should be provided. This makes it easier to review the effort put in.
- The logical connection between the Archetypes and Categories of Reform and reform outlines is not clear. The extensive fieldwork (in 43 communities throughout the country) appears to have been used to confirm the existence of the Archetypes and Categories of Reform, rather than these emerging from the empirical data; what is it actually that people want? The impression gained is therefore that reform outlines are not based entirely upon Tanzanian reality. However ILD do not agree with this interpretation and say that the proposed reforms are based on data obtained from actual experience and concrete testing of the processes and methods used in the absence of adequate institutions.
- The Progress Report makes almost no reference to the Tanzanian policy environment e.g. MKUKUTA, MKUZA, Vision 2025, although reference is made to these in the earlier Diagnosis Report. Nor does it employ the very large body of Tanzanian research already carried out on formalization issues, property, small business development etc. This reinforces the perception that the Reform Design process has failed to take account of Tanzanian reality and is basing itself on external models. The tendency to use expressions alien to Tanzanian/Zanzibari law such as "property", "title" or "eminent domain" might lead the reader to a similar conclusion
- The 12 reform outlines are described in considerable detail with consideration of the legal and administrative implications. It is not certain how implementable many are in practice, but it will be important to pick up and implement some of the simpler, more practical proposals
- The overall aims of the MKURABITA programme seem very ambitious, and to propose comprehensive reforms in such a complex legal, cultural, physical, political and administrative environment raises questions of costs and efficiency. Thus the costs and benefits of implementing it should be compared with other, more conventional and slower processes. If the programme reaches some of its goals after only 3 years it will be a very exceptional one.

- It is not easy to see how the existing legal, administrative, legislative and Parliamentary capacity of Tanzania could be sufficient to implement a programme of the size, complexity and volume which the Programme appears to be contemplating
- There seems to be considerable overlap between the reform outlines proposed in the Progress Report and existing program's under SPILL, BEST and BRELA. It is not clear how this will be resolved. On the other hand ILD contend that the reforms proposed will NOT duplicate the works of these existing programs.
- There is a need for more Tanzanian ownership and stakeholder involvement in the Reform Design process. To date the MKURABITA process and the Reform Design processes seem to be little known in Tanzania, and they are often badly misunderstood. This is partly due to a lack of awareness raising and consensus building within Tanzania. A failure to engage the Tanzanian public will make the programme very difficult to implement. A major recommendation in the Review of the Diagnosis Phase to apply a more inclusive approach appears to have been ignored. There seems to have been little interest in developing a communications strategy and in holding information workshops., although this now seems to be planned to take place at a later stage
- It is not entirely surprising that it has proved difficult to get Tanzanian stakeholder participation. This is because the Reform Design Work Plan prescribes that 75% of the consulting work is done overseas and that an average of no more than 2.5 person months consulting work by ILD is carried on in Tanzania at any one time (at the same time the total consulting team numbers 19 people). The fact that the Project Manager plans to spend more than two thirds of his working time outside Tanzania would suggest something is wrong with the Work Plan. Such a manpower disposition is not conducive to stakeholder participation in Tanzania.
- The Review team is not convinced that ILD's top-down model through the President's Office will be implementable in Tanzania. It seems to run counter to Tanzania's bottom-up approach to democratic decision making, first established under the *Ujamaa* system. Failure to involve decision-makers at all levels in society will make implementation very problematic.
- There is little mention of Formative research or the participation of civil society in the Reform Design process. This is not the fault of the consultants as neither subject is mentioned in their Terms of Reference, but have been introduced at a later stage.
- It is clear that the consultants are making progress to producing the deliverables specified in their Terms of Reference and contract. The main concern is that, because of a lack of stakeholder involvement and Tanzanian ownership, many of the reform proposals will not be implementable. It has to be remembered that the key to reform is consensus.

10. RECOMMENDATIONS

82. The Review team's main recommendations are as follows:

- It is **recommended** ILD produce detailed lists of the experts who have worked on the Reform Design phase to date, and how much time they have used in Tanzania and how much in Peru.
- It is **recommended** ILD consider revising its Reform Design Work Plan to allocate a larger proportion of the ILD consultant staff to work on the Reform Design in Tanzania rather than in Peru. This would be in the remaining 13 (?) calendar months of the Reform Design Phase. This would certainly assist in increasing Tanzanian ownership. The number of travels should also be reduced and this would help to reduce the cost of allocating a larger proportion of the consulting work to Tanzania. ILD should be required to make constructive proposals to this end.
- It is **recommended** that MKURABITA and the consultants consider whether the programme should be limited to low-level "barefoot" systems aimed at solving registration problems for poor people, as a supplement to expensive existing systems, although it has emerged that there is a general consensus that a comprehensive approach be adopted encompassing society at all levels
- It is **recommended** that proposals for a land register for rural agricultural areas and communities be reconsidered until there is a clearer understanding of the requirements of people in these complex interlinked systems. Efforts should therefore be concentrated on business registration and on "barefoot" survey systems for low cost and squatter areas. However ILD argue that their approach is a comprehensive one and must also be applied to the 80% of the population which lives in rural areas and whose needs for security and documentation are not currently being met.
- It is **recommended** that ILD give priority to producing a communications strategy and to building consensus within Tanzanian society. It is recommended that ILD, in cooperation with the MKURABITA administration a series of one-day regional workshops in, say, 6 locations throughout Tanzania to present the initial 12 reform outlines and 31 Second Phase reforms. The Norwegian People's Aid (NPA) should also be consulted with a view to coordinating communication strategies.
- It is **recommended** that the ILD consultants establish an immediate dialogue with the main Government organizations dealing with formalization of property and business i.e. SPILL, BEST, BRELA and SMOLE. They should be asked for their comments on the reform outlines proposed in Chapter IV of the Progress Report. Their feedback could be used to refine the designs.
- It is **recommended** that Norad and the Norwegian Embassy follow up the proposal made in the Review Report of the Diagnosis phase for a programme of formative research. It might be possible to contract this out to the Norwegian People's Aid or a Tanzanian NGO, and the Embassy should start discussions on this.

- It is **recommended** that the Property and Business Formalisation Programme (MKURABITA) administration be given responsibility for following up the recommendations made in this report on behalf of the Norwegian Embassy
- It is **recommended** that a prominent, independent Tanzanian legal expert be engaged to review the ILD Reform Outline proposals in order to give an informed opinion on the capacity requirements e.g. Parliamentary time, legislative work, legal drafting etc which the proposals imply

ANNEX 1: THE REVIEW TERMS OF REFERENCE

UNITED REPUBLIC OF TANZANIA

PRESIDENT'S OFFICE – STATE HOUSE

PROPERTY AND BUSINESS FORMALIZATION PROGRAM

TERMS OF REFERENCE FOR MID TERM REVIEW

1. BACKGROUND INFORMATION

The Government of the United Republic of Tanzania has received funds from the Government of the Kingdom of Norway to finance a Property and Business Formalization Program that seeks to facilitate the transformation of properties and business in the informal (extralegal) sector into formal, legally held and operated entities in the formal sector of economy.

The Program Concept is based on an Approach developed by the Institute of Liberty and Democracy (ILD) of Lima – Peru.

The ILD is contracted to provide professional services in line with a set to agreed Terms of Reference.

Currently the operation is limited to the first two phases of Diagnosis and Reforms Design. The Diagnosis was completed in September, 2005, its final report submitted / evaluated as provided for in the Financing Agreement between the Government of Tanzania and Government of Norway.

The Reform Design is underway since January, 2006. It is set to take 22 months. Its Work Plan is primarily based on the Terms of Reference in the Consultancy agreement between Government of Tanzania and Government of Norway, the Minutes of the Annual Consultative meeting between Government of Norway and Government of Tanzania as well as actual situation obtaining in the country in so far as property and business formalization relates.

The conceptual frame work, main activities and deliverables are detailed in the Reform Design Work plan.

2. CONTENT AND PURPOSE OF THE MID TERM REVIEW

The Financing Agreement between Government of Norway and Government of Tanzania provides for a Mid Term Review (Evaluation) of the Program in August, 2006 (Now postponed to November, 2006)

The purpose of the evaluation is to determine the extent to which the Program attained its objective and assess the Program's performance,

outcome and sustainability. This evaluation will also pass recommendations for the subsequent phases of the Program.

In that respect the evaluation will be centred on the Progress of the Reform Design phase its concordance with the findings and recommendations of the Diagnosis Report as well is compliance with the approved work plan.

Compliance to the provisions of the Government of Norway and Government of Tanzania Financing agreement including the decisions of the previous Annual Meeting will constitute another important area of evaluation. Specifically the Evaluators will seek to determine if the ILD work in progress in the Reform Design phase will lead to establishment of an institutional framework that fosters an inclusive framework under the rule of law. An Institutional Arrangement that will lead sustainable recognition registration of persons and their properties and business assets.

Thus the Evaluators will elucidate evidence that the ILD has satisfactorily implemented the activities described below:-

- i) Conducted situational Analysis to deepen and extend the gathering of information obtained during the Diagnosis in order to determine the type of reforms that need to be drawn up. This includes the identification and analysis of the main obstacles and costs involved in the legal access and exit to business activities; in the legal operation of a business; in the legal expansion of a business; and in the legal recognition and use of real estates for business and other purposes.
- ii) Prepared an outline of the proposed institutional reforms to be proposed.

The Evaluator will further determine Progress made in the development of the Formative Research agenda.

Subsequently the Evaluators will make a recommendation on the way forward including the appropriate completion of the Reform Design phase which in addition to complying with the Terms of Reference will be sufficiently responsive to the actual current and immediate future demands on MKURABITA.

3. SCOPE OF WORK

- 3.1 The Evaluators will prepare and submit for acceptance their action plan that will include the extent of the desk reviews and filed (work) if any to the Norwegian Embassy Dar es Salaam and Program Management Unit.
- 3.2 The Evaluation Team will seek to determine or assess the progress made upto 31st October, 2006 in comparison with the Terms of Reference of the Financing Agreement and the contract between the Government of Tanzania and ILD.
- 3.3 The Responsiveness of the ILD Deliverables to short term, medium term and long term requirements of the stakeholders particularly the poor shall be determined in relation to:-
 - i) Sustainability of the proposed reform packages as tools of the empowerment of the poor for reduction of poverty.
 - ii) The extent to which the Reforms are compatible with the economic modernization strongly founded on the acquisition and application of know how (knowledge) relevant to the market economy.
 - iii) The capacity of key sectors of the economy particularly financial sector, industrial and commercial sector support services, energy supply and so on to adequately respond to demands of owners of envisaged massively formalized property and business rights:-
 - iv) The strategic fit of the Reform Outlines to national vision 2025 of mainland Tanzania vision 2020 of Zanzibar and the key strategies namely MKUKUTA for Tanzania mainland and MKUZA for Zanzibar as well as ongoing national programs in all key sectors of the economy.
- 3.4 The Evaluators will determine the extent to which key challenges and risks in the Programs identified in phase one are addressed and factored in the Reform Design.
- 3.5 The Evaluators will also determine the extent to which the Terms of Reference and ILD Work Plan for the Reform Design phase can facilitate the generation of implementable reforms packages that add value to the prevailing property rights and business regimes in both the informal (extra legal) and formal sector.

- 3.6 The Evaluators will review the progress made in the Formative Research, plans for civil societies participation in the Reform Design determining their synergy or conflict with the Reform Design processes.
- 3.7 The Review Team will validate their findings, observations and recommendation through a well structured stakeholders workshop (Consultation Forum) prior to submission of their report to the Government of Norway and the Government of Tanzania.

4. IMPLEMENTATION ARRANGEMENTS

- 4.1 The Team will consist of a Team Leader appointed by the Government of Norway and three other members, one appointed by the Norwegian Government and the rest (two) appointed by Tanzania Government.

The Team shall as much as possible be multi disciplinary with individual members being senior professionals well versed in ongoing reform processes in Tanzania and with good insight in the property and business formalization agenda.

- 4.2 The excise shall be carried out and completed in two weeks.
- 4.3 The Norwegian Embassy in Tanzania and the Government of the Republic of Tanzania shall assist the Team in acquiring information and make available all necessary reports, data and documentation.

5. REPORTING

The Team will jointly produce a report to be submitted to the Governments of Tanzania and Norway. The report shall be based on the scope of assignment defined above.

The team is required to present their conclusions, findings and recommendations in a debriefing report in a meeting with the Royal Norwegian Embassy, prior to departure.

A similar debriefing meeting shall be held for Government of Tanzania officials including the Program Steering Committee.

A final report shall be submitted not later than xxxxx of November, 2006. The report shall present the views, findings and recommendations of the

Team only and shall not be binding for neither the Tanzanian nor the Norwegian Government. The report will be used as background material for the annual meeting in Dar es Salaam, Tanzania regarding the programme.

ANNEX 2: PROGRAMME OF MEETINGS HELD BY THE REVIEW TEAM

Wednesday 22 November

01.00:	Arrived Dar-es-Salaam
10.00:	Trond Augestad, Norwegian Embassy
14.00:	Ladislaus Salema, PCU, PBFP

Thursday 23 November

09.00:	Kari Hansen, Norwegian Embassy
11.00:	Gustavo Marini, ILD
13.00:	Team meeting
15.00:	Ladislaus Salema, PCU, PBFP

Friday 24 November:

08.00: Team meeting with Kari Hansen, Norwegian Embassy
09.30: Team meeting
11.00: Professor A.A.Hayume, Adviser, Strategic Plan for the Implementation of the Land Laws (SPILL), Ministry of Lands, Housing and Human Settlements Development
13.30: Allan Mlulla, Better Regulation Unit (BEST), Ministry of Planning, Economy and Empowerment
17.00: Visit to Mwenge area of Dar-es-Salaam (informal businesses)

Saturday 25 November:

09.30: Mark Waite, Norwegian People's Aid
Rest of day: Reading texts

Sunday 26 November:

11.00: Professor F.Luoga, Associate Professor of Law, University of Dar-es-Salaam
15.00: Visit to informal, squatter housing areas

Monday 27 November

07.30: Drove to Bagamoyo
09.00: Rhoda Semwa, District Executive Director, Bagamoyo District Council
10.00: Alphonse Tiba, District Lands Officer, Bagamoyo District Council
11.00: Karim Hoza, Senior Planning Officer, Bagamoyo District Council
12.00: Halima Noor Mohammed, District Trade Officer, Bagamoyo District Council
13.00: Drive to Dar-es-Salaam
16.30: By air to Zanzibar

Tuesday 28 November

09.00: Juuka Niemenin, Chief Technical Officer and Simon Luganda, Local Coordinator, Sustainable Management of Land and Environment Project (SMOLE), Ministry of Lands, Zanzibar
10.00: Al Amin Omar, Head, Surveys and Mapping Department, Ministry of Lands, Zanzibar
11.00: Meeting with the Zanzibar National Chamber of Commerce, Industry and Agriculture, Zanzibar
17.00: By air to Dar-es-Salaam

Wednesday 29 November

09.00: Norwegian Embassy: reading documents
13.00: Geir Sundet, Researcher, REPOA
16.00: Commission on the Legal Empowerment of the Power (CLEP):
National Consultation Conference

Thursday 30 November

10.00: Diana Mahalle, Tanzania, Revenue Authority (TRA)
11.30: Habraham Shamumoyo, Local Government Reform Programme,
Prime Minister's Office, Regional Administration and local
Government (PMO-RALG)
14.00: Professor J.M.L.Kironde, UCLAS
15.00: E.E.Mahingila, Chief Executive Officer, Business Registrations
and Licensing Agency (BRELA)
16.00: Team Meeting

Friday 1 December:

09.00: Kari Hansen, Norwegian Embassy
11.00: Mr. Mbede, Legal Adviser, Land Reform Division, Ministry of
Lands, Housing and Human Settlements Development
14.00: Team meeting
19.30: Video conference with ILD, Lima Peru

Monday 4 December:

16.00: Team meeting

Tuesday 5 December

14.00 Dr. Mwaisaka, Law Reform Commission, Ministry of Justice and
Constitutional Affairs
16.00: Team meeting

Wednesday 6 December:

10.00: Debriefing meeting with the Norwegian Embassy, Kristin
Sverdrup, Karl Edvardsdal Hansen, Trond Augestad
11.00: Suma Mbopyo, Coordinator SPILL programme,. Ministry of
Lands, Housing and Human Settlements Development
12.00: S.Wekema, Unplanned Settlements project, Ministry of Lands,
Housing and Human Settlements Development
15.00: Professor S.E.Mchome, Dean, Faculty of Law, University of Dar-
es-Salaam
18.30: Mark Waite, Coordinator, Norwegian People's Aid (NPA)

Thursday 7 December:

10.00: Charles Kimaro, Senior Economist, Bank of Tanzania

Monday 11 December:

16.00: Debriefing meeting with the MKURABITA Secretariat

ANNEX 3: THE MAIN DOCUMENTS AND REFERENCES CONSULTED

Bagamoyo District Council. *“Investments Profile”*, Bagamoyo, 2006

Institute for Liberty and Democracy (ILD), *“Reform Design stage: First Progress Report: Volume I: Fieldwork research Projects”*, Lima, September 2006

Institute for Liberty and Democracy (ILD), *“Reform Design stage: First Progress Report: Volume II: Fieldwork research Projects”*, Lima, September 2006

Institute for Liberty and Democracy (ILD), *“Reform Design stage: First Progress Report: Volume III: Fieldwork research Projects”*, Lima, September 2006

Institute for Liberty and Democracy (ILD), *“Reform Design stage: First Progress Report: Volume IV: Fieldwork research Projects”*, Lima, September 2006

Institute for Liberty and Democracy (ILD), “Reform Design stage: First Progress Report: Volume V: Annexes 2,3 and 4: Tanzania Institutional Reform Project: selected regions, Estimation of cost-effectiveness evaluation, Update Legal Research”, Lima, September 2006

Kironde J.M.L, “Making Property Rights work for the Poor in Tanzania”, The Commission on Legal Empowerment of the Power, Dar-es-Salaam, November 2006

Ministry of Lands and Human Settlements Development (MLHSD), “Strategic Plan for the implementation of the Land Laws”, Dar-es-Salaam, April 2005

Ministry of Planning, Economy and Empowerment, “Better Regulation Unit – Revised Work Plans, Procurement Plans and Budgets for the years 2006/07 and 2007/08”, Dar-es-Salaam, November 2006”

Ministry of Planning, Economy and Empowerment, (Poverty Eradication Unit), “Poverty and Human Development Report: 2005”, Dar-es-Salaam, 2005

Ministry of Regional Administration and Local Government, “Local Government Reform Programme: Policy Paper on Local Government Reform”, Dar-es-Salaam, October 1998

MKURABITA, “Programme Concept Note: Zero Draft”, Dar-es-Salaam, February 2006

Nordic Consulting Group (NCG) (Jens Claussen et al): “Review of the First Phase (Diagnosis) of the Property and Business Formalisation Program (PBFP) in Tanzania”, Oslo, October 2005

Norwegian People’s Aid, “Mkurabita: Concept Note: a Summary”, Dar-es-Salaam, November 2006.

