

# LEGAL IMPLICATIONS OF PROTECTION OF INFORMAL SETTLEMENTS ON URBAN LAND USE PLANNING IN TANZANIA

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## **Abstract**

Urban land use planning legislation prohibits the setting up of residential houses in any planning area without authorization. Despite this prohibition, most urban areas in Tanzania face the problem of informal settlements; and these are protected by legislation. The Land Act, for example, provides for upgrading of such settlements through issuance of residential licences and regularization. In this paper, it is argued that protecting informal settlements is an obstacle to planning institutions towards achieving planned urban areas as the upgrading schemes address the problem partially. It is recommended that during upgrading schemes, the law should be strictly complied with; and in the event some settlements fall short of the standards, they should be compulsorily acquired so that their re-development is in accordance with the law. The Government should ensure that surveyed and serviced land for residential purposes is timely available; and the law should prohibit development of informal settlements.

**Key words:** *Informal Settlements, Regularization, Residential Licences, Urban Land Use Planning*

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## 1. INTRODUCTION

Residential housing in urban areas in Tanzania, like other aspects of urban land use planning, is regulated by law. The legal framework provides for issues like zoning, plot allocation, plot density, building plans, building permits, size of walls, drawings, inspection of completed buildings, and several other matters. There is also an institutional framework which is made up of the Minister, Director of Urban Planning, city councils, municipal councils, town councils and township authorities.<sup>1</sup> Legally speaking, therefore, one cannot construct a residential house in an urban area without following the laid down procedures.<sup>2</sup> Despite the law and institutions referred to above, all urban areas in Tanzania still face the problem of informal settlements. For example, UN-HABITAT observes that a great majority of Dar es Salaam's population lives on unplanned and informal land and lacks access to appropriate housing services.<sup>3</sup> Furthermore, about

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<sup>1</sup> The Urban Planning Act 2007, Act No. 8 of 2007, sections 5, 6(1) and 7(1). This institutional framework is responsible for urban planning issues generally, residential housing inclusive.

<sup>2</sup> *Id.*, sections 28 & 29(1).

<sup>3</sup> UN-HABITAT, "Tanzania: Dar es Salaam City Profile", Nairobi, 2009, p.15. See also *Jamhuri ya Muungano wa Tanzania*, "Hotuba ya Waziri wa Ardhi, Nyumbana Maendeleo ya Makazi, Mheshimiwa Prof. Anna Kajumulo Tibaijuka (MB), akiwasilisha Bungeni Makadirio ya Mapatona Matumizi ya Wizaraya Ardhi, Nyumba na Maendeleo ya Makazi kwa Mwakawa Fedha 2013/2014", p. 37 (roughly translated as United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development, "Speech by Hon. Professor Anna Kajumulo Tibaijuka(MP), Minister for Lands Housing and Human Settlements Development Presenting before the National Assembly the Ministry's Income and Expenditure Estimates for the Financial Year 2013/2014") ; *Jamhuri ya Muungano wa Tanzania*, "Hotuba ya Waziri wa Ardhi, Nyumbana Maendeleo ya Makazi, Mheshimiwa Prof. Anna Kajumulo Tibaijuka (MB), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Ardhi, Nyumba na Maendeleo ya Makazi kwa Mwaka wa Fedha 2012/2013", pp. 43- 44,( roughly translated as

70% of urban residents in Tanzania are said to live in unplanned settlements known as slums or squatter areas.<sup>4</sup>

While developing land in urban areas is regulated as seen in the preceding paragraph, the land policy and law in Tanzania recognize and protect informal settlements in the sense that one of the fundamental objectives of the national land policy is ensuring that existing rights and recognized long-standing occupation or use of land are clarified and secured.<sup>5</sup> The law also

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United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development, “Speech by Hon. Professor Anna Kajumulo Tibaijuka(MP), Minister for Lands Housing and Human Settlements Development Presenting before the National Assembly the Ministry’s Income and Expenditure Estimates for the Financial Year 2012/2013”;*Jamhuri ya Muunganowa Tanzania, “Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa John Pombe Magufuli (MB), Akiwasilisha Bungeni Makadirio ya Mapatona Matumizi ya Wizara ya Ardhi, Nyumbana Maendeleo ya Makazi kwa Mwakawa Fedha 2007/2008”,* pp. 36 – 37(roughly translated as United Republic of Tanzania , “Speech by the Minister for Lands Housing and Human Settlements Development, Hon. John Pombe Magufuli (MP), Presenting before the National Assembly the Ministry’s Income and Expenditure Estimates for the Financial Year 2007/2008”); The National Human Settlements Development Policy 2000, paragraph 4.1.4.1, Kironde, J.M.L., “Access to Land by the Urban Poor in Tanzania: Some Findings from Dar es Salaam”, Vol. 7, No. 1, *Environment and Urbanization*, April, 1995,p. 78 and Josefsson, E. & Aberg, P., “An Evaluation of the Land Laws of Tanzania”, Master of Science( Economics) Thesis, Lulea University of Technology, 2005, p. 12. The problem of informal settlements reflects the national situation on ‘informality’ generally. It is established that, over 90% of Tanzanians live and earn their living in the extra-legal (informal) sector. See United Republic of Tanzania, Property and Business Formalization Programme, “MKURABITA in the Context of Legal Empowerment of the Poor”, 2009, p.5.

<sup>4</sup> United Republic of Tanzania, “Millennium Development Goals Report- Mid- Way Evaluation, 2000 – 2008”, p. 23. See also Dar es Salaam Institute for Land Administration and policy Studies, “Land Administration in the Development of Human Settlements” Review Paper No.5, September 2006, p.1, Goux, M.A., “Public Housing Policies: Decentralization, Government Policies and the People’s Solutions” in Calas, B.(Editor), *From Dar es Salaam to Bongo land: Urban Mutations in Tanzania*, Dar es Salaam: Mkukina Nyota Publishers, 2006, p. 102 and Cadstedt, J., “Influence and Invisibility: Tenants in Housing Provision in Mwanza City, Tanzania”, PhD Thesis, Stockholm University, 2006, p. 46.

<sup>5</sup> The Land Act, Cap 113, Revised Edition, 2018, section 3(1) (b).

provides for upgrading of informal settlements through schemes of regularization and issuance of residential licences, among others.

It is argued that there is an internal contradiction between planning laws and land laws. Whereas the former do not authorize uncontrolled land development in urban areas, the latter recognize and protect informal settlements, which are set up contrary to the former category of laws. This contradiction has negative legal consequences on urban land use planning in Tanzania's urban areas as shown in other sections of this article.

The article has six sections. The first section is an introduction; the problem of informal settlements is pointed out by making reference to relevant literature. The section also briefly points out the inherent contradictions between land laws and planning laws. The second section points out the basic attributes of informal settlements as discussed in various pieces of literature. The third section is a brief exposition of the concept of urban land use planning and the planning process in Tanzania. Section four points out the legal implications of protection and upgrading of informal settlements in Tanzania. The section starts by pointing out how the land policy and law recognize and protect informal land holdings; thereafter, it proceeds to show how upgrading of informal settlements through regularization and residential licences legally impede the planning process. The fifth section gives concluding remarks while the last section gives recommendations on the basis of identified gaps.

## 2. INFORMAL SETTLEMENTS: AN OVERVIEW

There is no definition of the expression ‘informal settlements’ in the Tanzanian urban land use planning law. They are defined generally as human settlements which, for some reasons, do not meet the requirements of legal recognition and have been developed without adhering to formal building and urban planning regulations.<sup>6</sup> Other authors define such settlements in terms of their characteristics. The main characteristics are: presence of a variety of social groups of different income levels;<sup>7</sup> high density of houses and population;<sup>8</sup> security of tenure is obtained through social rather than legal regulation;<sup>9</sup> houses are built of temporary materials and without adhering to building regulations;<sup>10</sup> and presence of settlements with low level of infrastructure for example poor sanitation, lack of solid waste management system, inadequate social services and lack of open spaces.<sup>11</sup>

According to another author, informal settlements are also defined as ‘spontaneous settlements’, which consist of dwellings of extremely flimsy construction lacking in basic social services such as safe water, sewerage system, and with no legal land tenure.<sup>12</sup>

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<sup>6</sup> The Vienna Declaration on National and Regional Policy and Programmes Regarding Informal Settlements in South Eastern Europe 2004, article II.

<sup>7</sup> Shuya, S., “Housing Transformation and Urban Livelihoods in Informal Settlements: the Case of Dar es Salaam, Tanzania”, PhD Thesis, University of Dortmund, 2003, pp. 34 – 35.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* See also Hill, A. & Lindner, C., “Modeling Informal Urban Growth under Rapid Urbanization: a CA-based Land Use Simulation Model for the City of Dar es Salaam, Tanzania”, Dr.-Ing., TU Dortmund, 2010, p.111.

<sup>12</sup> Dwyer, D.J., “Attitudes Towards Spontaneous Settlements in Third World Cities”, in Dwyer, D.J.(Ed.), *The City in the Third World*, London: Macmillan Press Ltd., 1974, p. 204.

The root cause of spontaneous settlements is the failure of cities in third world countries to provide housing to all.<sup>13</sup>

Other scholars use the term informal settlements interchangeably with phrases such as 'shanty towns' and 'squatter settlements'.<sup>14</sup>

Other characteristics of informal settlements include: informal land allocation procedures; unregulated and competitive land markets; use of indigenous resources in house construction; and local governance and informal information flow.<sup>15</sup> In the context of this paper, informal settlements are residential settlements which have been developed without paying attention to urban land use planning and building laws. The common definition of the phrase does not squarely fit in the situation in Tanzania due to the fact that some of its features are not found in all informal settlements. For example, it is not true that all informal settlements in Tanzania are made of temporary materials. In some informal settlements, housing units are made of permanent and high quality building materials.<sup>16</sup> The question of lack of security of tenure is also not a

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<sup>13</sup> *Ibid.*

<sup>14</sup> Ali, M.H. & Sulaiman, M.S., "The Causes and Consequences of Informal Settlements in Zanzibar", XXIII FIG Congress, 'Shaping the Change', Munich, Germany, October 8<sup>th</sup> – 13<sup>th</sup>, 2006, p.2 and UN-HABITAT, "Planning Sustainable Cities: Global Report on Human Settlements 2009", p. 133.

<sup>15</sup> Kessy, J.D., "Land Regularization through Participatory Approach in Tanzania: The Case of Ubungo Darajani- Dar es Salaam", M.Sc. (Community Economic Development) Project Paper, Sothern New Hampshire University, 2005, pp. 8 – 9. On the development of informal settlements in Tanzania, see Lekule, C.T., "Place Dynamics: Meanings of Urban Space to Residents in Keko Magurumbasi Informal Settlements, Dar es Salaam, Tanzania", PhD Thesis, Royal Danish Academy of Fine Arts, 2004, p.30.

<sup>16</sup> UN-HABITAT, "Informal Settlements and Finance in Dar es Salaam, Tanzania", Nairobi, 2010, p.7.

problem in informal settlements as the law of Tanzania protects both formally and informally acquired land.<sup>17</sup>

It is legally challenging to associate urban informal settlements with customary tenure due to the fact that customary law is almost limited to tribal/clan groupings which share certain historical and ancestral backgrounds; except where two or more such groups have similar rules on similar matters.<sup>18</sup> This shows that, in urban areas where there is a combination of many tribes and clans, it is difficult to establish customary rules - except, maybe, where one tribe occupies a particular piece of land in an urban area, which is not common in the world of intermarriages, rural-urban migration and inter-cultural relations. It is thus difficult to establish that there is applicability of customary law in land transactions taking place in large cities like Dar es Salaam and Mwanza.<sup>19</sup> In fact, it appears customary rights of occupancy are reserved for rural areas where it is easy to establish customary rules.<sup>20</sup>

### **3. URBAN LAND USE PLANNING: AN OVERVIEW**

#### **3.1 Meaning**

Planning, according to Ellickson and Tarlock, is a comprehensive, coordinated and continuing process which is aimed at helping public and private decision makers to arrive at decisions which promote the common good of the society.<sup>21</sup> According to the

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<sup>17</sup> See, for example, the Land Act, section 3(1) (b) & (g).

<sup>18</sup> The Judicature and Application of Laws Act, Cap 358, Revised Edition 2002, section 11(1) (a).

<sup>19</sup> Komu, F., "Land Management at Crossroads in Africa: Impact of the Tanzania Village Land Act No. 5 of 1999 on the Fate of Customary Tenure", FIG Working Week, Cairo, 6<sup>th</sup> – 10<sup>th</sup> May, 2012, p. 4.

<sup>20</sup> Mramba, S.J & Tenga, R.W., *Theoretical Foundations of Land Law in Tanzania*, Dar es Salaam: Law Africa (T) Ltd., 2014, p. 139.

<sup>21</sup> Ellickson, R.C. & Tarlock, A.D., *Land Use Controls: Cases and Materials*, Boston: Little, Brown & Company, 1981, p. 363.

authors, the planning process includes the following steps: problem identification; research and analysis; formulation of goals and objectives to be attained; development and evaluation of alternative methods to attain the agreed goals and objectives; recommendation of appropriate courses of action from amongst the proposed alternatives; assistance in the implementation of approved plans and programmes; evaluation; and a continuing process of adjusting plans and programmes.<sup>22</sup>

The scope of planning extends to such issues as economic growth management; housing and community development; environmental management; energy and other natural resources conservation and management; aesthetics and historic preservation; transportation; health, education and welfare; and public safety.<sup>23</sup>

The statutory definition of the term 'land use planning' is found in the Land Use Planning Act.<sup>24</sup> It is defined as the procedures and processes in accordance with which land use planning in a planning area or zone are prescribed, managed, monitored and evaluated.<sup>25</sup> Urban land use planning is made up of principles which guide the physical development of the urban environment.<sup>26</sup>

There are standards or norms which are set by principal and subsidiary legislation which must be followed by planners. For

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<sup>22</sup> *Id.*, pp. 363 – 364.

<sup>23</sup> *Id.*, p. 364.

<sup>24</sup> Act No. 7 of 2007.

<sup>25</sup> The Land Use Planning Act., section 2.

<sup>26</sup> Williams, F.B., *The Law of City Planning and Zoning*, Maryland: McGrath Publishing Company, 1969, p.1. See also Jackson, J.N., *Surveys for Town and Country Planning*, London: Hutchinson & Co. (Publishers) Ltd., 1963, p.11.



example, when allocating land for public utilities, the standards help to achieve the following objectives: guiding planners in preparing general and detailed planning schemes with respect to size of sites; guiding planners in determining the amount of land to be allocated for public utilities; guiding planning authorities in determining acceptability of architectural plans and designs; and providing a mechanism for coordinating urban land use activities amongst different institutions and agencies.<sup>27</sup>

It should be noted that land use planning is subjected to the broad classes of usages to which land may be put. According to one source, land may be put to seven broad classes of use, namely, agriculture, forestry, recreation, mining, water resources, transportation, and urban purposes.<sup>28</sup> For purposes of urban land use, major pressures come from demands for space for residential housing, industrial sites, business, streets, and parking lots.<sup>29</sup>

### **3.2 The Planning Process**

Planning an urban area encompasses a number of intertwined processes. The processes range from declaration of planning areas to preparation of planning schemes, surveys and mapping, issuance of certificates of rights of occupancy, issuance of building permits and enforcement of building regulations. Each of the processes is aimed at achieving a particular objective of urban land use planning. For example, declaration of planning areas aims at ensuring that land development is properly guided and controlled. On the other hand, issuance of building permits is

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<sup>27</sup> Alterman, R & Hill, M., "The Problem of Setting Flexible Norms for Land Allocation for Public Facilities", in Soen, D., *New Trends in Urban Planning: Studies in Housing, Urban Design and Planning*, Oxford: Pergamon Press, 1979, p. 94.

<sup>28</sup> Grolier Inc., *The Encyclopedia Americana*, Vol. 16, 1982, p. 686.

<sup>29</sup> *Id.*, pp. 686 – 687.

aimed at ensuring that houses do not pose risks to human beings and the environment.

The planning process begins with declaration of an area to be a planning area by the Minister who is responsible for urban planning through an Order published in the *Government Gazette*.<sup>30</sup> Before an area is declared to be a planning area, the following matters must have been done or taken into account: the planning authority must have conducted public hearings in the respective area and obtained a favourable response;<sup>31</sup> the planning authority must have passed a resolution recommending declaration of a planning area;<sup>32</sup> and a positive recommendation by the Regional Secretariat of the respective region.<sup>33</sup>

The second step is preparation of a general planning scheme; the purpose of which is to coordinate sustainable development of the planning area in order to promote the following aspects of urban development: health; safety; good order; amenity; convenience; general welfare; efficiency; economy; improve the land; provide for proper physical development of the land; secure suitable provision for transportation, public purposes, utilities and services, commercial, residential and recreational areas; and for the making of suitable provision for the use of land.<sup>34</sup> In preparing the general planning scheme, the planning authority must abide by the following requirements: carrying out of surveys over the whole

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<sup>30</sup> The Urban Planning Act, section 8(1). A similar procedure used to be followed under section 13 of the Town and Country Planning Act, Cap.355, R.E., 2002(repealed).

<sup>31</sup> The Urban Planning Act 2007, section 8(3) (a).

<sup>32</sup> *Id.*, section 8(3) (b).

<sup>33</sup> *Id.*, section 8(3) (c).

<sup>34</sup> *Id.*, section 9(1) & (2).

area to be included in the scheme; preparation of an inventory of planning resources in the area; and compilation of a survey report, maps, and other descriptive matters.<sup>35</sup>

The general planning scheme must consist of the following matters: a technical report on the conditions, resources and facilities in the planning area; a statement of policies and proposals relating to the allocation of resources and the locations for development in the planning area; description and analysis of the conditions of development in the area; relevant studies, data and reports concerning the physical development over the area; maps and plans showing present and future land uses and development in the area; and any information deemed necessary by the Director of Urban Planning.<sup>36</sup>

In addition to the foregoing, the following matters may be taken into account when preparing the general planning scheme: population growth, projections, distribution and movement; land potentials; natural resources in the planning area; operational guidelines for planning and management of land, the environment and natural resources; identification of problems likely to affect natural resources in the area; identification of approaches for controlling adverse environmental impacts; employment and income; human settlements; buildings, other structures, building plots, roads and car parks; alternative development patterns; and strategies for human settlements.<sup>37</sup>

The third step is preparation of a detailed planning scheme, which has two major objectives namely, to coordinate all development

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<sup>35</sup> *Id.*, section 10 (1) (a) – (c).

<sup>36</sup> *Id.*, section 10(2) (a) – (f).

<sup>37</sup> *Id.*, section 10(3) read together with the First Schedule, part A.

activities and control the use and development of land in a planning area.<sup>38</sup> It must consist of a survey of the area to which it relates; and maps and descriptions necessary to indicate the manner in which the land may be used.<sup>39</sup> The preparation of the scheme by the planning authority must go through the following processes: the planning authority must initiate the process by passing a resolution to prepare a detailed planning scheme; the planning authority must convene a meeting of all stakeholders to be affected - landholders, public and private institutions, Community Based Organizations and Non-Governmental Organizations ; if the meeting endorses the proposal, the planning authority should proceed to prepare a detailed planning scheme; the planning authority must conduct public hearings within three months of the making of the detailed planning scheme; and the planning authority must make alterations or modifications that take into account matters drawn from public hearings before submitting the scheme for approval.<sup>40</sup>

#### **4. LEGAL IMPLICATIONS OF PROTECTION OF INFORMAL SETTLEMENTS**

##### **4.1 Protection of Informal Settlements**

From a land policy point of view, the overriding objective is ensuring that informal settlements are recognized and upgraded. The main objective of the National Land Policy is to promote security of tenure, encourage optimal use of land resources and facilitate development which does not compromise the ecological

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<sup>38</sup> *Id.*, section 16(1).

<sup>39</sup> *Id.*, section 16(3) (a) & (b).

<sup>40</sup> *Id.*, section 19(1) (a) – (e). On other matters for which provision may be made in the detailed planning scheme, see the Second Schedule to the Act.

balance of the environment.<sup>41</sup> With regard to urban land use planning generally and residential housing particularly, the Policy sets the following specific aspirations: First, all grants of land should be made after the land has been fully surveyed and approved by the Director of Surveys and Mapping.<sup>42</sup> Second, the Policy declares that residents in unplanned urban settlements should have their rights recorded and maintained by relevant land allocating authorities; such records should be registered with relevant authorities.<sup>43</sup> Specific policy efforts are directed towards combating the problem of unplanned settlements. The Government undertakes to carry out measures, such as timely planning of all potential areas for urban development, designing special areas for low income housing and upgrading of existing unplanned residences through participatory approaches.<sup>44</sup>

The policy objectives on informal settlements are echoed in relevant land legislation. According to the Land Act, where a right of occupancy is on an area occupied in accordance with customary law, occupiers thereof should get their land rights recognized before they are relocated subject to, *inter alia*, prompt payment of compensation.<sup>45</sup> Occupiers of land in urban areas who have no official titles may be issued with residential licences by respective local government authorities.<sup>46</sup> Furthermore, occupiers of land within urban and peri-urban areas may have their interests regularized.<sup>47</sup> In essence, the provisions of the Land Act cited

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<sup>41</sup> United Republic of Tanzania, Ministry of Lands, Housing and Human Settlements Development, The National Land Policy 1995, paragraph 2.0.

<sup>42</sup> *Id.*, paragraph 4.1.1(viii).

<sup>43</sup> *Id.*, paragraph 4.2.22 (iii).

<sup>44</sup> *Id.*, paragraph 6.4.1.

<sup>45</sup> The Land Act, section 34(3) (a) & (b).

<sup>46</sup> *Id.*, section 23(1).

<sup>47</sup> *Id.*, sections 56 – 60.

herein aim at achieving tenure security in respect of groups of urban residents who have no official titles to the land they occupy and use as well as upgrading the settlements so that they are in line with urban planning legislation.

## **4.2 Upgrading of Informal Settlements**

The arguments advanced in this paper primarily focus on two upgrading schemes provided for by the Land Act, namely, residential licences and regularization. These have been chosen deliberately as they are often resorted to by land administration and planning institutions in addressing the problem of informal settlements in Tanzania's urban areas. A detailed discussion follows under items 4.2.1 and 4.2.2 below.

### *4.2.1 Regularization Schemes*

The purpose of a scheme of regularization is to facilitate the recording, adjudication, classification and registration of the occupation of land.<sup>48</sup> Before a scheme is declared by the Minister, the following matters must be taken into account: whether the area is substantially used for habitation;<sup>49</sup> whether a substantial number of persons living in the area appear to have no apparent lawful title to their occupation and use;<sup>50</sup> whether the land is occupied under customary law;<sup>51</sup> whether the area is substantially built-up;<sup>52</sup> whether the area has been or is likely to be declared a

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<sup>48</sup> *Id.*, section 57(1). For a detailed discussion on the schemes of regularization, see Gastorn, K.G., "Prospects and Efficacy of Regularization of Land Rights in Peri-Urban Dar es Salaam: Case Study of Boko and Bunju 'A' Villages", LL.M Dissertation, University of Dar es Salaam, 2003, pp. 33 – 58.

<sup>49</sup> The Land Act, section 57(2) (a).

<sup>50</sup> *Id.*, section 57(2) (b).

<sup>51</sup> *Id.*, section 57(2) (c).

<sup>52</sup> *Id.*, section 57(2)(d).

planning area under relevant urban planning laws;<sup>53</sup> whether the area is well-established from a social point of view;<sup>54</sup> whether there is evidence that a considerable number of persons living in the area appear to be investing in their houses and businesses;<sup>55</sup> whether a substantial number of people and community based organizations in the area indicate that they wish to participate in the scheme of regularization;<sup>56</sup> and other considerations as prescribed.<sup>57</sup>

A scheme of regularization may contain all or any of the following matters: arrangements for the survey, adjudication and recording of interests in land; arrangements for the readjustment of boundaries; arrangements for the better planning of the land in question; arrangement for involvement of local government authorities in the area; arrangement for involvement of people likely to be affected by the scheme; arrangements for the assessment and payment of compensation; budget for the scheme; and other matters which may be prescribed.<sup>58</sup>

The law provides that a scheme of regularization cannot take effect unless the following three issues have been addressed. Firstly, occupation and use of land by persons in the area must have been adjudicated, recorded and registered.<sup>59</sup> Secondly, the land in question must be acquired by the President under the

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<sup>53</sup> *Id.*, section 57(2) (e).

<sup>54</sup> *Id.*, section 57(2) (f).

<sup>55</sup> *Id.*, section 57(2) (g).

<sup>56</sup> *Id.*, section 57(2)(h).

<sup>57</sup> *Id.*, section 57(2) (i).

<sup>58</sup> *Id.*, section 60(1) (a) – (h).

<sup>59</sup> *Id.*, section 60(3) (a).

urban planning law.<sup>60</sup> Thirdly, fair compensation must be paid to persons whose interests are acquired.<sup>61</sup>

According to the guidelines issued by the Ministry of Lands, Housing and Human Settlements Development in collaboration with the President's Office - Planning Commission, preparation and execution of a scheme of regularization should follow several steps. The first step is that the local authority within which the scheme is to be implemented should justify the need for a detailed planning scheme and, thereafter, declare the area to be under a scheme of regularization.<sup>62</sup> It should be noted that it is the minister responsible for land matters who is empowered to declare areas to be under schemes of regularization.<sup>63</sup> It should be noted further that, once an area is declared to be under a scheme of regularization, the declaration operates as a planning scheme under the urban planning law.<sup>64</sup>

The second step is that the local government authority should pass a resolution of intention to prepare a planning scheme of regularization.<sup>65</sup> According to urban planning law, preparation of

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<sup>60</sup> *Id.*, section 60(3) (b).

<sup>61</sup> *Id.*, section 60(3) (c).

<sup>62</sup> United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development in Collaboration with the President's Office Planning Commission, "Guidelines and Procedures for Implementation of Regularization in Tanzania", 2008, p.3.

<sup>63</sup> The Land Act, section 59(5). See also the Land (Schemes of Regularization) Regulations 2001, G.N. No. 85 of 2001, regulation 17(2).

<sup>64</sup> The Land Act, section 59(6).

<sup>65</sup> United Republic of Tanzania, Ministry of Lands, Housing and Human Settlements Development in Collaboration with the President's Office - Planning Commission, "Guidelines and Procedures for Implementation of Regularization in Tanzania", p.4.



planning schemes should be preceded by resolutions by relevant urban local government planning authorities.<sup>66</sup>

The third step is that the local government authority should publish a notice in the Government *Gazette* and newspapers circulating in the area.<sup>67</sup>

The fourth step is that the technical committee should convene a meeting of all stakeholders in the area to be affected by the scheme for purposes of giving them an opportunity of participating in preparing the scheme.<sup>68</sup>

The fifth step is preparation of an inventory of property ownership, existing services, land suitability, land use and tenure, and infrastructure. The sixth step is that the local government authority, in consultation with relevant stakeholders, should agree on and determine regularization standards. The seventh step is that, the technical committee should prepare a general land use plan and present it to the community for approval.

The eighth step requires the technical committee to negotiate with land holders for purposes of acquiring land for infrastructure and community facilities and agree on and demarcate property boundaries. The ninth step is that the technical committee should assess compensation schedules. The tenth step is that the technical committee should prepare a scheme of regularization and have it ratified by the urban planning committee of the

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<sup>66</sup> The Urban Planning Act, sections 8(3) (b), 11(1), and 19(1) (a).

<sup>67</sup> United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development in Collaboration with the President's Office- Planning Commission, "Guidelines and Procedures for Implementation of Regularization in Tanzania" , p. 3.

<sup>68</sup> *Ibid.*

relevant planning authority. The eleventh step requires the planning authority to submit the scheme to the minister responsible for land matters for purposes of approval.

The twelfth step is that the technical committee should mobilize resources for cadastral surveys and infrastructure provision. The thirteenth step is that the planning authority should submit the survey plans to the Director of Surveys and Mapping for approval. The fourteenth and last step is that the technical committee should facilitate issuance of certificates of rights of occupancy.<sup>69</sup>

Regularization schemes in Tanzania have been carried out in some regions such as Dar es Salaam and Mwanza.<sup>70</sup> The scheme involves planning processes such as survey and mapping, and preparation of planning schemes.<sup>71</sup> The ultimate outcome of the

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<sup>69</sup> *Id.*, pp. 4 – 5.

<sup>70</sup> See, for example, WAT Human Settlements Trust, “Documentation of Regularization Experience in Informal Settlements in Kinondoni Municipality, Dar es Salaam: Experience of Hanna Nassif”, 2010; Mdheme, E.P.O., “State versus Community-led Land Tenure Regularization in Tanzania: The Case of Dar es Salaam City”, Master of Science (Urban Planning and Land Administration) Thesis, International Institute for Geo-Information Science and Earth Observation, 2007; UN-HABITAT, “ Informal Settlements and Finance in Dar es Salaam, Tanzania”, p.19; Kessy, J.D., “ Land Regularization through Participatory Approach in Tanzania: The Case of Ubungo Darajani- Dar es Salaam; Ramadhani, S.H., “ Effect of Tenure Regularization Programme on Building Investment in Manzese Ward, Dar es Salaam”, Master of Science( Urban Planning and Land Administration) Thesis, International Institute for Geo-Information Science and Earth Observation, 2007; and United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development in Collaboration with the President’s Office- Planning Commission, “Environmental Assessment Framework”, 2008.

<sup>71</sup> The Land Act, section 60(1). According to section 23(1) of the Urban Planning Act, any area intended for a scheme of regularization should be declared as a planning area. This shows that the scheme is executed in accordance with urban land use planning legislation.

process is that the land holder is given a certificate of the granted right of occupancy.

The above discussion shows that, in fact, schemes of regularization are subjected to normal planning processes and hence do face some legal and practical challenges. For example, the schemes are initiated at the discretion of planning authorities. The schemes must be approved by planning authorities as well as land holders. Survey plans and maps must be approved by the Director of Survey and Mapping. There are also issues to do with compensation in cases where land is acquired for purposes of giving provision for infrastructure and other community facilities.

The most critical challenge with regard to schemes of regularization in Tanzania is the fact that they do not address the problem as a whole. A scheme of regularization has the core aim of ensuring that land holders in informal settlements are given certificates of rights of occupancy. This is despite the fact that the law provides that the land under the scheme must be acquired by the President so that it can be re-developed in accordance with the applicable urban planning laws.

Legally speaking, schemes of regularization are carried out in informal settlements which have been developed without adhering to the urban planning law. That is why one of the conditions to be observed before a scheme is declared is whether residents appear to have no apparent lawful title to the occupation and use of the land in question.<sup>72</sup> The other consideration is that the

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<sup>72</sup> The Land Act, section 57(2) (b).

minister should consider whether the land in question is substantially built-up.<sup>73</sup>

In practice, however, planning authorities do compromise with a lot of planning standards as seems to be permitted by the law. For example, planning authorities are required to negotiate with land holders for purposes of securing land for infrastructure development.<sup>74</sup> The authorities are also required to negotiate with landholders on the space standards to be applicable and in designating such standards, planning authorities are required to use methods that minimize demolition of private properties.<sup>75</sup> It is also a policy consideration that regularization should aim at minimizing resettlements.<sup>76</sup> Land for public use is obtained through contribution by individual community members. Compulsory acquisition is recommended in cases where the land owner loses more than 10% of his land.<sup>77</sup>

The procedure is to negotiate with land holders on a number of matters relating to urban planning issues. The scheme's implementation avoids demolition of existing structures as much as possible. For example, when the scheme was being carried out at Ubungo Darajani, negotiations related to matters such as access roads, storm water drainage, electricity lines and space for

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<sup>73</sup> *Id.*, section 57(2) (d).

<sup>74</sup> United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Developments in Collaboration with the President's Office- Planning Commission, "Guidelines and Procedures for Implementation of Schemes of Regularization in Tanzania", p.7.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Id.*, p. 8.

<sup>77</sup> *Ibid.*

community services such as schools.<sup>78</sup> It was through negotiations that the community members agreed on planning standards to be applied in the regularization process.<sup>79</sup> There were also negotiations on the standards to be applicable with regard to the size of residential plots. Whereas the national standards provide that high density plots in residential areas should be between 400 and 800 square metres, the community at Ubungo Darajani agreed that their high density plots should range between 12 and 800 square metres.<sup>80</sup>

The process in Hanna Nassif, Kinondoni, involved negotiations on a number of planning issues. For example, standards on feeder roads had to be compromised in order to avoid demolition of existing housing units.<sup>81</sup> Demolition would have entitled the occupiers to compensation as provided for by relevant laws.<sup>82</sup>

It is clear that regularization schemes do not address the question of informal settlements in its totality. As noted earlier, the focus of the schemes is to provide security of tenure to landholders in informal settlements. The other focus is to provide some basic social services in such areas. The schemes do not address the question of irregularities associated with housing units in informal settlements. Those implementing the schemes are advised to

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<sup>78</sup> Kessy, J.D., "Land Regularization through Participatory Approach in Tanzania: The Case of Ubungo Darajani- Dar es Salaam", pp. 141 – 145.

<sup>79</sup> *Id.*, p.145.

<sup>80</sup> Magigi, W. & Majani, B.B.K., "Planning Standards for Urban Land Use Planning for Effective Land Management in Tanzania: An Analytical Framework for its Adoptability in Infrastructure Provisioning in Informal Settlements", p. 14, available at [https://www.fig.net/.../ts19\\_magigi\\_majani.pdf](https://www.fig.net/.../ts19_magigi_majani.pdf).

<sup>81</sup> WAT Human Settlements Trust, "Documentation of Regularization Experience in Informal Settlements in Kinondoni Municipality, Dar es Salaam: Experience of Hanna Nassif", p.15.

<sup>82</sup> *Ibid.*

avoid, much as they can, demolition of existing structures, housing units inclusive. Furthermore, it is clear that the schemes do not address the question of whether or not the housing units in informal settlements were built in accordance with the use classes regulations.<sup>83</sup>

#### 4.2.1 Residential Licences

A residential licence is a derivative right which gives the holder thereof the right to occupy and use land in non-hazardous land, land reserved for public utilities, surveyed land, and urban or peri-urban land.<sup>84</sup> The licence is granted by a local government authority to any person occupying land without official title for a term of not less than six months and not more than five years.<sup>85</sup> The law also provides that a person who was in occupation of land for not less than three years at the time the Land Act came into operation shall be deemed to be occupying such land under a residential licence granted from year to year by a local government authority in that area.<sup>86</sup>

The legal recognition and subsequent issuance of residential licences came as a result of tenurial problems facing people living in unplanned urban areas by the 1980s.<sup>87</sup> The National Land Policy recognizes this problem by stating that all interests,

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<sup>83</sup> See the Town and Country Planning (Use Classes) Regulations, Government Notice Number 249 of 1993, regulation 2.

<sup>84</sup> The Land Act, section 23(1). See also Josefsson, E. & Aberg, P., "An Evaluation of the Land Laws in Tanzania", p.9.

<sup>85</sup> The Land Act, section 23(3) (a) & (b).

<sup>86</sup> *Id.*, section 23(2).

<sup>87</sup> Kironde, J.M.L., " Issuing of Residential Licences to Land Owners in Unplanned Settlements in Dar es Salaam Tanzania", Draft Consultancy Report Prepared for UN-HABITAT, Shelter Branch, Land and Tenure Section, 2006, p.17.

including customary land rights which exist in planning areas, should be identified and recorded.<sup>88</sup>

As of December 2008, 90,000 residential licences had been issued to Dar es Salaam residents. This was in response to a survey which pointed out that out of 500,000 properties identified, 400,000 were in unplanned areas.<sup>89</sup> Another report shows that as of 2015, 102, 959 residential licences had been issued to selected Dar es Salaam residents.<sup>90</sup>

It is argued that issuance of residential licences is a way of protecting informal settlements instead of abolishing them. This is justified by the following reasons. First, statutorily a residential licence is available to a person who is occupying land without any official title.<sup>91</sup> To that extent, the licence cannot be used to address the problem as its grant does not amount to planning an unplanned urban area.

Second, the main objective behind issuance of residential licences is more economic than urban land use planning. The project which was implemented in Dar es Salaam from 2004 had its general objective of creation of a comprehensive land property register that would show the status of every individual land parcel in the

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<sup>88</sup> The National Land Policy 1995, *op cit.*, paragraph 6.3.1(i).

<sup>89</sup> See Kironde, J.M.L., "Improving Land Sector Governance in Africa: The Case of Tanzania", Paper prepared for the Workshop on Land Governance in Support of the MDGs: Responding to New Challenges, Washington DC, March 9 – 10, 2009, p. 13. See also United Republic of Tanzania, Ministry of Lands Housing and Human Settlements Development, "Environmental Assessment Framework", 2008, p. 2.

<sup>90</sup> United Republic of Tanzania, Ministry of Lands, Housing and Human Settlements Development, "HABITAT III National Report Tanzania", April 2015, p. 13.

<sup>91</sup> The Land Act, section 23(3) (a).

unplanned settlements.<sup>92</sup> The general objective itself shows that informal settlements were to be maintained save that their status was now officially known.

The specific objectives of the project also show that the intention was indeed not to address the problem of unplanned settlements but to economically empower holders of properties in such areas. The specific objectives were, among others: to identify ownership of individual properties in unplanned settlements and prepare a property register; to give legal status to land owners in existing unplanned settlements by issuing residential licences, hence, increasing the economic value of their land and other properties; to widen the tax base for revenue by enabling the Central Government to collect land rent and local government authorities to collect property taxes from unplanned areas; and to prevent environmental degradation.<sup>93</sup>

This explains why, in the exercise, the question of space standards was not addressed. In Kigogo, Kinondoni District, for example, more than 80% of the plots were below 400 square metres, showing that they did not fit in the space standards as provided for by the law.<sup>94</sup> According to the author, there were plots measuring up to 99 square metres in size.<sup>95</sup> It is to be noted that, according to the applicable space standards of the time, the minimum density (high density) for a plot in a residential area was

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<sup>92</sup> Kironde, J.M.L., "Issuing of Residential Licences to Landowners in Unplanned Settlements in Dar es Salaam Tanzania", p. 21.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Id.*, pp. 49 – 50, Table 13.

<sup>95</sup> *Ibid.*



400 – 800square metres.<sup>96</sup> As shown under footnote number 87 below, the current regulations provide for special space standards in peri urban unplanned areas, and this is between 90 and 300 square metres per plot. It is argued that, much as this is an improvement compared to the repealed space standards regulations of 1997 and 2011, informality cannot be addressed solely by adjusting applicable plot size.

Third, the licences are meant to address the question of lack of security of tenure for landholders residing in informal settlements. Admittedly, tenure security is one of the issues that are looked at when addressing the problem of informal settlements. However, as far as urban land use planning is concerned, there are other issues to be dealt with. For example, before certificates of rights of occupancy are issued, the land in question must be surveyed.<sup>97</sup> House construction is preceded by issuance of building permits. Once residential buildings are completed, the planning authority must satisfy itself that such houses are fit for human habitation.<sup>98</sup>

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<sup>96</sup> See the Town and Country Planning (Planning Space Standards) Regulations G.N. No. 157 of 1997 item 1, which provided for the minimum plot size of 400 square metres in urban areas. However, this has been changed by item1 (a) (i) of the Schedule to the Urban Planning (Planning Space Standards) Regulations, Government Notice Number 93 of 2018. According to this item, the minimum plot size in peri-urban and unplanned areas is between 90 and 300 square metres. Admittedly, this is an improvement compared to the repealed (1997) regulations which had no provision on informal settlements. However, apart from taking care of plot size and width of roads, the current regulations are silent on other space standards in informal settlements. In any case, buildings in informal settlements are set up contrary to construction law; and this cannot be cured by merely providing for special standards during the upgrading exercise. Furthermore, plots measuring less than 400 square metres before 2018 were not within the permitted space standards under the repealed regulations, that is G.N. No. 157 of 1997.

<sup>97</sup> The Land Act, section 22(1) (c).

<sup>98</sup> The Local Government (Urban Authorities) (Development Control) Regulations 2008, regulations 124 & 141.

These matters are not addressed by issuance of residential licences.

It should be noted that informality of residences is not merely the outcome of lack of legally recognizable documents of title; informality comes out of an interplay of so many factors, especially failure by developers to adhere to the requirements provided for by urban planning laws and building regulations. Building regulations provide for a number of requirements before a person is allowed to construct a residential house. Apart from building permits, a developer should also comply with regulations on space standards, ventilation, size of walls, setbacks, roofing, waste disposal system, and many others.<sup>99</sup> These cannot, legally speaking, be addressed through issuance of residential licences. At the end of the day, therefore, informal settlements are here to stay.

It is clear, therefore, that residential licences are not a solution to the problem of informal settlements or unplanned residences. The problem of informal settlements is not solely attributed to lack of documents of title to land. It is also argued that these documents do not offer a permanent solution to the problem of tenure insecurity. This is because; the licences subsist for a maximum period of five years. After expiry of this period, the local government authority is at liberty to give a renewal or not.<sup>100</sup>

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<sup>99</sup>*Id.*, see, for example, 1<sup>st</sup> – 3<sup>rd</sup> Schedules on various standards to be complied with by developers when constructing residential and other types of houses.

<sup>100</sup> The Land Act, section 23(3) (b).

## **5. CONCLUSION**

From the above discussion, it is clear that the problem of informal settlements is facing most urban areas in Tanzania. This is despite the fact that urban planning legislation prohibits unauthorized developments in any planning area. Land legislation, which is concerned, primarily, with tenure security for both urban and rural residents, recognizes and protects informal settlements. The law also provides for upgrading of informal settlements in the forms of issuing residential licences and regularization schemes. This contradiction makes it legally difficult for planning authorities to deal with the question of informality as the available solutions do not address the problem holistically.

## **6. RECOMMENDATIONS**

It is recommended that while addressing the problem of informal settlements in urban areas, planning legislation should be fully adhered to; that is, all requirements should be met. Instead of engaging in negotiations on planning standards with land holders, principles enshrined in planning legislation should guide the processes. In the event that some settlements do not meet the standards, the same should be acquired under the Land Acquisition Act; and this possible under section 59(2) of the Land Act. To avoid engaging in endless processes of squatter upgrading, the Government should ensure that surveyed, serviced and affordable land is always available for residential purposes. If this is achieved, the Land Act and the Urban Planning Act should be amended to remove protection of informal settlements which may be set up in the future.