The New Land Act and Its Possible Impacts on Urban Land in Tanzania

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Urban Land Markets in Transition
Edited by Gareth A. Jones

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Gareth A Jones
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To Carwyn

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[1] Resumes of papers and discussions appeared in *Land Use Policy* (1999, 16 (1) 57-59), *Urbanissimo* (1999, February, 23-26), and *Land Lines* (1998, 10 (6) 1-4, available in Spanish at http://www.lincolninst.edu/pubs/pub-detail.asp?id=385).

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The New Land Act and Its Possible Impacts
On Urban Land Markets In Tanzania

J.M. Lusugga Kironde

Like other sub-Saharan African countries, Tanzania has been urbanizing rapidly. The proportion of the national population now living in urban areas is estimated to be over 30 percent, up from 14 percent in 1978. While the overall population growth rate is 2.8 percent per annum, the rate of urbanization is around 11 percent. One major aspect of this rapid urban development has been the shortage of land necessary for orderly urban development. Overall, less than 10 percent of people obtain land from the public authorities, and the ability of the authorities to provide land has declined over the years. According to the Survey and Mapping Division of the Ministry of Lands, 21,000 urban plots were surveyed nationally in 1972–1973, but in 1997–1998, only 5,429 plots were surveyed (Government of Tanzania 1999a).[1] Instead, the majority of people acquire land from the informal system, usually buying it from those who purport to own it by virtue of earlier occupation or customary tenure (Kironde 1997; 2000). An active, unregulated informal land market exists in most urban areas: in Dar es Salaam an estimated 70 percent of residents live in unplanned areas, and in Mwanza, the second largest urban area in the country, the estimate is 74 percent (Kironde 1997).

In principle, the legal status of allocated or planned land in urban Tanzania is clear. Such land usually has a formal title or, at the least, a letter of offer that can be followed later by receipt of a formal title. In practice, the system of allocation is highly inefficient, in part because of tension between the central and local government as to who should have the powers of allocation. Malpractice allocates the same piece of land to more than one person, or permits the development of large quantities of planned land in breach of regulations or despite the term of the tenure having expired. Even at its best, the system operates in financially unsustainable ways by charging fees and rents that are usually below market value.

By contrast, in principle and practice, the legal status of land obtained from the informal system is quite vague. It is not quite correct to call the developers of informal land squatters, since in most cases they acquire land from recognized owners and often use some form of state sanction, such as local government or political leaders. Much of the land is claimed to be owned under customary tenure, and in peri-urban areas, occupation is recognized by the government, formally, when urban boundaries are extended outward, or organically, as urban uses eat into rural uses without action being taken. Subsequent construction is done with the tacit approval of government officials who keep a blind eye, and many properties in unplanned areas are connected to urban services such as electricity and water. In a number of areas, government-sanctioned, community-based (CBO) and non-governmental (NGO) organizations are active, improving the quality of the environment, dealing with poverty and instituting service infrastructure. Many times, too, high-ranking government officials or political leaders are invited to initiate or inaugurate development schemes in unplanned areas, thus rendering to them some form of legitimacy. Lastly, many of the landowners pay land taxes.

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[1] Kironde (2000) notes that only 4.7 percent of applications to the Ministry of Lands in 1990 were surveyed in the same year and that by 1996, the figure may have fallen to 4.3 percent. For Dar es Salaam, Kombe (2000) calculates that between 1978–1979 and 1991–1992, only 6.2 percent of applicants to the city council received an allocation, a total of 17,751 plots from 261,688 applications over 14 years. These figures compare to the growth of Dar es Salaam to a city of approximately 2.6 million people.

While the informal system has delivered land to large numbers of people, it has generated a range of significant problems:

- Knowledge of land availability is imperfect and relies upon an inefficient system of communication by word-of-mouth.

- The possibility of fraud is considerable, negotiations are lengthy, and there is no general framework for setting land prices.

- Land acquired through the informal system is not sanctioned by public authorities, and is usually unregistered or lacking formal title.

- Usually the land is developed irregularly, in contravention of the intentions of the planning authorities.

- Much of the land in the informal land delivery system is put to residential uses, thus making it difficult for the authorities to provide land for other uses, such as industry, infrastructure or public open spaces.

- The lack of control on land subdivision, especially in low-income neighborhoods, means that developments can attain very high densities. In some areas, internal circulation is poor, dependent on non-standardized and uncoordinated roads and footpaths, leaving many houses unreachable by vehicular traffic. This has important implications for the provision of municipal services, such as solid waste collection and drainage, as well as for urban governance.

- Some of the land obtained from the informal land delivery system is physically marginal, hazardous or environmentally sensitive.

- Once areas are informally developed, removing the occupiers becomes difficult and brings political, social and economic complications.

- Irregular development prevents the realization of the full-value potential of the land. In Mwanza, informal development has taken place on valuable and well-located land within the municipal boundary.

THE NEED FOR A NEW LAND POLICY

The many land-related conflicts and problems reaching the government required action. Like many other African countries, including Uganda (McAuslan this volume), Ghana (Kasanga 1999) and Tanzania's union partner, Zanzibar (Törhönen 1998), the government decided to initiate a reform of land policy and law. The Presidential Commission of Inquiry into Land Matters (the Shivji Commission) was formed in January 1991, and submitted its report in 1993, arguing for the reform of the land law (Government of Tanzania 1994). In June 1991, the Ministry of Lands initiated a process leading to the formulation of the New National Land Policy that was adopted in 1995 (Government of Tanzania 1995).

The overall aim of the new land policy was to promote and ensure a secure land tenure system, to encourage the optimal use of land resources, and to facilitate broad-based social and economic development without endangering the ecological balance of the environment (Government of Tanzania 1995). It aimed at addressing several of the problems of land tenure and land administration

experienced in the past decades, including the land market question. The government justified the new land policy in the following terms:

- Intensified competition for land in and around urban centers during the past 30 years has necessitated a need for more land for human settlements, industries and commerce on the one hand, and the need to preserve valuable agricultural land on the other.

- Increased awareness among the population of the value of land and property (buildings) has been the cause of conflicts in both rural and urban areas, especially as more people compete for a limited number of demarcated plots, or for land acquired through purchase, inheritance or allocation by local leaders.

- The development of land markets in and around urban centers requires recognition and regulation to enable the government to capture potential fiscal gains from transactions.

- The evolution of customary land tenure towards more individualized ownership, accompanied by the development of land markets in many areas of the country.

Among a range of objectives, the new land policy specifically aimed to: promote equitable distribution and access to land; ensure that existing land rights, especially customary rights of small holders, are recognized, clarified and secured in law; ensure that land is put to its most productive use to promote rapid social and economic development; streamline and make more transparent the institutional arrangements in land administration and dispute adjudication; and promote sound land information management.

On the question of land tenure and administration, the policy made a number of clear statements:
- All land is public land vested in the president as trustee on behalf of all citizens.
- Land has value.
- Full and fair compensation should be paid when land is compulsorily acquired.
- A dual system of tenure that recognizes both customary and statutory rights as equal in law was to be established.
- Rights of occupancy would include all rights over land acquired through direct grants, relevant customary procedures and alienation by the legally designated allocation authorities; and
- There would be a statutory right and a customary right of occupancy.

It is worth noting three specific items of the new policy. First, on land administration, it was stated that a Commissioner for Lands would be the sole authority responsible for land administration and was to be empowered to appoint officers to administer land (except village land) on his behalf. Second, to improve land information systems, the government was required to issue a certificate of title within 180 days of issuing a letter of offer, and failure to do so would entitle the offeree to register the letter of offer. Residents in unplanned areas were to have their rights recorded and maintained by the relevant land allocation authority, and that record was to be registered. The land registry offices were to be gradually decentralized. Third, the new land policy was to recognize land rights of peri-urban dwellers and to issue them with rights of occupancy and, in collaboration with residents and CBOs, to upgrade, rather than clear, unplanned areas.

After the new land policy was announced, new legislation was prepared that was expected to be a "more explicit and full bodied legislation which would be more readily understood and responsive to the needs of modern Tanzania in the context of a liberalized economy and an emerging land market"

(Preamble to the Proposed Land Act). In the end, two acts were passed by Parliament in 1999: the Land Act, which concerns urban areas and is the subject of this chapter, and the Village Land Act.

THE PROVISIONS OF THE NEW LAND ACT

Important provisions in the Land Act (1999) that have relevance to urban land markets, administration and management include:

- The right to occupy land is declared to be:
  (a) a granted right of occupancy that can only be conferred by the president,
  (b) a derivative right of occupancy. This is a residential license conferred by the relevant local authority upon a person who, at the commencement of the new act, was without an official title or right, had acquired and occupied a home for not less than three years, and was in an urban or peri-urban area (other than granted or customary right of occupancy). The license is for a term of not less than six months and not more than three years, but can be subject to renewal, and cannot be assigned by the licensee.

- In recognition of the fact that thousands of households have acquired land through the informal sector and in unplanned areas, the Land Act provides powers for validation of any dispositions of interests in urban land, involving either a granted right of occupancy, interest in land held under customary tenure, or any other informal tenure or dispositions carried out without approval. The occupation of such land is made lawful for six years (or for a longer period if the minister so decides) from the commencement of the act. Occupiers may, within two years of the commencement of the act, apply to the commissioner for lands for a Certificate of Validation.

- In recognition that much of the land in urban areas is developed through informal processes, the act empowers the Minister for Lands to declare and administer the regularization of interests, including village land in peri-urban areas. Similar powers had been provided by the Town and Country Planing Ordinance (1956, Cap 378), but the new act clarifies and extends the criteria to determine whether an area should be declared a regularization area. The criteria provide that an area is used mainly for habitation in dwellings constructed by the occupiers or converted from buildings abandoned by the former owners; that most people in the area lack an apparent lawful title; that land is occupied under customary land law, which, if not applicable to all, is at least applicable to one group of occupiers; that the area is consolidated physically, socially and economically, and is likely to be declared a planning area; that residents and CBOs indicate an interest in participating in the regularization. These criteria probably cover most existing unplanned areas in Tanzania.

- The Land Act provides for the creation of a lease of the right of occupancy. This is a new dimension to land administration in Tanzania, as, in the past, the leasing of land was not explicitly allowed except in the case of renting accommodation.

- Unlike in the past, the new act recognizes that land has value and provides that the market can be the basis of decisions to determine land rent, premiums, compensation and disposition.

- The act addresses problems emanating from inadequate compensation provisions where land is acquired through compulsory means. A principle of fair and prompt compensation is established, with the amount based on the market value of the land plus provisions for disturbance, relocation, the cost of acquiring alternative land and loss of earnings. A Land Compensation Fund is established to provide compensation to those who suffer loss and deprivation as a result of the implementation of the act.

IMPLEMENTATION PROBLEMS WITH THE NEW LAND ACT

The government would like to see the provisions of the Land Act implemented. A consultant has been hired to work out the modalities and costs of implementation, steps have been taken to have the act translated into Swahili, a language understood by most Tanzanians, and a nationwide education campaign will be conducted. But these measures aside, and despite the many positive features of the new legislation referred to above, the Land Act has serious problems that may make it ineffective in dealing with the current problems of urban management in Tanzania.

Concentrates Functions in Central Government

Contrary to expectations and current trends toward decentralization, most powers of land management and administration set out in the new act are concentrated in the offices of central government, particularly in the Commissioner for Lands. By contrast, local authorities are shorn of most of their actual or appropriate powers for administering land. They are prevented from giving offers for land unless authorized by the commissioner. Only officers named by the commissioner can deal with matters of land administration and the local authorities can only make recommendations to the commissioner, who need not take their advice. The commissioner has powers to direct the land officers in local authorities to act in ways that may be contrary to the orders of the local authorities. All applications for what is known as a Granted Right of Occupancy, or permission to change use or disposition of land carrying a granted right of occupancy, must be sanctioned by the commissioner for lands.[2]

The rationales for the concentration of powers is, possibly, due to wanting consistency with the principle that land rights are vested in the president. It may also be thought of as a means to reduce the characteristic conflicts and corruption of past land administration regimes, or a response to the fear that local authorities will mess up the complex procedures of the new legislation. But in a country the size of Tanzania, and with an enormous demand for land, a centralized system has proven in the past to be highly bureaucratic and insensitive to local needs.[3] One can only expect that the new land bureaucracy will be slow to act, while land transactions in urban areas will not wait.

Excludes Actors in the Informal Land Market

A second problem with the new legislation is the exclusion of the various actors that make the informal land market work. The landowners, middlemen, developers, the local formal and informal leaders and institutions that oversee and guarantee sales and tenure, regulate or fail to regulate land development, and resolve disputes, the emerging CBOs, and people seeking land, are all denied a substantive role in land administration and management. The new legislation allows for the sale of land, but only under the rubric of requiring the consent of the Commissioner of Lands. While most land sales, therefore, continue to take place through informal agents, most of the provisions in the new legislation address central government (Table 1).

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[2] Although the New National Land Policy envisaged doing away with the need for consent over disposition, the act seems to concentrate powers of allowing disposition with the commissioner for lands.

[3] We should note the long history of centralized land administration in Tanzania that has been so hard to break. From 1947 to independence in 1961, land allocation was conducted centrally to ensure that expatriates were not priced out of the market by the richer Indian community. After 1961, centralization was maintained on the grounds of assisting the poor to gain access to land, and was cemented into numerous policy blueprints, such as the Arusha Declaration (1967), which set out a socialist land nationalization policy.

Moreover, once land has been developed informally, the act places emphasis on the occupier who must apply to the Commissioner for Lands for a Certificate of Validation. What incentive is there for them to do that? Most people derive their security of land tenure from actual development and recognition by local neighborhoods. As many low-income occupiers are illiterate or poorly educated, entering into a bureaucratic process by making an application to the Commissioner for Lands for a Certificate of Validation will be unattractive. Conversely, if the volume of applications for a certificate of validation is high, it is likely to be too great for the Commissioner for Lands to handle, thereby discouraging people from pursuing applications. One could envisage a better, decentralized, system involving local leaders and actors as well as local government, to deal with land validation problems, compared to the remotely placed commissioner, with the initiative to encourage landowners to register their land coming from public authorities rather than from the occupiers.

Table 1: A Typology of Tanzania Land Law Reform

Land Market Activities	Actors	Land Administration and Management powers
Least Action ⇨	Central Government	⇦ Most powers, provisions
Most Action ⇨	Informal Land Markets	⇦ Least powers, provisions.

The Land Act is Static, but the Land Market is Dynamic

A third problem relates to the relationship between the provisions of the new act and the land market. While the Act marks a number of welcome improvements on the old system, for example, through granting a residential license or validating land acquired informally, the provisions are static. Although the New Land Policy recognizes that market transaction in land are common, the government seems to assume that once the act comes into operation the informal acquisition of land will come to an end and recognition can be limited to validation. There are no specific steps to encourage the open selling and buying of land, and there is no institutional support to this process, especially in the informal land delivery system. Indeed, the provisions to validate land acquired informally improve the legal status of many landowners who acquired land through the informal system in the past. This is likely to encourage further informal development of land. As there are no provisions in the act geared towards improving the supply of planned land, the informal market in land will continue with little government direction.

Inadequate Measures for Settlement Regularization

The fourth problem concerns the provision for dealing with land that has already and will continue to be developed and acquired informally. In the new act, informality is dealt with through post hoc regularization. Given the extent of unplanned urban areas in Tanzania, regularization measures are welcome and, indeed, the criteria for regularization in the act cover most of these unplanned areas. But the provisions for regularization raise problems with the legislation. The requirement that the area be substantially built upon in order to qualify as a regularization area may exclude newly developed settlements at the periphery that would benefit the most from regularization, for example through land pooling, and thereby permit introduction of services before the area is substantially developed. It should be noted, too, that regularization in lower-density areas would help the poorest households who own land but are unable to invest in construction.

Moreover, in line with the centralization provisions in the act, the power to regularize unplanned areas is concentrated in the Minister and the Commissioner for Lands. It is the minister who must determine whether an area qualifies for regularization, and who is empowered to oblige the commissioner for lands to prepare a draft scheme of regularization and is responsible for its implementation. The local authorities are *invited* to be involved, but they do so as advisors, not as active participants in the process. Given the urgent need for urban land and the speed at which it is being developed irregularly,

it is difficult to see why regularization powers should be concentrated in the central government. It is equally difficult to avoid the conclusion that empowering the minister of lands to be the active agent of land regularization in urban areas is going to provoke institutional conflicts with local authorities. Since many people acquire land from the informal system, it should be possible to involve this system in regularization—residents might use local or community-based organizations to declare a regularization area—with a greater role for the urban authorities.

Over-ambitious Standards Relative to Capacity

A long-standing problem of land management and administration in Tanzania is the paucity of land management information. Much of the land in urban areas is not mapped, surveyed or registered. Yet the aim of the New Land Policy is a formal land management system with land holding a right of occupancy and certificate of title. The Land Act insists that a right of occupancy can only be granted on surveyed land. Unfortunately, there are no steps in the act to improve the land information system, except in the requirement that a certificate of title is issued within 180 days of accepting the offer for a right of occupancy. There is little hope that the land in the unplanned urban areas will be surveyed in the short term or that documentation will be issued expeditiously. The standards to which land must be surveyed (including procedures for approval) are too high for the needs of urban development in Tanzania and should be reviewed downwards (Silayo 1999). The alternative would have been for the act to incorporate various kinds of junior titles commensurate with levels of land surveying and land development.

Customary Tenure Remains Vague

A sixth problem with the new Land Act is the limited definition it affords to customary land tenure and laws. This tendency to be vague about customary land tenure represents continuity with colonial concepts that regarded customary tenure as the complete negation of freehold or other individual forms of tenure. Customary tenure was considered to be the occupation of land in accordance with customary law by a community of Tanzanians of African descent. It was seen as a communal, tribal or traditional form of land occupation, and lacking in dynamism despite evidence that customary tenure did evolve rapidly, not least with the introduction during the colonial period of cash crops, improvements in infrastructure and migration (Bruce 1993).

In both colonial and post-colonial Tanzania, the government also ignored the evolution that, as land assumes value by virtue of investment, productive improvements or location near to market and service centers, individual law gradually comes to recognize land sales (Bruce 1993). Instead, customary tenure was considered to be incompatible with individual tenure and the buying and selling of land even when, as has already been outlined, this is precisely what was happening in the informal land delivery system (Kironde 1997, 2000). During the 1950s, for example, the colonial government of the then Tanganyika issued a proposal seeking to extinguish customary tenure in urban areas. The proposal was not enacted into legislation but in practice it was assumed that customary tenure ceased once an area was declared to be urban. Not until a Tanzanian court ruling in the case of *Nyagwasa v Nyirabu* in 1985, was it established that rights in land did persist after the declaration of an area to be a planning area, until these rights are properly extinguished in law (Fimbo 1992).

The 1985 ruling recognized customary land rights in urban areas in principle, but did little to change practice. During the expansion of a road in Dar es Salaam in 1996, land owners whose houses were built in an unplanned area and were earmarked for demolition invoked a right to hold the land under customary tenure. This claim was rejected by the Attorney General, inter alia*,* because the claimants were not indigenous to the area (i.e., they came from other parts of Tanzania) and could provide no evidence of how they had acquired their plots. Their houses were therefore demolished without compensation or the provision of alternative land (*The Guardian,* October 9, 1997).

More recently, in December 1998, in the case of *Mwalimu Omari and Ahmed Baguo v Omari Bilal* (Civil Appeal 19 of 1996), the Court of Appeal ruled that no person had the right to own urban land under customary law. The appellants claimed ownership of land in Magomeni, Dar es Salaam, by citing Section 2 of the Land Ordinance (Cap 113 of 1923) which states, "A right of occupancy is a title to the use and occupation of land, and includes the title of a native or native community lawfully using or occupying land in accordance with native law and customs." The court ruled that customary tenure applied only in rural areas or to registered villages within urban areas, in effect, making anybody who held land in an urban area without a granted right of occupancy a squatter without title.[4] This curious ruling turned the majority of urban landowners into squatters, but did nothing to prevent people continuing to invoke customary tenure in the process of land acquisition. The Land Act 1999 sets out to validate the acquisition of customary tenure in urban areas, but it still begs the question, "what is the operative definition of customary tenure in the dynamic situation obtaining in Tanzania?"

Land Has Value but Mechanisms for Compensation Are Inadequate

One of the fundamental features of the New Land Policy and the Land Act is the statement that land has value. This is a departure from previous practice, where bare land was considered to have no value. Nevertheless, the departure is not complete. While the Land Policy takes as one of its points of departure the development of urban land markets, the act states that land has value only when it has improvements on it and the sale of land without improvements is not to be approved. So, only certain types of land are recognized officially as having value, despite an active land market.

A similar contradiction presents itself with the provision for compensation. In the past, problems of compensation where land must be acquired for planning schemes have been acute. Compensation was usually inadequate, based on the unexhausted improvements on the land, and was rarely paid promptly. To address these problems, the Land Act establishes a Land Compensation Fund in order to provide "fair and prompt compensation" to those who suffer loss, deprivation or diminution of any rights or interests in land or any injurious affection in respect of any occupation of land. The act does not give a clue as to the source of finance for this Fund except that the government will capture gains from land market transactions by granting of right of occupancy through public auctions. Nor is the act clear on how it is to operate except that the relevant regulations pertaining to its administration fund are to be made by the Minister for Lands. Needless to say, local authorities are not involved, and history presents a bad omen of centralized compensation mechanisms in Tanzania. The experience of a plot development revolving fund set up in 1991–1992 that aimed at using the proceeds from the allocation or auction of plots to plan, survey and acquire new plots, shows that the fund has so far had very limited impact. Among the many reasons for this poor performance is the fact that it was centralized in the Ministry of Lands, and the local authorities were not involved, and insufficient cost recovery mechanisms were put in place to ensure sustainability (Masebu 1999). Without adequate resources to the new compensation fund the government will be restricted in its ability to assemble land for planned development in urban areas.

CONCLUSIONS

The provisions of the 1999 Land Act may improve the management of land in the rapidly growing urban areas of Tanzania where most land is acquired and developed outside the realm of the public authorities. But major shortcomings exist with the new legislation, largely because there has been little or no action taken to understand and therefore incorporate the various informal and semiformal actors in the land market. Although the New National Land Policy (1995) and the new Land Act (1999) acknowledge the existence of land markets and the need for security of tenure (including for customary land), the traditional approach of seeing the public authorities as the providers and

[4] In the Magomeni case, the appellants were later granted a right of occupancy by the government.

regulators of land administration has been largely upheld. It is still not recognized that the public authorities are minority players, resulting in the current proposals that aim to centralize powers of land administration.

Decentralization would have been a better direction, particularly since, parallel with the New Land Policy, there was a Local Government Reform Agenda (1996–2000) which aimed at creating strong, efficient and democratic local government (Government of Tanzania 1999b). The ideal situation would have involved the powers of land administration decentralized so that the roles of respective government authorities became dependent, at least partly, on the nature of their interest in the land or area in question.[5] Later, one could even envisage a situation where all land within the jurisdiction of an urban authority is allocated to that authority for the purpose of management and administration, under the guidance of the central government. Regrettably, local authorities have not been given any incentives to intervene positively to ensure the proper development of lands in their jurisdiction. The one ray of hope is that the Commissioner for Lands is empowered to appoint authorized officers in local authorities to act on his or her behalf. These appointments should be made as soon as possible. Even then, public authorities need to recognize and support the informal land market and enable it to work more efficiently. Approaches like land pooling and redistribution need to be adopted on a wide scale in urban Tanzania. If public authorities do not recognize, work with and support informal land markets, it is the authorities that will continue to be marginalized, and the many undesirable aspects of irregular urban development will continue.

[5] To date, the decentralization proposals implemented in Tanzania do not seem to involve land, and local authorities are not being prepared to take on a more substantial role in urban land management and administration.

REFERENCES

Bruce, J. W. 1993. Do indigenous land tenure systems constrain agricultural development? In *Land in African agrarian systems*, C. Donald and T. J. Basset, eds. Madison, WI: University of Wisconsin Press.

Fimbo, G.M.M. 1992. *Essays in land law in Tanzania.* Dar es Salaam, Tanzania: Faculty of Law, University of Dar es Salaam.

Government of Tanzania. 1994. *Report of the presidential commission of inquiry into land matters (2 volumes)*. Uppsala, Sweden: Scandinavian Institute of African Studies.

———. 1995. *National land policy.* Dar es Salaam, Tanzania: Ministry of Lands, Housing and Urban Development.

———. 1999a. *Report of the annual conference of the survey and mapping division.* Dar es Salaam, Tanzania: Ministry of Lands and Human Settlements, Survey and Mapping Division.

———. 1999b. *An update on the local government reform programme*. Dar es Salaam, Tanzania: Ministry of Regional Administration and Local Government.

Kasanga, K. 1999. The existing law, the New National Land Policy and national development in the 21st century. Paper presented at the 1998–1999 Annual General Conference of the Ghana Bar Association, Kumasi, Ghana.

Kironde, J.M.L. 1997. Land policy options for urban Tanzania. *Land use policy* 14(2,):99–117.

———. 2000. Understanding land markets in African urban areas: The case of Dar es Salaam, Tanzania. *Habitat International* 24(2):151–165.

Kombe, W.J. 2000. Regularizing housing land development during the transition to market-led supply in Tanzania. *Habitat International* 24(2):167–184.

Masebu, H. 1999. *Land market reform project*. Consultant report prepared for the Ministry of Lands and Human Settlements, Dar es Salaam, Tanzania.

Silayo, E. 1999. Cadastral surveying for the regularisation of informal urban land development in Tanzania. Paper presented at the International conference on the interaction between formal and informal urban land management in Africa. Dar es Salaam, Tanzania (November 25–27).

Törhönen, M. 1998. *A thousand and one nights of land tenure: The past, present and future of land tenure in Zanzibar.* London, England: Royal Institution of Chartered Surveyors.