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LAND ACQUISITION FOR PUBLIC USE: EMERGING CONFLICTS AND THEIR SOCIO-POLITICAL IMPLICATIONS

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Land Acquisition for Public Use: Emerging Conflicts and their Socio-political Implications

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Abstract

This paper expounds the problematic of land acquisition for public use in Tanzania. Three cases are examined to explore how social, institutional and economic processes and interests and the associated key players interact to generate conflicts, and the abortive attempts made to resolve them.

One of the most valuable lesson drawn is that the processes involved in land acquisition for public use i.e. alienation, valuation and compensation, unless supported by clear, institutionalised and inclusive protocols, which are transparent and predicable, may result in unintended and undesirable negative consequences and grievances triggering conflicts between government and landowners. These could potentially escalate and assume political dimensions that may further undermine the socio-economic sustainability, particularly of the poor, as well as constituting a threat to peace and stability.

It is argued that policy and legislative reforms are necessary in order to review the current top-down approaches to compulsory land acquisition practices, to institutionalise dialogue as a key strategy to acquire land and to set reliable mechanisms for the funding required to pay fair and prompt compensation. Most importantly, mandatory provision of land for resettlement and restoring appropriated households to the same position, as well as a change of attitude among public officials, including professionals, are also critical considerations. The latter is particularly so because a 'business as usual' outlook tends to ignore the transformed urban property landscape, especially in regard to private property rights and the commodification of land.

Key words: Land acquisition, public use, compensation, land conflicts and peace and harmony

1. Introduction

Tanzania is a relatively large country located in East Africa, with a total of area of about 9, 500, 000 square kilometres. Its current population is estimated at 40 million, with a growth rate of roughly 2.4 per cent per annum. Despite the adoption of neo-liberal economic policies which have been steering the country towards a market economy since the mid-1980s, land remains the exclusive property of the state. The President is the custodian of land and individuals have only usufruct rights. The Land Act (1999), Sections 19-23, recognises the existence of three land tenure regimes. The statutory or granted rights of occupancy, the customary right and other informal rights.[1] Under the statutory system, the rights to access,

[1] Informal rights includes *quasi-customary* tenure (Kombe, 1995) or what Durand-Lasserve (2003) termed *neo-customary* tenure. This is the tenure system through which most settlers in informal settlements occupy land. Customary rights are rights held by natives under various traditional customs and cultural norms. These are mainly dominant in rural and some peri-urban areas.

develop and occupy land are granted by the government under leaseholds of up to a maximum of 99 years. Therefore, the state retains the right to own the land and is entitled to take it back at the end of the lease, or if leaseholders do not abide by the conditions of the grant. The Land Act (1999), the Land Acquisition Act (1967) and the Urban Planning Act (2007) give the President overwhelming powers to acquire land needed for public use or interest. Compulsory acquisition laws stipulate that *persons whose land is expropriated for public interest have to be fairly and promptly compensated.* The compensation payable to dispossessed persons is based on the market value of the property or land.[2] The spirit of the compensation is to ensure that affected households neither lose nor gain as a result of their land or property being appropriated for public interests.

The land conflicts and other unresolved problems discussed in this paper relate to a decision to expropriate land for the expansion of a cement factory and for the construction of a campus for the University of Health and Allied Science (MUHAS), both of which fall squarely within what is legally recognised as land for public use or interest. Malpractices in the acquisition of land for public use have, however, grossly affected socio-economic sustainability among the poor living in peri-urban areas.

1.2 Urban growth and land development in Dar es Salaam

Dar es Salaam, like other urban centres in the country, has experienced dramatic spatial and population growth over the last four decades. High birth rates and rural–urban migration have sustained high annual population growth rates ranging between 4.5 and 8 percent in the last three decades. With a population of around 4.5 million at present, the spatial extension of the city stretches over 40km from North to South, and 35km from East to West (Map 1). The availability of trunk infrastructure services, especially potable water and electricity, along the major arterial roads has given rise to the expansion of residential land use along these axes, as well as increased commuting distance and transport costs to the main services centres (Megacities, 2007).

Despite the fairly small proportion of the population that is urbanised in Tanzania, the proliferation of informal land markets, land grabbing, speculation and land related conflicts have intensified especially in the peri-urban areas. As a result, land values and speculation have been increasing persistently (Kombe, 2006; Kombe and Kreibich, 2000; Mwafupe and Briggs, 2000). Speculation is largely by high income people including senior civil servants (Kombe and Lupala, 2006). The enactment of the Land Act (1999) which, unlike the Land Ordinance Cap 113 of 1923, recognises the value and transaction of bare land has catalysed land markets and speculation. Nevertheless the poor in Tanzania are still able to access and occupy land in the peri-urban areas and thus play a role in the dynamics of land development.

Owing to declining real income coupled with high unemployment, urban farming is a key source of livelihood in most urban areas. In Dar es Salaam, two out of three households are engaged in some form of urban agriculture or husbandry (Kreibich and Olima, 2002:3-9). In this respect, access to, occupation of and use of land have to be seen as critical factors and indeed preconditions for the social and economic sustainability of many urbanites, the bulk of whom depend on land. Another important observation to note is that the common mis-conception among most policy makers and bureaucrats regarding customary or neo-

[2] This refers to the sum of money which land or property occupiers might have realised if the property were sold in an open market by a willing seller at the time of compensation.

customary rights is that once urban boundaries are extended to encroach upon such land; customary rights cease to exist.. In practice, however, the rights of the customary or neo-customary land occupiers to continue using their land legally often persist even after the official extension of urban boundaries; inter alia because of delayed and inadequate compensation payments (Kombe and Kreibich,2006).

For over five years, the government has been implementing an extensive programme aimed at formalising property rights in informal settlements through identification, demarcation, and the issuance of short term (five years) licences. The programme is being implemented under the Business Environment Strengthening for Tanzania (BEST) scheme.[3] The ultimate aim is to issue long term titles/leaseholds to land and property holders. However, owing to the rapidly rising number of informal settlements and their high rates of growth - especially unregulated expansion in the peri-urban areas - coupled with the resource capacity deficiencies facing this programme, its impact remains limited. So far, formalisation projects have been confined to only a few informal settlements. On the other hand, the thrust of the programme is on consolidated or densely built informal settlements and as such the sparsely built peri-urban areas including the case study areas (see Map 1) are excluded. In principle, an extension of the property formalisation and titling programme to the peri-urban areas has the potential to improve land governance in particular because it may facilitate the establishment of a register for land holdings as well as checking unauthorised land subdivision.. In the long run, it would place both land occupiers and the government in a better informed position when negotiating over land acquisition for public use.

1.3 Access to land for public use and compulsory acquisition

According to the Land Acquisition Act of 1967, acquisition of land for public use includes exclusive use by the government, or general public uses including improvement of public utilities such as trunk roads, planning of new commercial/business centres, residential and other land use requirements for expansion of a city or municipality. It also includes land for development of public facilities such as schools, universities, ports and airports.

The most common instruments which the state has and can apply to access land are: *negotiations and persuasion; legalised force; and compulsory acquisition*. The latter is normally effected through the 'power of eminent domain'. This gives the state powers to expropriate private property for public use without necessarily seeking the owner's consent (Ndjovu, 2003). However, this is subject to the payment of fair and prompt compensation. Compensation is provided as a necessary instrument to limit the property rights of the state, especially the abuse of compulsory acquisition powers. It also helps to check over-regulation on the part of the state (Blume, Rubinfield and Shapira, 1984 cited in Ndjovu, 2003). The Constitution of the United Republic of Tanzania (1977) articles 24(1) and (2) explicitly provides for the right to own property and to enjoy state protection and **fair** and **adequate** compensation in the event of compulsory purchase:

- *Subject to the provision of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.*

[3] The BEST programme is currently under the Prime Minister's Office and supports a number of ministries and sectors. For instance, under the land sector it is financing a number of areas such as property formalisation and titling, improvement of the performance of land tribunals and land registry.

- *Subject to the provision of sub article (1) it shall be unlawful for any person to be deprived of property for the purposes of nationalisation or any other purposes without the authority of the law which enables provision for fair and adequate compensation.*

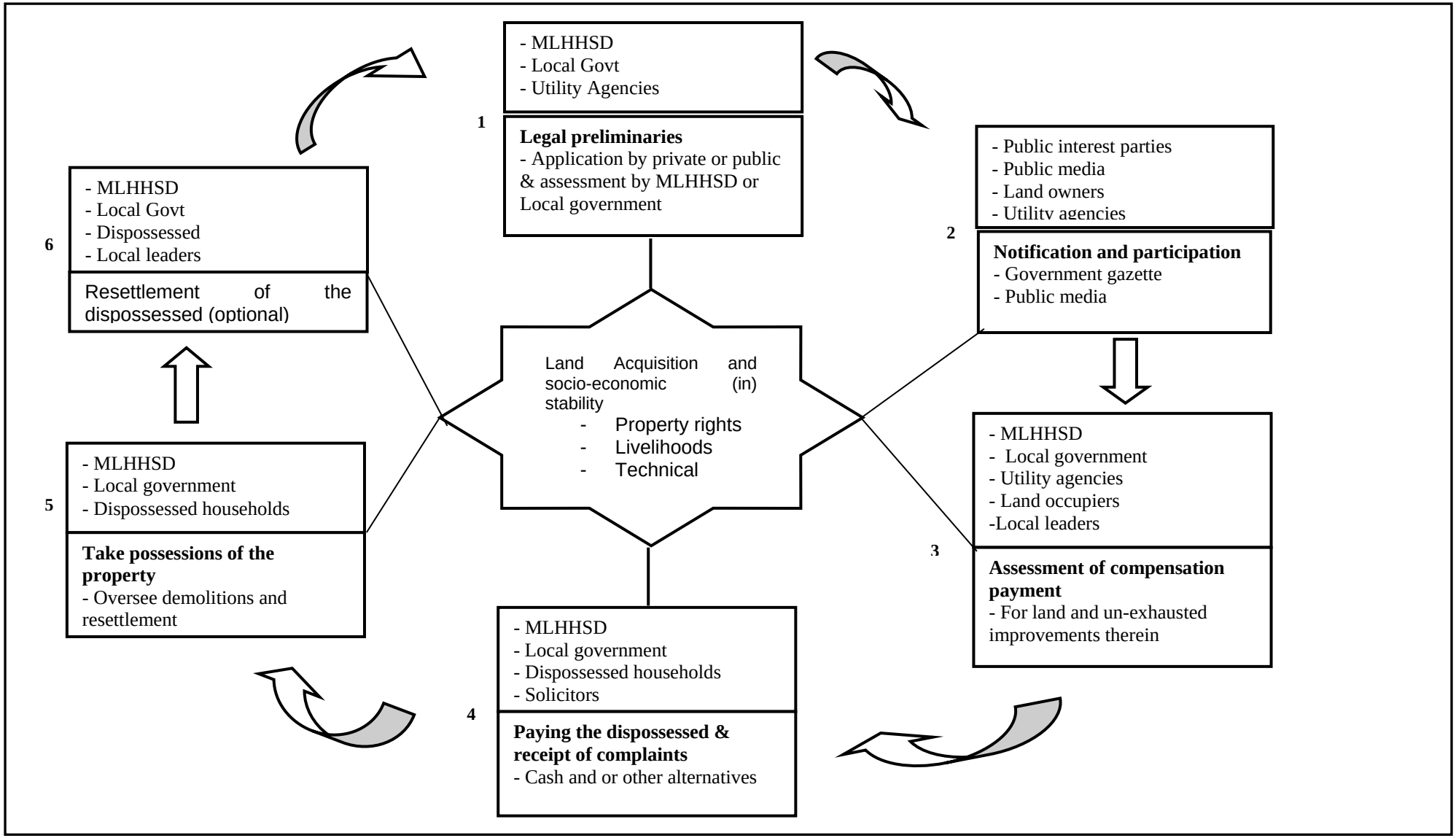
The Land Acquisition Act 1967 is the principal legislation insofar as land acquisition is concerned. The provisions of Section (1) draw attention to the requirements of the constitution: *"Subject to the provision of this Act, where any land is acquired by the President under Section 3, the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by the Parliament; such compensation as may be argued upon or determined in accordance with the provision of this Act."*

Compulsory land acquisition involves four key steps, namely (i) Planning and the decision to acquire land, (ii) Legal preliminaries including getting statutory authority and serving notices, (iii) Field investigations including valuation, and (iv) Payment of compensation to those being dispossessed (Fig. 1).

Normally it is the local or central government that initiates the process of land acquisition for public use. Valuation of land and other improvements therein is done either by the government or private companies but central government must give approval. Whilst dispossessed households are entitled to fair and prompt compensation, the allocation of alternative land for resettlement is not a right, but at the discretion of the government or any other institution involved in the acquisition of land for public use.[4] This situation calls into question the statutory provisions which aim to protect the rights of the land occupiers, or aim to restore dispossessed persons to the same position they were in before the acquisition. In the Tanzanian context, the provision of alternative land in an appropriate location seems to be a key pre-condition not only for restoring land occupiers to the situation they were in before the acquisition of their land for public use, but also for promoting sustainable use of environmental resources on which the survival of urban settlers depends.

[4] It is noteworthy that in cases where projects involving land acquisition for public use have been funded or have involved institutions such as the World Bank , the latter has always provided for conditional provision of land for resettling dispossessed households. This was the case in the Songo Songo Gas Pipeline project and many electric power rehabilitation, distribution and transmission projects.

Figure 1: Key processes and key actors in compulsory land acquisition



Source: Author's own

1.4 Land conflicts and governance in Tanzania

Three major types of land conflicts associated with acquisition of land for public use can be posited as follows:

Delayed and/or unfair compensation
The Constitution (1977); the Land Act 1999; the Land Acquisition 1967 and the Physical Planning Act 2007 are explicit on the issue of payment of fair and prompt compensation before land or property can be acquired for public use. In practice, however, these provisions are often not observed. Delays of up to five years or more are not unusual after valuations have been done.[5] There are also problems associated with clandestine selling after compensation is paid to land occupiers (Shivji, 1999).

Poor communication and non-involvement of landowners
Conflicts have also emerged because sitting land occupiers are not being involved or educated about the rationale for the valuation process and the method used to compute the compensation payable for land and other developments therein. Often, sitting land occupiers are not directly represented in key decision-making stages related to the expropriation of their land, leading to protracted disputes particularly between public authorities and sitting land occupiers (Kombe and Kreibich, 2006).

Poor governance
Other major causes of land conflicts include dysfunctional land management and problematic governance institutions, including a lack of transparency especially in public land acquisition; weak structures for checking land grabbing; and exclusion of the disadvantaged. There are also problems related to nepotism, corruption and the disregard of regulations, and unregulated informal land acquisitions (Wehrmann, 2008).

1.4.1 Urban land governance

The concept of governance as the relationship between local communities including their civil societies and the state, between rulers and the ruled, between government and governed (McCarthey et al, 1995) has been adopted in this paper to capture the context within which decisions, activities and relationships between the many actors involved in the competition for urban land, and the ensuing conflicts took place. As will be noted the resulting nexus involves public actors (i.e. the central and local government), local community leaders (at Ward and Subward/*Mtaa* levels), investors, public institutions, and individual land occupiers (Figure 2).

Apart from the primary functions that central and local government authorities (LGAs) have in providing basic services and infrastructure such as roads, drainage, water, education and health, they also have an obligation to maintain peace and order; as well as to regulate land development and management. For instance the Local Government (Urban Authorities) Act, No 7 of 1982. Section 59 (e) gives LGAs powers to prepare land use plans for streets, buildings and other areas. Local governments are also responsible for the identification of

[5] For instance, valuation of land and other property at Kipawa, an area proposed for the expansion of the Mwalimu Nyerere International Airport in Dar es Salaam, was done in 1997, but payments were made only in 2010. Recent discussions with displacees revealed that some of them have yet to collect their payments, primarily because of disputes over the amount of compensation.

land required for urban development (planning areas), preparation of planning schemes (general and detailed), allocation of building land, and enforcement of development control measures. In the areas noted they are also the initiators especially in cases where land is being acquired for city, municipality and township expansion or other public requirements. Local authorities are also required to work with the Ministry of Lands Housing and Human Settlements Development (MLHHSD) in all the stages of acquiring land including the assessment of compensation (i.e. valuation), processing of complaints, and paying the dispossessed. They may also identify and designate land for the resettlement of the dispossessed (Figure 1). The MLHHSD for its part is the actor responsible for many key processes such as assessing and determining whether or not the land in question can be acquired and for gazetting the decision to expropriate the land. Often it also mobilises funds for paying compensation.[6]

The role of the grassroots leaders at local community level, i.e. at Mtaa and Ward levels, is to support and facilitate the execution of the land acquisition process. They mobilise residents including informing land occupiers about the various government decisions pertaining to land development such as land use planning, change of use, or plans to expropriate land for public use.

A critical observation worth mentioning here is that a number of functions and decision-making powers pertaining to land acquisition and management are centralised in the MLHHSD. With respect to land conflicts, at the Mtaa and Ward levels, there are Land Conflicts Arbitration Committees and Ward Tribunals respectively. Cases which cannot be resolved by the latter are referred to the court of law. Generally, the performance of public land management and land conflicts resolution systems in the country has been poor.

1.5 Conceptual concerns

The most important justification for the acquisition of land for public use is for protection and enhancement of benefits to the wider community or society. It is therefore argued that the state, using the *powers of eminent domain* can - and should - have the authority to acquire or purchase privately held land or property for the utility of the general public. The economic justification for the deployment of compulsory acquisition is to ensure that *public interests* or projects such as economic ventures, public infrastructure development (e.g. highways, water pipelines, electricity), or the provision of social services such as the construction of schools and hospitals which cater for the wider public interest are not frustrated by an individual refusal to sell land to the government at a reasonable price (Miceli and Segerson, 1999: 239 cited in Ndjovu 2003). If the public cannot access land forcefully, individuals could block social projects or demand unrealistically high sums, which the public cannot pay *(ibid)*. Therefore, this provision is intended to ensure that an individual cannot veto the acquisition of land by the state because of self-interest or other motives including profit maximisation.

In this respect, the loss to individuals resulting from acquisition by the state is justified by the tangible and intangible gains by the community (Ndjovu, 2003: 18)

[6] As well as for purchasing the land required to resettle the dispossessed households, if it decides to provide land to resettle displacees.

This, however, is subject to the provisions and protocols outlined in the law including mandatory payment of fair compensation to affected households. Compensation first aims to protect socially and legally recognised rights, second, the spirit is to ensure that the dispossessed are restored to the position they were in before the acquisition of land by the state. In other words, an individual ought not to gain or lose from the decision by the state to acquire his or her land for public interest. In democratic states, governments have evolved protocols for participation and negotiation between sitting land occupiers and the state, thus the use of the powers of eminent domain or forceful acquisition is seen as a last resort. Despite elaborate protocols and statutory provisions, acquisition of land for public use is one of the most contentious undertakings primarily because of the intractable problems to which it often gives rise. These include excessive bureaucracy and delays in compulsory land acquisition projects, weak coordination between actors, alienation of local communities (including land occupiers) and disregard of social costs such as disruption of social networks and the livelihoods of the dispossessed land occupiers (World Bank, 1990; Olima and Syagga, 1996). This apart, often decisions taken by bureaucrats on behalf of the government seem to ignore the democratic rights of the wider community of land occupiers.

1.6 Sources of data

The main issue driving the discussion in this paper concerns the contentions and unresolved conflicts which have increasingly emerged in regard of acquisition of urban land for public use in Tanzania. The aim therefore is to explore the nature of the contentions and the kind of measures that are required to mitigate them.

The findings presented here are drawn from studies conducted in the three peri-urban settlements of Msikitini, Chasimba and Kwembe in Dar es Salaam city, Tanzania.[7] Field studies in the three areas were undertaken between July 2007 and August 2009; during the first quarter of 2010, field follow-ups were made.

In each area, 50 household interviews were conducted mainly with heads of households and some tenant households. Face to face discussions were conducted with key informants - community leaders, opinion leaders and elderly settlers, as well as with public officials at the Kinondoni Municipal and at the Ministry (MLHHSD). Focus group discussions and local consultative workshops were held with selected groups involving residents and community leaders. Whilst local leaders were ready to be quoted and their names mentioned, many respondents requested that their names be kept anonymous due to the unresolved court case.

The first two settlements of Msikitini and Chasimba (Section 2.1), represent cases where a private cement manufacturing company the Twiga Portland Cement Company (TPCC, formerly the Saruji Corporation) tried to acquire land from sitting land occupiers. The other case of Kwembe (Section 2.2) refers to a situation where the government resolved to apply compulsory acquisition in order to expropriate land for a new medical university.

[7] This paper is extracted from a three year study funded by DFID and undertaken in collaboration with the Crisis States Research Centre at the London School of Economics & Political Science.

2.0 Empirical findings

2.1 Msikitini and Chasimba Case Studies: Expropriation of Land for Industrial Use

2.1.1 The genesis of the land conflict

The two settlements of Msikitini and Chasimba are located 20km north of Dar es Salaam city centre along Bagamoyo Road (Map 2).[8] According to aerial photographs, until late 1960s the land that comprises the two areas was largely unbuilt with only a few scattered homesteads and farms. It was built up starting from the late 1980s, mainly by indigenous land occupiers. In 1993 the Saruji Corporation, a public institution which was operating the cement factory nearby, negotiated with the landholders to acquire their land so that the Corporation could expand and diversify their operations. With this extension, the total amount of land held by the cement company would add up to 61 square kilometres. According to the Msikitini Sub-ward leaders and residents the negotiations were conducted by the local leaders, at the Sub-ward, Ward and Divisional levels on behalf of the Saruji Corporation.[9] Records show that in 1994 a total of 183 sitting land occupiers were paid compensation for un-exhausted improvements such as buildings and plants but excluding the land itself. This was in accordance with the provisions of the Land Ordinance Cap 113 of 1923.[10]

According to the 1979 Dar es Salaam Master Plan, the areas occupied by the two settlements were part of a large tract of land designated for industrial use. At present, the areas accommodate a total of 4,000 people or 800 houses. The current population includes many new immigrants and second- generation allottees who did not own land in 1994 when the Saruji Corporation is reported to have paid compensation to some of the sitting occupiers. Whilst many among the current land occupiers in the disputed area are former employees of the Saruji Corporation (now Twiga Portland Cement Company)[11], a few are tenants who migrated from other areas of the city in search of building land and employment opportunities. Some of the settlers are still employed by the cement factory; but the majority work in the informal sector related to cement production, such as loading and unloading cement from trucks and brick making. Others are engaged in petty trading; gardening; poultry keeping and in repair and manufacturing workshops.

Chasimba (Map 1) settlement comprises predominantly small (2 or 3 room) single banked houses of poor construction and finishing. The area lacks basic social services and facilities and overall it depicts a typical low-income area. Msikitini on the other hand comprises many high quality houses with better construction materials, finishing and several utility services including electricity and potable water supply and it accommodates both low and middle income households.

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[8] According to field studies, Msikitini is an indigenous settlement which existed already in the early 1950s, whereas Chasimba is a fairly recent settlement which emerged from the 1990s onwards.

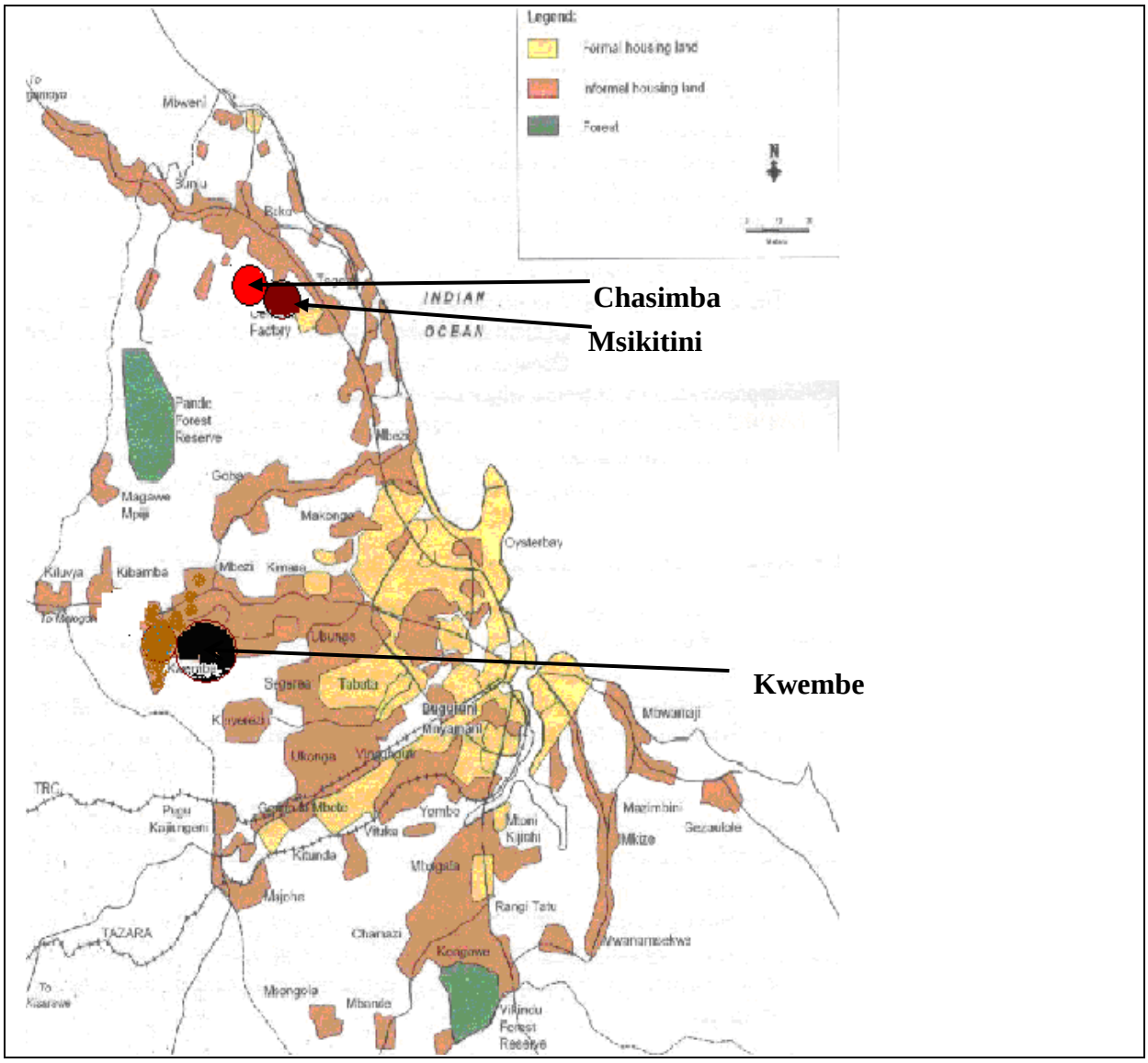
[9] Saruji Corporation was found in 1965 as a government owned cement production company.

[10] According to the Land Ordinance Cap 113 the compensation payable covered only un-exhausted improvements, as land was considered to have no monetary value and to be non-marketable. The Land Act No. 4 1999 repealed the Land Ordinance Cap 113, and recognised the value of bare land.

[11] Following the economic reform policies which theTanzania government started implementing from the mid 1980s, in 1998 the Saruji Corporation was privatised and the name changed to Twiga Portland Cement Company (TPCC); at present the majority shareholder is Scancem of Norway.

Map 1: Location of the study settlements

Source: ARDHI



Large tracts of land in Chasimba remain unbuilt and unattended to. According to the interviews, some of the unbuilt plots are held by absentee landlords, suggesting that there may be speculators on the land in dispute. According to the Msikitini Sub-ward leaders, TPCC officials who were willing to speak to the author (*but on the condition of anonymity*) and the Kinondoni Municipal officials, in the early 1990s TPCC had successfully negotiated with the sitting land occupiers in two settlements adjoining the factory area, and paid them compensation but the dispossessed requested TPCC to allow them to continue using their houses and the land until such time as TPCC would require it for the intended development. The interviewed land occupiers in Chasimba, however, adamantly denied that they were paid any compensation or sought permission from TPCC to use the land, which they claimed to have occupied for many years. During the focused group discussions with Chasimba leaders in March 2008, a middle-aged man charged: *"Claims of compensation by the TPCC for our*

land is a lie. If they can show that anyone of us here did receive compensation from TPCC we will all vacate this area immediately.[12]*"*

This argument sounds logical if one considers the Msikitini leaders' statements to the effect that most of the present Chasimba inhabitants settled in area after the TPCC had acquired the land in 1994 and thus they could not be among those who received compensation.

On their part, Msikitini settlers asserted that they got compensation but complained firstly that it was a pittance and unfair. Further they contended that the agreement to allocate them alternative plots (resettlement area) in Block G and F in Tegeta area about 2 kilometers away, was not fulfilled by the TPCC. Documentary evidence, including minutes of the proceedings of the meetings held between TPCC and residents, shows that some land occupiers who had only farm land were paid as low as TShs. 1,000/= (equivalent to US$ 1.5 in 1994); whilst some of those with land and houses were paid TShs 36,250/- (i.e. approx. US$ 56)[13] an amount many respondents argued could not resettle even the smallest household. Asked about whether they were given an opportunity to appeal, all respondents said that there was no room for discussion because they were not in direct contact with the Saruji Corporation, the Kinondoni Municipal Council (KMC) or the Ministry of Lands (MLHHSD) officials. They said that payments were made by the Saruji Corporation cashiers, without involvement of government officials from the municipality or the Ministry of Lands, Housing and Human Settlements Development (Figure 2).[14] They added that those who were adamant to take their cash compensation were cajoled by the local leaders to accept the money.[15]

According to the local leaders, the average size of landholding when negotiations were going on with Saruji Corporation was between half and three quarters of an acre, with the majority occupying half an acre. There was neither any written document nor evidence to support the claims about the promise by TPCC to provide land for resettlement nor were any to support TPCC's claims that the settlers were granted temporary occupation or use rights only.

It is also noteworthy that although TPCC processed and acquired a new title for their land holding including the two disputed areas in 1994, it was only in 2003 that it sued the inhabitants, for refusing to vacate the land after they were compensated.

According to the judgement on the legal suit filled by TPCC, in October 2006, the High Court labelled the sitting land occupiers as trespassers who had been compensated but had resisted vacating the land. However, settlers in both areas maintain that they are neither invaders nor trespassers. Many asserted that they were occupying their ancestral land; others argued that they have been legal occupiers of the disputed land since 1976 when their land holdings were registered under Boko Village, a village established under the Ujamaa Village No. 21 of 1975, with certificates No. VIJ of 1976.

For his part, the TPCC Executive Director in an interview with a Norwegian reporter about this conflict was quoted to have said that TPCC did not acquire the disputed land in 1993. Adding that TPCC had nothing to do with payment of compensation to the displacees as

[12] Focused Group Discussions with 12 Chasimba residents and leaders March 2008.
[13] Then, 1 USD was equivalent to TShs. 650/=.
[14] Normally, payments of compensation to persons affected by a decision to acquire land for public use are made by the respective local government officials. Local governments are normally actively involved even if the land is being sought by a private investor.
[15] Discussions with Msikitini CCM (Party) Secretary, July 2008 .

whatever their property was, it was expropriated by the Government of Tanzania, the proprietor of Saruji Corporation. Before privatisation in 1998 the Government was the sole owner of the cement factory.

2.1.2 Did the conflicts disrupt peace and security?

According to interviewees, the inhabitants lost the case they had filed with the Tanzania Court of Appeal in January 2007. This ruling gave TPCC the right over the land implying that the sitting occupiers could be evicted. In addition, the respondents were required to pay damages to the TPCC amounting to US$80,000. Following the court ruling, TPCC was reported to have sought support from riot police to enforce the order and forcefully evict the trespassers. This was the source of open confrontation leading to clashes between police and the inhabitants. The respondents in Chasimba and Msikitini reported that the police were forced to use tear gas to disperse settlers who were armed with sticks and stones. During this period, local newspapers carried wide coverage of the conflict between the police and the settlers. The confrontation seems to have prompted a group of women from Chasimba to organise a protest in front of the State House in Dar es Salaam in May 2007 aimed at registering their disapproval of the police action in raiding their area and pressurising the government to intervene to restore peace and security. In the meantime, the residents filed an appeal against the court ruling.

In December 2007, a new Court Order directed that the land occupiers continue occupying the land until their new appeal was determined. According to the interviews with Msikitini and Chasimba settlers, the Regional Commissioner and the Commissioner for Lands stepped in at the peak of the confrontation and called for a stay of the court order whilst a peaceful resolution was explored. Meanwhile, a Norwegian reporter who managed to interview the TPCC Executive Director reported that TPCC management had threatened to halt the planned expansion of the factory if it lost the court case. Considering that the threat was issued at a time when the TPCC controlled around 40 per cent of cement production in the country, it would appear this was a move aimed at twisting the government's arm to act in their favour, a step that could undermine delivery of justice.

Despite being the custodian of land in dispute, Kinondoni Municipal Council (KMC) did not play any direct role in the conflict. Recent discussions to find why did KMC not take action to re-possess the land allocated to TPCC on the grounds that the allottee has failed to develop it commensurate with the requirements the planner was rather adamant on this issue but noted in passing: "we are usually very careful when dealing with investors[16]; suggesting that the law was not invariably being enforced.

The attempts by TPCC to forcefully evict settlers without giving them time to collect their belongings may sound justifiable given the court order. However, it also raises questions on moral grounds, particularly because no considerations were given to provide land for resettlement. It is also not clear why the TPCC applied for the change of land use from industrial to residential, but thereafter kept the land open (undeveloped) for so long. Could it be that TPCC was speculating in order to make windfall profits?.

[16] Discussion with KMC Planner in March 2010, at the KMC headquarters.

2.1.3 Residents' views and perceptions about the key parties involved

- The TPCC attempt to forcefully evict the settlers was reported to have been the key factor that provoked violence. Most landowners in Msikitini and Chasimba criticised TPCC for not being concerned about their suffering if they had to vacate the area without land for resettlement. Other criticisms raised related to failure to engage with them in dialogue or honour an earlier agreement to resettle displacees in the nearby Block F and G in Tegeta area. Respondents also alleged that the TPCC management had corrupted some of the local leaders who negotiated with landholders on TPCC's behalf. These accusations could not, however, be confirmed.

- The Central Government actors (Commissioner for Lands and the Dar es Salaam Regional Commissioner) and the ruling Chama Cha Mapinduzi (CCM) have been particularly hailed by the Msikitini residents for halting the Court Order whose implementation would have provoked more violent protests. The role played by Kinondoni Municipal Council in the conflict has, on the other hand, been received with mixed feelings. Some claimed that the Council was adamant because of vested interests in the land in question. Others accuse the KMC Mayor, the local Member of Parliament and municipal bureaucrats of deserting them at a time when they most needed their support.

  The conflict assumed political overtones when the political parties, namely the Civic United Front (CUF) and the Chama Cha Demokrasia na Maendeleo (CHADEMA), prudently and successfully took advantage of the conflict to mobilise political capital by supporting the residents in Chasimba and encouraging them to stand firm and resist eviction. During the interviews with the Msikitini Sub-ward leaders there were converging views that Chasimba settlers decided to defect and join the opposition parties (CUF and CHADEMA) because these two parties had shown sympathy.

  According to the Msikitini settlers and leaders, it was the political events that took place in Chasimba, especially after many residents defected to join the two opposition parties, and the subsequent election of Sub-ward leaders from among the opposition party CUF members, that alerted the ruling CCM party to support Msikitini residents who were under immense pressure because the TPCC wanted to evict them. The influence and popularity of the CCM party was reported to have been highest in Msikitini after the intervention by the government and the suspension of the court order. In short, the dispute seems to have been used as a political capital to consolidate political interests.

- Whereas few Mtaa and Ten Cell leaders enjoy a high degree of confidence from the residents, others, notably those still employed by TPCC, are seen by aggrieved residents as traitors and puppets of their paymaster - the TPCC.
- As for the public media actors, in general the residents' feelings are that they did a commendable job of informing and educating the public about the situation particularly on matters pertaining to their democratic rights.

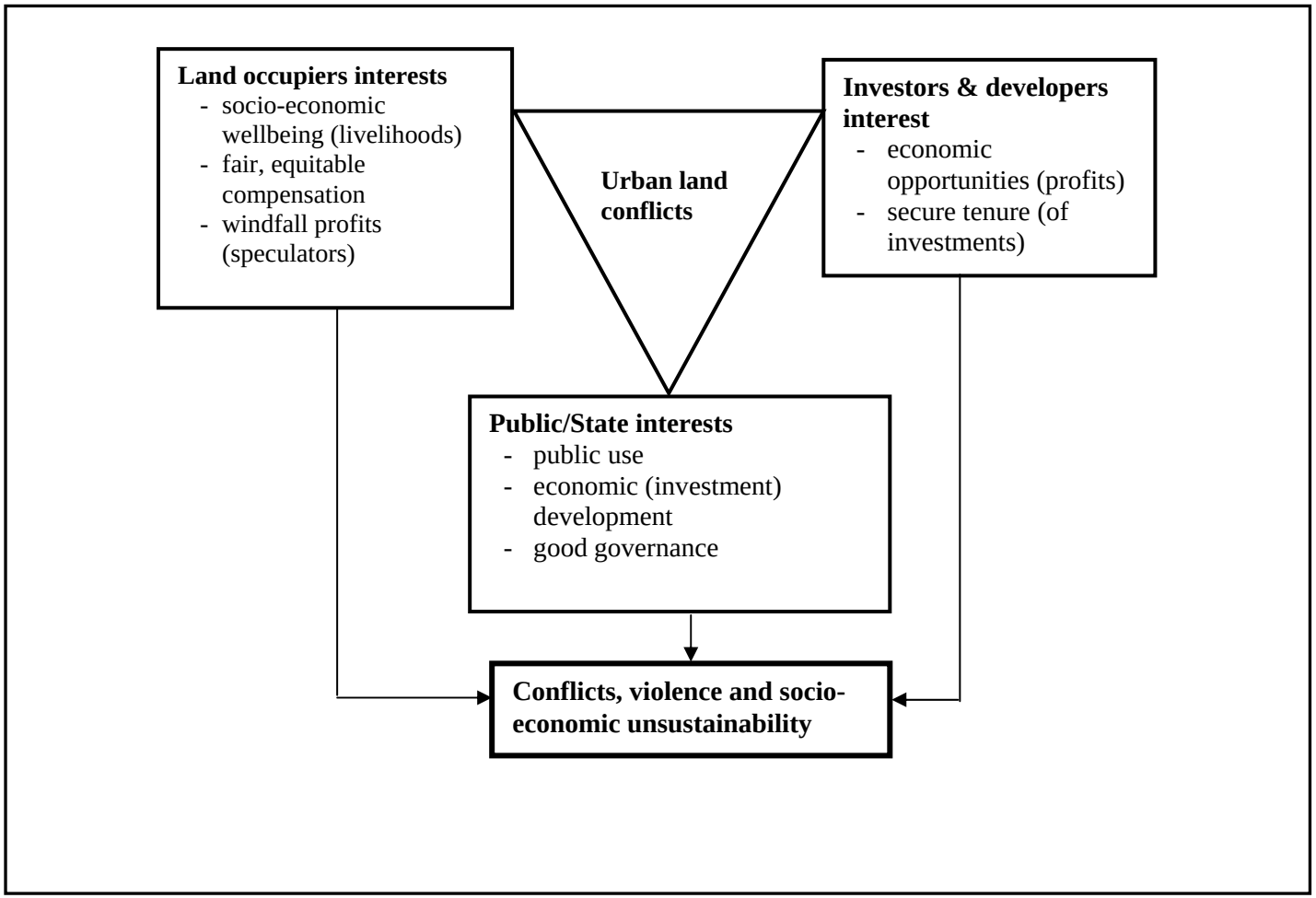
Central to both the Land Acquisition Act 1967 and the Land Act 1999, is the requirement that an individual whose land is appropriated for public use to be paid fair, full and prompt compensation. The compensation ought to restore dispossessed households to the same

positions as they were in before the dispute.[17] It is unfortunate that the decisions and actions in Msikitini and Chasimba settlements do not seem to have met this condition.

Failure to pay fair and equitable compensation and provide an alternative land for resettlement were major sources of conflict between the residents and the TPCC. One may also add that as long as laws are selectively enforced, procedures disregarded and the conditions for restoring the dispossessed to the condition they were in before the acquisition remain unfulfilled, good governance can hardly be said to have been practiced.

[17] Although the spirit of the two Acts is to restore displacees to the same position, this is not always possible for various technical reasons. For instance, the real estate market and especially the housing market in Tanzania is still very underdeveloped. As a result, it is unlikely that a household which has lost its original property will find a similar property to buy on the open market; moreover, the compensation paid is often insufficient and is not intended to facilitate the erection of a new structure even if land would be more less freely granted.

Figure 2: Key actors and interests in the land conflicts



2.2 The Kwembe Case Study: Expropriation of land for a Public University

2.2.1 The nature of the land dispute in Kwembe

Kwembe settlement is located in Kibamba Ward, a peri-urban area about 22 km from the city centre (Map 1) . According to the 2002 National Population Census, Kwembe had 4,560 inhabitants and at present it is estimated to accommodate over 6,000 persons. The population has been growing steadily over the last two decades, primarily due to immigration from other parts of the city. According to an elderly settler, many among the indigenous ethnic settlers namely the Zaramo, Makonde, Yao and Matumbi have been displaced; mainly through informal land transactions. Apart from scattered residential units, the main land use in Kwembe is agriculture. A typical plot size in Kwembe ranges between two and three acres, although some occupy less than an acre. There are also a few absentee landlords, many of whom are civil servants.

The Kwembe land conflict can be summarised in three different but interrelated conflict phases, namely: the TPL/KABIMITA era, the Tanzania People Defence Force (TPDF) phase and the current MUHAS phase. The conflict is mainly between the Kwembe residents and the Muhimbili University of Health and Allied Sciences (MUHAS). MUHAS regards the residents as trespassers on the land that was legally allocated to it by the Ministry of Lands (MLHHSD). The residents on other hand, claim they are the rightful occupiers and have refused to vacate the area because statutory procedures for acquiring the land for public use were not followed.

The Kwembe Sub-ward leaders and settlers who were interviewed reported that the land conflict goes back to 1978 when the village granted TPL/KABIMITA[18] eight hectares of land for holding cattle before they were taken to the slaughter house at the then Tanganyika Packers Company Limited in Dar es Salaam. At that time, Kwembe was a registered village with registration No. VIJ.41 of 1974. The administration of 8,479 hectares of land under the village was at that time vested in the Village Council, in accordance with the Ujamaa Village Act of 1974. It was through this mandate that Kwembe Village Council granted TPL/KABIMITA 8 hectares of land, on condition that the company compensated the residents whose land would be appropriated.

According to the interviews, when TPL/KABIMITA went bankrupt in the 1980s, it closed operations and left before paying the previously agreed compensation or surrendering the land to the Village Council. This was reported to have been the beginning of the land conflict in Kwembe. Later, the land that was occupied by TPL/KABIMITA was allocated to the Tanzania People's Defence Force (TPDF) Kisarawe Division by the Ministry of Lands, Housing and Human Settlements Development (MLHHSD). This was reported to have been done without informing or consulting the Village Council. However, for unknown reasons, the TPDF soon left without any significant development on the land.
Whilst it has not been possible to establish whether or not TPDF still has any claim or interests over the land, in another interesting development, the Ministry (MLHHSD) reallocated the same land to MUHAS in 2004.[19] To make matters worse, while the

[18] TPL/KABIMITA was a public organisation and a subsidiary of the Tanzania Packers Limited (TPL) a beef canning factory. KABIMITA was established *inter alia* to buy and transport cattle from upcountry to the factory in Dar es Salaam.
[19] An undated public notice issued by MUHAS that was posted at the local office in Kwembe showed that in

TPL/KABIMITA holding measured only 8 ha, MUHAS was allocated over 3,000 ha for the construction of the new Medical University Campus. This includes large tracts of land currently occupied by various Kwembe inhabitants. The respondents added that MUHAS has not shown any serious desire to engage in discussions and negotiations with them, ostensibly because they consider them to be trespassers.

2.2.2 The big (land) question

In principle, the land that was granted to TLP/KABIMITA by Kwembe Village Council was still the legal property of the Village Council when MLHHSD reallocated it to TPDF and later to MUHAS, because TLP/KABIMITA had not settled the outstanding third party claims. Therefore any attempt to re-allocate it to any other party, TPDF included, can be construed as a violation of the land rights held by Kwembe residents. Whilst the public retains the right to access land required for public use, the MLHHSD reallocated land to MUHAS before extinguishing the rights held by the land occupiers and without involving them in decision-making processes. Moreover, the allocation included large tracts of land that are currently occupied and used by the residents for housing and livelihoods activities. The decision to allocate, transfer and demarcate the land in dispute commenced before an agreement was reached on the amount of compensation payable, contravening the Land Act No. 5 of 1999, Section 4(6), which prohibits the transfer of land belonging to Village Authorities before an agreement is reached regarding compensation. In this respect, the residents' reactions and the ensuing conflicts can hardly be considered unexpected since, apart from the fact that the disputed land is the source of livelihoods including income and employment generation activities, the basic principles guiding acquisition of land for public use were violated.

The land conflict between the Kwembe residents and MUHAS reached such proportions that it had the potential to explode into violence and breach of the peace. According to interviews with Kwembe residents, some of the more violent conflicts included an incident when residents lost their temper and threw stones at the District Commissioner when he told them that they had to vacate the land. On another occasion land occupiers took captive the land surveyor who was engaged by MUHAS to demarcate the area, prompting police intervention (Figure 2).

Attempts to solve the Kwembe land conflict have involved many actors at different decision-making levels. These have included administrators and high-ranking officials from the MLHSD, the Regional Commissioner Office, the City Directorate, the Municipal Authorities, Ward and Mtaa leadership. Politicians, as well as some influential individuals, have all become involved with the problem. As in the Msikitini and Chasimba cases, these efforts have in most cases been of a spiral type demonstrating no genuine recognition and appreciation of the rights and value of peri-urban land and the limited alternative sources of livelihoods available for the affected households, many of whom are amongst the urban poor.

Many respondents complained that government officials addressed them as if their land had no value. They added that in one incident they were told that their land had been allocated to MUHAS and so they should simply vacate the area to allow MUHAS to go ahead with its plans of developing it. During the focus group discussions, one of the respondents charged: "*How can somebody ignore one's right so easily? We have lived hear for years, we are*

2004 MLHHSD granted the land under dispute to MUHAS. The notice was intended to warn sitting land occupiers against development, subdivision and selling of the land within the disputed area.

citizen of this country, but somebody wants to kick us out as if we are refugees. We will not leave unless justice is done to us" .

Many respondents repeatedly complained that they have not been treated with respect as property/land owners.

3.0 Discussion

The impasse created by the conflict has rendered the land underutilised. No new building development or serious farming activities could be conducted and no improvement of existing properties could be undertaken as long as the conflict persists. Above all, the planned land use, which aims to serve wider public interests could not be carried out. From the socio-political point of view, the conflicts have damaged the relationship between the residents and their government. The conflicts have also threatened peace and security in the area; as well as interfered with the basic rights of land occupiers. Politically, the conflict seems to have eroded confidence and undermined the credibility of the bureaucrats as well as the government.

Whilst the predicament in which the communities of the study settlements find themselves and the associated psychological trauma has multiple causes, one can identify several factors which have moderated the conflict and determined whether or not they escalated into violence. These broadly include private property rights; governance and the integrity of bureaucrats; manoeuvre by political elites; and land policy.

3.1 Threat to peace, security and private property rights

The implementation of decisions intended to achieve public interests in land use development and facilitate socio-economic improvement, have resulted in the mishandling of third party interests. This is at the heart of the conflict that emerged between the state and would-be large scale investors on the one hand, and land occupiers on the other. The decision to expropriate land and eventually evict the settlers of Msikitini, Chasimba and Kwembe was done without their direct involvement. The tendency to evict sitting land occupiers without abiding by the statutory requirements including payment of fair and prompt compensation, payment of transport costs and disturbance allowance, or without dialoguing with land occupiers as the three cases invariably show, are not experiences limited to Tanzania. Similar incidences have been reported in other countries including Ghana and Nigeria (Ndjovu, 2003). In Ghana appropriated households are given opportunities to seek professional valuers' advice and support. The latter lodge claims for compensation with the Land Valuation Board (LVB) on behalf of the affected persons (Larbi, 2008). As noted, unfortunately this is not the practice in Tanzania.

Moreover, normally only land occupiers are paid compensation, therefore tenants are excluded. This tends to leave a large proportion of the tenant settlers helpless or destitute, particularly because many are likely to lose their sources of livelihood. As in many other land acquisition initiatives, there has been a failure to translate policy and legal provisions into action and to provide "fair and prompt" compensation to land occupiers affected by land expropriation decisions, as well as the restoration of displacees to the same position they were in before their land or property were acquired.

The land conflicts in Kwembe, Msikitini and Chasimba areas which date back to 2002/03 and 1996 respectively were fuelled by the lack of transparency in land acquisition processes. For instance, in Kwembe neither the landholding households *nor* the local leaders at Mtaa level were involved in decisions that preceded valuation of their property. According to the interviews, the local communities in Kwembe learnt about the plan to evict them when they saw surveyors demarcating the boundaries of land granted to MUHAS. Worse, the property owners were not informed about the approach to, and valuation method used, to compute the compensation payable. Their participation was limited to filling in Forms Number 69 and 70, which among other things require affected persons to indicate the amounts they would expect to be compensated, However, their proposals did not in reality influence the valuation determined by the government valuers.

Access to, and occupation of, land is fundamental and indeed a *raison d'etre* of social and economic wellbeing. Attempting to evict poor urban communities whose safety nets and livelihoods are already so fragile[20] without preparing them psychologically, or involving them in the process, and without paying them an amount that can restore them to the same position as required by the law or not allocating them an alternative land for resettlement appears both undemocratic and unfair. Disrespect of property rights and unfair practices hit the poor hardest and exacerbate social exclusion (Altenburg and Drachenfels, 2006). Furthermore, the extent to which such rights are recognised and respected, particularly by the institutions responsible for land administration, has an impact on the investment in land by the poor (Selod and Durand-Lasserve, 2009), and on the overall urban sustainability.

3.2 Poor governance and integrity of bureaucrats

Good governance principles require that state actors including bureaucrats act in a transparent and predictable manner. It also calls for the rule of law and advocates substantive involvement of affected persons in matters that concern them. As noted in Kwembe settlement, there have been erroneous interventions, both by state actors (MLHHSD and Kinondoni Municipality) and the would-be large scale land developers, namely MUHAS. In most cases the bureaucrats seem to have been largely inspired by technical rationalism with little or no concern for engendering collaboration and negotiating with the land occupiers. Putnam's (1977) assertion that technical and exclusive knowledge among specialists, bureaucrats and administrators is a mechanism by which power is usurped from democratic processes underpin the practices observed in the case studies.

The violence that followed attempts to forcefully evict Msikitini and Chasimba settlers and the hostility that ensued the initiative to acquire land in Kwembe settlements share a common denomination of underestimating people's rights, such as the right to be informed about what is going on or decide what will happen to their hard-earned lifetime properties. Had the residents been substantively involved, counselled and educated, they would have been psychologically prepared to make their choices, prepare themselves and come to terms with the news, however bad it might have been. One might question why the valuation process should be treated as a secret matter among those who are affected directly. The professionals and bureaucrats involved went ahead with getting the settlers of Kwembe, and Msikitini to sign up to official forms (Form No 69 and 70) and take their compensation cheques without prior consideration of an alternative resettlement area and without providing an explanation to justify the amount paid. As noted, information and decisions on issues such as land use

[20] Especially due to the increasing food prices and increasing urban unemployment.

planning and acquisition protocols were kept confidential even from those who had investments and other rights on the land. This shows a lack of transparency and accountability on the part of the policy makers and professionals involved.

The Land Act of 1999 has recognised and assigned value to bare land. This in turn, has accentuated commodification of land and enhanced the perceived value of land. An elderly respondent in Kwembe, who complained about the attempts to evict them without consensus on the amount of compensation payable noted:

> *"Had we not known the value that our land has we would not have settled here already in the 1970s when the area was infested by wild beasts including dangerous snakes. We have survived the growing economic hardships in the city because we have this land were we grow food for our families. You see, I had plans to subdivide and allocate to my elder son, now I cannot do this. We know they want to evict us, but not without taking these realities into account".*

Another respondent added:

> "*This land is invaluable to us, to our lives and the lives of our children, without it we can not survive, in the city where there is no employment where the rich are getting richer and the poor poorer".*

A settler from Chasimba echoed the foregoing noting:

> "*Government wants to take our land more or less freely and allocate to aliens. If we do not win the case in the court, we will fight whoever tries to evict us forcefully".*

These quotes are but snapshots of the multi-faceted significance and value that land has in the lives of the land occupiers. Landowners attach more than just monetary significance to their land, including invaluable social sentiments or assets, many of which are scarcely appreciated by the valuers. The views given by the municipal planner at Kinondoni who was responding to the question: 'What options are there to solve the Msikitini and Kwembe land conflicts?' further illustrate this:

> *"There is a rapidly growing culture of disobedience on the part of city residents. In recent years we have seen people simply refusing to abide by lawful government directives. We have to act (stop) on this, otherwise lawlessness will prevail".*

Judged by the public handling of the cases, the quality of governance has been put to question, especially by the tendency among bureaucrats to ignore statutory provisions including constitutional rights of the sitting land occupiers to be involved in decision making. One of the possible undesirable outcomes includes loss of public confidence in state machinery for land administration.

3.3 Politicisation of the conflict: a blight or blessing?

Allocation of, and access to, resources are often political matters. This is even more so in cases where varying power groups are contesting for limited resources. In the context of the study areas, change of land use and transfer of occupancy rights imply the loss of assets and livelihood activities from which many poor households eke a living. The change would also

mean loss of wealth earned and accumulated over many years. As observed, many land occupying households were desperate to retain their land and only give it up in exchange for a fair and equitable compensation and an alternative resettlement area. At the height of the land conflict in Chasimba, the settlers anxiety to get whatever support was available to pursue their cause seems to have created conditions ripe for partisan politicisation of the conflict which was initially restricted to the main opposition parties the Civic United Front (CUF) and the Chama Cha Demokrasia na Maendeleo (CHADEMA).

Faced with such a serious problem, the community sought refuge outside the ruling party structures; largely because they perceived the latter to be acting against their interests. Discussions with Wazo Hill Sub-ward leaders revealed that the opposition parties, especially the CUF, fully backed their new electorates in various ways, including logistical support to members to pursue their case with higher levels of government or judicial organs. Moreover, the Msikitini community leaders asserted that for a long time Chasimba was a no-go area for some of their colleagues simply because they were members of the ruling party and as such they were considered rivals. Even though one cannot directly associate all these events with partisan politics, the political environment that unfolded following the decision by the Regional Commissioner and the Commissioner for Lands to intervene and suspend the decision to execute the 'court order', suggest a link. As noted, the intervention came at the height of the partisan orchestrated changes in Chasimba area. Wazo Hill Sub-ward leaders asserted that since the government leaders stepped in to stop the execution of the court order, many people restored their trust in the ruling CCM party. One of the leaders noted, *"CCM is our party, we are still living here today because of the party concern and support"*. The legality of the action taken by the party and the government officials in suspending the execution of a lawful court order is contestable and beyond the discussion here. Suffice to note that politicisation of public policies, including land policies does not bode well for overall non-partisan, fair and equitable governance.

3.4 Public policy on land ownership – does it make a difference?

The radical land title in Tanzania is permanently vested in the state and as such individuals have only rights to use and occupy it for a defined period. The spirit of the Land Policy (1995) and the Land Act (1999) in this regard is to guarantee public rights in land use. One would therefore presuppose that this public land ownership policy would make it easy for the state to access land and make it available as and when it is needed. However, as the case studies demonstrate, the state did not find it easy to appropriate land, despite this policy. The general trend does not bode well for the future and suggests that a serious re-appraisal of policy and other institutional frameworks is required.

Until very recently Village Councils in the peri-urban areas were the main authorities responsible for land within their areas of jurisdiction. This was the case particularly in villages established during the Ujamaa Villagisation Programme of the mid 1970s.[21] Prior to the enactment of the Land Act No 4 and 5 of 1999, non-marketability of land was the principle tenet of the government policy, even though this principle was not written anywhere (Ndjovu, 2003). Perhaps one of the glaring outcomes of the Land Act 1999 is the catalytic effects it has had on land markets, and speculation particularly in the peri-urban areas of the rapidly growing urban centres *(ibid).* Today, almost every piece of land in the peri-urban areas is owned by someone. In most cases land-holding households, especially speculators,

[21] Prior to the declaration of planning areas, Kwembe settlement and the proposed Luguruni satellite town were both part of the former Kwembe Village.

erect limited or scanty developments, just to ensure they retain the land until they receive a good offer for it (Kombe, 2006). In view of the paucity of public resources, there are doubts and constraints about the prospect of public landownership in Tanzania that might facilitate easy access to land. This is particularly so because after the enactment of the Land Act 1999, land in both urban and rural areas has been highly commodified. It would appear that for too long bureaucrats and policy makers have turned a blind eye to the unfolding reality, presumably because of the legacy associated with public land ownership.

4.0 Conclusion

Until very recently land located not far from the consolidated urban centres was easily available to individuals, including the poor, in most urban areas in Tanzania. However, now it is only available at much higher costs and largely in remote areas, further away from the consolidated urban areas and basic services.[22] Easy access to alternative land in the past seems to have been an important factor that made many dispossessed households react tolerantly as they could move a few kilometres away and still access land easily and more or less freely. Since the enactment of the Land Act no. 4 of 1999, this situation has changed radically.

Land has been and remains the single most important asset for a poor urban household's survival in the hostile economic environment. In fact when the macro-economy almost faced collapse in the 1970s and 1980s, individuals and households, both the poor and not poor, adjusted through subsistence farming and informal income and employment generation activities (Ndulu, 1996). To date, many low-income households in cities in the country including peri-urban areas of Dar es Salaam grow cassava, maize, beans, vegetables, fruits, coconut and sweet potatoes to complement their food and income sources. Land is therefore a crucial shock-absorber and a safety net that helps cushion socio-economic hardships. With increasing food prices, land is likely to become even a more critical asset for the survival of rapidly growing poor households especially in the peri-urban areas. Needless to add that many poor households that occupy land especially in the easily accessible peri-urban areas are aware of the value their land commands, as many have used it as a collateral and exchanged or sold part of it to meet social-cultural commitments (Kombe and Kreibich, 2000).

Compulsory acquisition is no doubt a critical policy instrument necessary to facilitate and protect public interests in land development. However, its application especially in areas occupied by the urban poor, without providing an alternative resettlement area or paying fair compensation is likely to make the livelihoods of many households more precarious. Continued conduct of 'business as usual', in other words disregarding land occupiers' rights and using coercive force to access land or resolve land-based conflicts further complicates the matter. It also underlines the insensitivity among bureaucrats about the strategic role land and especially the protection of private property rights play in maintaining peace and above all, enhancing livelihoods and sustainability particularly among the urban poor. The ensuing conflicts as observed in the three study areas and similar events that have emerged in recent years in Dar es Salaam and elsewhere in the country clearly suggest that current practices

[22] Individual rights to occupy and use such land, which is often acquired through the informal system, are often protected by social norms and actors at the grassroots level (Kombe and Kreibich, 2006). These social informal institutions have helped promote property rights even of the most vulnerable in the society who cannot pay prohibitive titling and registration costs..

regarding acquisition of land for public use are in conflict with concepts of good governance.[23]

The changed land policy and legislation and increasing constraints to land access for public use call for a rethinking of policy and practices regarding land acquisition. They underscore the need for a review of the top-down procedures and practices of land acquisition for public use, for more transparency and accountability and for recognition of the prerequisites for restoring sitting land occupiers to the same position they were in before their land was acquired. Lack of pro-poor policy and statutory provisions particularly in regard of bringing to the fore dialogue with expropriated households, predicable and sound sources of funding to pay fair compensation and resettlement modalities as well as the counselling necessary to prepare the affected households psychologically are critical areas that require urgent action. Without these considerations, many of the affected households will become impoverished and the negative effects on the dispossessed persons will only increase.[24]

[23] Often displaced households move further into the peri- urban area where they clear forests, bushes and establish new informal settlements; aggravating the environmental costs (Kombe and Kreibich, 2006).
[24] At the same time, the social stability and livelihoods of the poor would be grossly undermined (Selod and Durrand-Lasserve, 2009)

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