

**THE NEW KIGAMBONI CITY: PROSPECTS AND  
CHALLENGES**

**RESEARCH REPORT**

**By**

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## **List of Acronyms**

BOT	Build-Own-Operate-Transfer
BTL	Build-Transfer-Lease
BRAC	Bangladesh Rural Advancement Committee
BRI	Bank Rakyat Indonesia
CBD	Central Business District
CBOs	Community based organizations
CAP	Chapter
DRC	Democratic Republic of Congo
GHEA	Greater Horn for East Africa
GN	Government Notice
IACtHR	Inter-American Court of Human Rights
IDMC	Internal Displacement Monitoring Centre
KDA	Kigamboni Development Authority
MKUKUTA	Mkakati wa Kukuza Uchumi na Kupunguza Umasikini Tanzania
MLHSD	Ministry of Lands, Housing and Human Settlements Development
NALCO	National Aluminium Company Limited
NGOs	Non-Governmental Organizations
NSGRP	National Strategy for Growth and Reduction of Poverty
No.	Number
R.E	Revised Edition
R&R	Resettlement and Rehabilitation
SN	Serial Number
TALA	Tanzania Land Alliance
TISS	Tata Institute of Social Science
UNEP	United Nations Environmental Programme
URT	United Republic of Tanzania

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## **EXECUTIVE SUMMARY**

In early 2008 the government of Tanzania through the Ministry of Lands, Housing and Human Settlements Development –MLHSD, initiated a project to develop a new city at Kigamboni area in Temeke district of Dar es Salaam region. The reasons behind the decision were many but the most important factor was that the move would provide solutions to mitigate the urbanization problems of Dar es Salaam and its environs. Ideally the project is expected to generate significant social and economic benefits to the people of Kigamboni and, a relatively potential site for urban expansion of Dar es Salaam city. Implementation of the project is categorized into three phases from 2011 to 2020; 2021 – 2025 and 2026 to 2030 respectively.

While the Ministry is promising that very few displacements will take place in the course of project implementation, experiences from other projects of similar nature indicate that a lot of people were displaced from the project areas. It is on the basis of the foregoing that HAKIARDHI and TALA members engaged in a serious investigation to explore the current status of the project with a view to uncover the various land related challenges that are associated with this project to the resident communities of the project area and Kigamboni area in general.

The New Kigamboni City Master Plan's conception is based on six main objects as set out in the New Kigamboni City Master Plan Report. First, is the decision by the government through the Ministry of Lands, Housing & Human Settlements Development to establish a new satellite city – one with self identity but one linked with Dar –es-Salaam city, and able to accommodate more than 500,000 people by 2030. Second, the Master Plan concept is based on the current development status of Kigamboni as a planning area, hence the need to resettle its people and properties in order to implement new plans.

Third, is the need to achieve sustainable development and to promote economic growth of the new planned city taking into account the industrial sector of Dar-es-Salaam, the port and socio-economic activities of the proposed new city. The fourth basis for the Master Plan's conception is the fact that the new proposed city is an 'Eco-City' which is intended to exploit the available Kigamboni natural resources in a sustainable manner. The fifth object which stands as a basis for the Master Plan conception is the fact that the new city and Dar-es-salaam will need to play a major role as the eastern gateway to Tanzania and the rest of

African countries in terms of tourism and transport development. Finally, the Master Plan was conceived on the basis of the need to support and encourage social interactions of the people of Kigamboni through the new city structures and the community infrastructures to be developed.

Presently, the preparation of the New City Master Plan has been finalised and reports to that effect have been submitted to the relevant authorities. In the project area, according to information obtained during field survey conducted in the course of preparing this report, preliminary inventory of existing developments, in terms of the properties to be affected has been made. The level of participation of the local people in this exercise is, however, questionable. In view of this, people have a quite different perception about this project despite its overall good objectives.

Various policy instruments have been reviewed, which include; Tanzanian Vision 2025, MKUKUTA (2002), National Population Policy (2007), National Environmental Policy (1997), National Land Policy (1995), National Human Settlement Policy (2000) , Land Act, Cap 113 (R.E 2002) Village Land Act, Cap 114 (R.E 2002), Land Acquisition Act Cap 118 (R.E, 2002) and Urban Planning Act, Act No 8 of 2007. From the policy analysis, it is clear that the policy framework in place does generally acknowledge the importance of community participation. Public participation in developmental programmes enables the public to make informed decision; but it is also such participation that guarantees their right to information as stipulated in Article 18(2) of the URT Constitution. This participation is not only at the final stages but at the initial stages. A project that fails to follow the legal procedures risks the chance of lacking required legitimacy and hence unacceptable. Local communities and all required stakeholders need to be given opportunity to make informed choices regarding projects and developments that are to be carried out in their areas or likely to affect them. It would appear that the communities around were not involved although the government it now attempting to conduct series of workshops to raise the awareness of the project regarding the project. As will be seen in the report, projects of this kind not only affect lives of people in one way but multifarious ways. Some will have to be relocated, issues of compensation will have to come in but others will have to compromise they way of life and economic activities.

Various laws considered relevant were also analyzed. The Land Act (1999) provides for among other things fundamental principles of national land policy in Tanzania Mainland



under section 3 of the Acts. The section gives force of law to crucial principles of the National Land Policy (1995). It does so by adopting the principles of the National Land Policy as the objective of the Act. Hence, all persons exercising powers under the Act or applying or interpreting the Act must take them into account<sup>1</sup> failure of which will render any act or decision made challengeable. Under the Act, land occupiers are entitled to full, fair and prompt compensation where the right of occupancy<sup>2</sup> is revoked or interfered with to his detriment by the State under the Land Act or is acquired under the Land Acquisition Act 1967.<sup>3</sup> In assessing such compensation opportunity cost has to be taken into account. The major challenge on assessment has been on the reality of the so called market value. Sometimes the value has been fairly low below the market value or the assessment has failed to take into account all the aspects of opportunity cost. In some other cases the value estimated by the affected occupiers has been on the high side leading to disputes.

The Act has upheld the status of land occupiers and protected their rights. It does that by providing for essential principles which vindicate their right to participation, compensation and access to justice. But also being the first among equal on land matters it means that all policies and other laws must work for good to uphold its spirit. Any person executing a duty or assignment on land he has to ensure that he observes the fundamental principles of the National Land Policy.

The Land Acquisition is vital to be discussed. It has been seen that the Land Act vests all land in the President. In addition to the custodial duty of the President under the Land Act, he has also been vested with immense power to acquire any land for any estate or term where such land is required for any public purpose.

The Minister for Land is empowered to declare a scheme of redevelopment.<sup>4</sup> Where the Minister declares any area to be a redevelopment area, he must cause the area to be defined on a map and he must cause copies of the map to be exhibited at the offices of the local government authority within whose jurisdiction the redevelopment area or any part thereof is situated.<sup>5</sup> Subject to such declaration he may advise the President where necessary

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<sup>1</sup> Section 3(1) of the Land Act, 1999.

<sup>2</sup> Granted right or customary right.

<sup>3</sup> Section 3(1)(g) of the Land Act, 1999.

<sup>4</sup> Section 34 of the Land Acquisition Act (1967) Cap 118.

<sup>5</sup> *Id*

to acquire land, for the areas requiring redevelopment in urban areas.<sup>6</sup> In case of redevelopment, all interests in or over land within the redevelopment area, once acquired becomes extinguished.<sup>7</sup>

Apparently, upon such declaration of re-development scheme residents of the area whose buildings were of acceptable quality will be deemed to have a valid right in the area. Other residents will have to apply for rights of occupancy as developers under the new terms and conditions. In that case the law has empowered the Minister to grant to every development owner within the redevelopment area, a right of occupancy over the land on which an acceptable building is situated.<sup>8</sup> The development owner is further deemed to hold a right of occupancy over such land on such terms as the Minister may by order prescribe until the time the grant is made.<sup>9</sup>

In addition according to section 8(3) of the Urban Planning Act (2007) Cap 355, the process for the declaration of planning area requires (a) *favourable response at public hearing or public hearing in the area conducted by the planning authority*; (b) resolution by planning authority recommending declaration of planning area; and (c) positive recommendation by the Regional secretariat of the respective region. It is therefore vital for the Minister to consider the process as regarding declaration of a planning area. Although the rest of the stages may be simple, the most controversial one is securing favourable response from affected parties which may tempt skipping the procedure. After the declaration of planning area, the relevant planning authorities may prepare general and detailed schemes of development. The schemes must adhere to legally established procedures.

From the research findings, the procedure under the Urban Planning Act was flawed leading to atmosphere of distrust between the community and the government. The procedure was to inter alia conform to part IV of the Act (a) 8(3) declaration of planning scheme, 8(1-4). The declaration of the scheme was not preceded by favourable hearings as required. In planning issues, participation is not a privilege. The 1<sup>st</sup> meeting would have allowed the public to air their views, lack of participation denied them useful right and opportunity. But also, in the committee that was appointed for the project only one member, the Member of Parliament is from the project area. To the citizens of Kigamboni, such kind of involvement

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<sup>6</sup> Section 35(1)(b) of the Land Acquisition Act, (1967) Cap 118,( R.E 2002).

<sup>7</sup> *Id.*

<sup>8</sup> Section 36(1) of the Land Acquisition Act (1967) Cap 118, (R.E.2002)

<sup>9</sup> *Id.*

is not meaningful and it lacks necessary credibility to make it valid as stated under section 8 and 9 of the Urban Planning Act 2007.

It would appear that although the intention might be good the process has been flawed which makes it illegal for want of procedure. It has been and will continue to be perceived as yet another land grabbing mechanism plotted by the government against its own people resulting into internal displacements. The inception of the project, the preparation of the Plan and its submission to the public and the manner of implementation has lacked the requisite transparency and involvement.

Moreover, as was noted during the study, the proposed Master Plan for New Kigamboni City will affect existing properties thus calling for relocation to other areas within the planning area. The implementation of the Master Plan will therefore require acquisition of land for development of the new city before any project implementation starts on ground. This situation necessitates land acquisition, compensation and resettlement of affected people and properties within the planning area. Land acquisition for New Kigamboni City development will therefore require compensation to affected properties. Properties survey for valuation for compensation must be done immediately after approval of the Master Plan.

Regarding the peculiarity of the project, it is an undeniable fact that every development project has its own peculiarities and effects. The size of such a project, the costs involved and the impacts it will cause in the lives of those affected in the course of its implementation are some of factors that create distinctive marks in a particular development project. The envisaged New Kigamboni City Project is no exception in that regard. Measuring it by such standards, the project is big and in need of big amount of finances to make it successful. Its costs implication which arises from its preliminary implementation stages and its effects, including the need for land acquisition and resettlement of the existing people are also factors that mark its peculiarity from a Tanzanian context. All these call for serious considerations including the need to take into account issues regarding the rights of the affected population in terms of their entitlement to prompt payment of full and adequate compensation. Devising policies meant to advance the livelihoods of those expected to be resettled is also an issue of paramount importance. This, as noted in this chapter, is necessary because people need to be assisted in the reconstruction of their livelihoods after the relocation exercise.

In relation to displacement and resettlement, any involuntary displacement regardless of the cause has devastating impacts. It may leave the people poor or poorer than they were, if not carefully executed, and it brings also other risks upon their culture, human rights and political power. Hence the socio-economic impacts of the proposed project are multifarious.

With increasing food prices, land becomes more critical asset for the survival of rapidly growing poor households especially in the peri-urban areas. Since the issue of stop order in 2008 various economic activities have been affected in a great extent. In particular, access to credit allows poor people to take advantage of economic opportunities. While increased earnings are by no means automatic, clients have overwhelmingly demonstrated that reliable sources of credit provide a fundamental basis for planning and expanding business activities. Given the situation of Kigamboni area, banks and financial institutions have been less willing to accept property as guarantee for securing loans.

It is almost inevitable that the poor will be displaced from their homes and livelihoods to make way for the new cities. It is instructive that while the Government of Tanzania promised that there would be limited displacement in the areas earmarked for Kigamboni Satellite City, given the size of the development, a large proportion of existing landowners would have to be relocated.

Since the effect of stop order, tenants have kept a very low profile in renting houses because they expect that at time the project will start. For those who show up for renting, they do not accept long term contracts; they pay rent only for short periods of two to three months. Before the issue of the stop order Kigamboni was an area where new buildings were being constructed in a good number. This is because the area is close to the main city as compared to other places resided by low and middle income earners. Open plots were still available to allow new construction. Since 2008 construction activities have declined.

It was estimated that 70 to 80 percent of all youth were involved in construction activities for reasons discussed above. With the stop order in effect, many youth have lost employment, without alternative source of income. Such population is likely to turn into illegal activities including robbery, drug addiction and alcoholism.

The residents expressed their fear in the sense that, after displacement and during resettlement, many people will be rebuilding their houses at the same time. This will raise the

price for construction materials. Contractors will also raise their labour charges and associated costs.

The community has a strong attachment to the existing social services; they have feelings of integration in their community. Therefore, any reallocation of the landholders to other areas must take account infrastructure utility and facility that have to be invested in these new areas to attract the affected people but also to be in harmony with common normal life as far as possible. Displacement and resettlement disrupts social relations and network. To the extent possible, the affected people should therefore be relocated within their respective community. In addition, relocating people in the same locality has many advantages.

With collapsed socioeconomic activities, money circulation has been reduced. Food vendors (*Mama Lishe*) who used to sell food to workers are no longer making sells because the buyers who used to work as casual labourers are have been negatively affected.

Also, there are structures which were under construction when the stop order was put on. Since then they have remained unfinished while some of them have started to deteriorate. On the other hand residents complained that they have not been able to sell their plot except at lose.

Community members cannot predict the future. They have unfinished structures, without sufficient income, and with their means of reduction handicapped. The matter is worsened by lack of communication between the community and the implementing agent. They do not know exactly what the project is all about and what they should expect from it. Community members call for a) transparency b) participation and c) compensation.

The New Kigamboni City Project, when viewed from the perspective of urban development in Tanzania, is a peculiar project. This is partly due to the fact that the project, though conceived through the adoption of Master Plan approach that has been applied in Tanzania for almost fifty years now, is being undertaken with different viewpoints, i.e taking into account the need to promote sustainable urban development and achieving an integrated urban planning.

The project thus aims at achieving such a goal. Its success in that regard, however, depends on a number of factors one of which include its participatory processes that

guarantee meaningful engagement and involvement of the public in all phases of decision making, implementation and re-integration. The project is peculiar in terms of size, cost and socio-economic impacts.

Because in most cases the initiatives to displace and resettle massive numbers of people are mainly involuntary, they are therefore 'planned and organised by the government at all levels but financial support for people displaced for environment-related reasons is usually minimal. Although the project should be perceived in the context of globalization and opening up of resource to willing and capable international investor certain fundamental must be observed. The report has examined the experience of the project but also compare emerging issues with what happened elsewhere in similar projects. It has been noted throughout the course of the analysis that certain interests are particularly at risky and must be given due consideration.

In general, development projects like the one envisaged, have raised questions of equity, fairness, justice, and equality before the law, in the matter of distribution of benefits and burdens. People affected by the project are not on the mood to suffer displacement along with its concomitant attributes like occupational degeneration, social disorientation, pauperization, loss in dignity and often getting nominal compensation, which serve to make the experience a trauma. This has given rise to in trying to understand the project and its implications in their livelihoods. The starting point was to create awareness about the project itself.

Given the gender-blindness of the planning process development projects typically build on the imbalance in existing gender relations. The development project may widen gender disparities either by basing on disproportionate share of social costs on women or through an inequitable allocation of the benefits generated. As noted major impacts of development-induced displacement, especially large scale displacement include loss of access to common property resources, lack of sanitation facilities, loss of livelihoods and marginalization of women. Others are decline in social status, additional workload and responsibilities, deteriorating health status, breakdown in social support network and breakdown of lifestyles which are likely to affect the Kigamboni residents.

# CHAPTER ONE: INTRODUCTION

## 1.0 Background

In early 2008, the government of Tanzania, through the Ministry of Lands, Housing and Human Settlements Development –MLHSD, initiated a project to develop a new city at Kigamboni area in Temeke district of Dar es Salaam region. The reasons behind the decision were many but the most important factor was the need to provide solutions to mitigate the urbanization problems of Dar es Salaam and its environs. In addition, the project would generate significant social and economic benefits to the people of Kigamboni and, a relatively potential site for urban expansion of Dar es Salaam city.<sup>10</sup>

According to the Ministry, the project is part and parcel of the government strategies in stimulating the growing towns, major towns and major cities, proper urban planning and hence reduce the growth of existing and unplanned settlements. This project also aims at bringing urban services closer to residents, thus, decongesting the city centre.

Implementation of the project is categorized into three phases from 2011 to 2020, 2021 – 2025 and 2026 to 2030 respectively. Since its commencement in 2008 various issues related to land have been raised, including but not limited to land acquisition procedures, valuation and compensation of properties, residents' resettlement and land marketing. For instance, in 2008 the Ministry issued a stop order on the land development activities in the project area for two years. Although the said stop order expired in October 2010, residents of Kigamboni have not been able to continue with any land development due to the uncertainties accompanied with the valuation and compensation determination processes. The recent statement by the Ministry in the parliament that 'the government will not pay compensation to the citizens living in the New Kigamboni City project area,'<sup>11</sup> has raised additional concerns and fears on the future of the residents of Kigamboni, especially those whose livelihoods depended entirely on the land and allied improvements in the project area.

The Ministry is promising that very few displacements will take place in the course of project implementation. However, the magnitude of the few displacements is still undisclosed because the project is taking place covertly. Overall, experiences from other projects of

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<sup>10</sup> See Kigamboni New City Master Plan Main Report (2010) 3.

<sup>11</sup> This statement was made by the Deputy Minister for Land, Housing and Human Settlements Development Goodluck Ole Medeye in the Parliament November 2011 while responding to a question posed by Kigamboni MP, Dr. Faustine Kinduguile regarding the project.

similar nature suggest that a lot of people were displaced from the project areas. The Ministry promise also contradicts with the project Master Plan which indicates that:

‘[m]ost of the present residents of Kigamboni are concentrated in Kigamboni ward. According to the land use plan, Kigamboni ward is planned as the Central Business District (CBD) for the new city. It is obvious that most residents are affected by the plan and must be resettled in the first phase development of the new city.’<sup>12</sup>

From the time when the initial stages of the project commenced, there seems to be lack of trust between the people and the government. This is associated with reservations that the project will exclude residents who cannot afford to live in the new planned neighbourhoods of the satellite city. For instance, during the land valuation exercise, there were a lot of complaints from the residents that Ministry’s officers are playing fouls to benefit themselves from the project at the expense of the affected people. Others are complaining that their lands have been mentioned in the names of other unknown individuals who are not the residents of Kigamboni best known by the project officers. Besides, more complaints are directed to the government regarding lack of transparency on the whole process which essentially results into poor participation of the community members in the project.

It is on the basis of the foregoing that HAKIARDHI and TALA members engaged in a serious investigation to explore the current status of the project with a view to uncover the various land related challenges that are associated with this project and their effects on the resident communities of the project area and Kigamboni area in general. The rationale of this study is based on the fact that it has been delayed for more than two years, a period given by the government in the said notice, and implying that the affected members of the Kigamboni Community must have encountered various socio-economic and cultural consequences. To that effect, the research team was constituted to consult various stakeholders in the project area.

### **1.1 The Objectives of the Assignment**

The main object of this assignment was to explore the current status of the project with a view to uncover the various land related challenges that are associated with the project to the resident communities of the project area and Kigamboni area in general. Specific objectives are:

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<sup>12</sup> See Kigamboni New City Master Plan Main report (2010) 200.



- (a) to establish the status of the implementation of the Kigamboni new satellite city project first phase as per the Master Plan of the project, what has been done so far;
- (b) to examine to what extent the people of Kigamboni have been affected by the two years stop order restricting any land development in the project area;
- (c) to explore the views and perceptions of the Kigamboni residents on the said project and its implications to their livelihoods;
- (d) to assess the level of involvement of the project area residents in the process of land survey and land valuation and any other processes that have taken place so far;
- (e) to explore the social and economic impacts of the delayed implementation of the Kigamboni new satellite city project in the livelihoods of the Kigamboni residents;
- (f) to examine if there is any procedural misconducts that led to the violation of land and human rights of the residents of the project area and Kigamboni area in general in the course of project implementation;
- (g) to enquire information on compensation process and procedures to the project area residents on the resettlement if any;
- (h) to assess any response mechanisms of the people regarding the project in general and the delays in particular ;
- (i) to determine any peculiarity of the project in all aspects; and
- (j) to determine any land market that is related to or connected to the project and its implications.

## **1.2 Technical Approach to the Assessment**

Basically the study methodology was qualitative and consultative in nature. The study team consulted various stakeholders in the project area including, but not limited to, the local government authorities (street, ward and municipal council), Kigamboni Member of Parliament, and Kigamboni residents' special committee for the potentially affected communities, political parties and the project office of the ministry of land. The various activists and NGOs working in the place were also consulted. Among other issues, this

research brings out discussion points for advocacy by land rights advocacy stakeholders along the following aspects:

- (a) procedural conduct and misconducts of both boundary partners involved in the project;
- (b) peoples' response and struggles in understanding the project in realizing and/or protecting their land rights;
- (c) particular impacts to women and other vulnerable community groups;
- (d) the level of understanding of the project by the community in general particularly the Master Plan for the project implementation; and
- (e) the role of the government in involving the communities in terms of information availability and decision making processes.

### **1.3 Methodology and Data Collection Methods**

At least four methods of data collection were used.

#### **(a) Literature Review**

The study team conducted literature review of various documents including the project Master Plan and other project reports. The desk-top review of available literature, among other things, included laws and frameworks related to the implementation of such projects to see if there was any procedural misconduct that led to violation of land and human rights of the residents of the project area and Kigamboni area in general.

#### **(b) Consultations with Stakeholders**

The consultant held discussions and consultations with stakeholders, to include, local government authorities (street, ward and municipal council), Kigamboni residents' special committee for the potentially affected communities and the project office of the ministry of land. Despite the proposed plan, some of the intended stakeholders could not be reached for interview. In particular, our deliberate efforts to procure audience with the responsible Ministry proved fruitless. As a result, we relied more on information official statements like the Master Plan Report, Hansard and newspaper reports of quoted Government statements related to the project.

### **(c) Interviews**

Although the assignment was mainly of qualitative nature, the team used different methodologies or approaches to obtain necessary baseline data and information on the issues. The team used secondary or existing research reports, findings, results and or design in the course of conducting the study. Open ended simple questionnaire were prepared in order to aptly capture the relevant information from the respondents. This diagnostic approach eased the task of the respondents in responding to the questions or issues raised, and it simplified the analysis of the information obtained from the field. In the course of administering the questionnaires the research team however, gathered other information relevant to the study, including feelings of community members, through site observation.

### **(d) Field Observation**

The team did walk around the project area and saw the areas that will be affected. It also witnessed some of the activities that will be affected by the project implementation. The fate of groups like women, children and the elderly remained uncertain as will be discussed further in this report.

## **1.4 Expected Output**

The research team worked closely with the Knowledge Generation and Dissemination Unit (KGD) which maintained a regular contact with the Executive Director of HAKIARDHI for feedback and further guidance. The outcome of the study is report is further based on the terms of reference.

# CHAPTER TWO: THE NEW KIGAMBONI CITY MASTER PLAN

## 2.0 Introduction to the Proposed New Kigamboni City

As the population of Dar-es-salaam continues to grow concerns have been mounting among town planners and policy makers regarding the future of Dar-es-salaam City. According to the 2002 census Report, the total population of this city has been growing at an annual growth rate of 4.3 percent.<sup>1</sup> The estimated population is now well above 3.5 million people, and the expectations are that by 2030 the city population will be 5.8 million people.<sup>2</sup> This information is quite challenging to both policy analysts and city development planners. Such a growth suggests that there is a need to embark on various plans and efforts to accommodate the expected more than 2.8 million inhabitants by 2030. There are other implications associated with such population growth. New infrastructures such as network of roads to alleviate the already congested ones, new housing projects, and new network of other essential services are all important issues to take into account. In addition, the need to manage the city environmental conditions is also a crucial aspect that strikes the minds of not only the municipal and city council officials but also other interested stakeholders such as the Ministry of Lands, Housing and Human Settlements Development, the business community, the city dwellers, and many other development partners.

According to the Director of Rural and Town Planning, an overall assessment of the Dar-es-salaam suggests that the entire city has experienced ‘unprecedented urbanization over-stretched urban sprawl and strained public resource capacities to regulate, guide and promote sustainable urban land use development.’<sup>3</sup> Coupled with the growing population size, traffic congestion and environmental concerns within the city, the government saw a need to conceive a new plan for a satellite city within Dar-es-salaam region as a mitigating measure. Kigamboni area, which is adjacent to the city of Dar-es-salaam, was thus chosen as a project site for developing a new city to be known as New Kigamboni City.

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<sup>1</sup> See URT, National Census, *Analytical Report*, Vol. X, National Bureau of Statistics Ministry of Planning, Economy and Empowerment Dar-es-Salaam (2007) 3.

<sup>2</sup> See United Republic of Tanzania, Ministry of Lands, Housing & Human Settlements Development, *Kigamboni New City Master Plan: Main Report* (2010), (to be referred to hereafter as ‘The Kigamboni Master Plan Report (2010).

<sup>3</sup> See Burra, A ‘Forewords’ *Kigamboni New City Master Plan: Main Report* (2010) (ibid).

The overall goals of developing a new city include the need to generate significant socio-economic benefits to the people of Kigamboni, this area being potentially suitable for the expansion of Dar-es-salaam city. It is also a fact that Kigamboni has unique natural landscapes, including pristine beaches and adjacent small islands, but all these potentials have remained untapped due to the poor infrastructure services, including essential ones such as roads and electricity. The project was therefore conceived with a view to ‘[f]acilitate the realization of a planned urban development of a new city within the context of Dar-es-Salaam City and promote enhanced utilisation of inherent potential of harbour’s front, exotic beaches, surrounding islands, ample land with good terrain and general natural landscape.’<sup>4</sup>

## **2.1 The New Kigamboni City and its Master Plan**

New Kigamboni City Development Plan is an ambitious project which is situated within the Temeke district and to the south of the city of Dar-es-Salaam. The area of Kigamboni is considered a geographically strategic point where land, air and ocean transportation meet. The planned project, thus, incorporates a total of five wards, namely: Kigamboni, Mjimwema, Vijibweni, Kibada and Somangila. The total land area for the five wards where this project is to be implemented is 6,494 hectares.

The New City of Kigamboni is expected to be a catalyst for the country’s economic growth in general and Dar-es-Salaam in particular. The project, which was conceived and is being supervised by the Tanzanian Government Ministry of Lands, seeks to develop the current cited wards in Kigamboni into a thriving new city that supports a population of 500,000 residents, various commercial, educational, social and other important economic interests. It is also meant to facilitate development of competitive urban services of oriental nature as a way to spur economic growth.<sup>5</sup> It is also intended to provide the public with better accessible services to beaches and promoting tourism and its associated benefits in the country as well as being a stimulus for investment opportunities.<sup>6</sup>

As the project takes into advantage the fact that Kigamboni, the new city will also be linked to Dar-es-salaam by a new bridge and a net work of roads, and is expected to be a model in Africa, making Tanzania a hub for international business, industry, tourism and residence. In order to bring the plan to its actual realization, the government engaged a

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<sup>4</sup> See *The Kigamboni Master Plan Report* 2010) (note 2) 3.

<sup>5</sup> *Ibid*, at 4.

<sup>6</sup> *Ibid*, at 4.

Korean consulting firm – LH Consortium, to prepare a Master Plan for the New Kigamboni City. In May 2010, the consultant submitted a Main Report –called *New Kigamboni City Three Dimensional Master Plan*. This Main Report, which is divided into ten chapters, (and three other minor detailed reports), are collectively referred to here as the documents embodying the Master Plan for the project in question. For conceptual clarity, however, the notion of a Master Plan for a new city needs to be examined.

### **2.1.1 The Master Plan Concept and its Application in Tanzania**

Development of a new city is a matter that needs guidance through creation and adoption of development plans or schemes. One such scheme is referred to as a ‘Master Plan’ or a ‘General Planning Scheme’. Generally, a Master Plan constitutes ‘a compendium of all regulations on building, physical development ... health ordinances and ...rules for the use and development of land.’<sup>7</sup> In other words, it is a ‘a device or piece of ... machinery for preparing, and keeping constantly up to date, a unified forecast and definition of all important changes, additions, and extensions of the physical equipment and arrangement of the city which a sound judgment holds become desirable and practicable in the course of time so as to avoid as far as possible both ignorantly wasteful action and ... inaction in the control of the city’s physical growth.’<sup>8</sup>

As a plan to guide the present and future developments in a planning area, a Master Plan or general planning scheme (as often referred to), consists of a written statement and set of maps indicating the development objectives of the planning authority.<sup>9</sup> It is thus a layout of an area which shows the subdivisions in that area and the purposes for their use. These sub-divisions are called zones and they reveal categories of uses allowed to be carried out in those areas. A Master Plan, apart from guiding the overall developments in a planning area, also facilitates the preparation of detailed schemes and other project plans.<sup>10</sup>

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<sup>7</sup> Proceedings of the Third National Conference on City Planning, Philadelphia, Pennsylvania, 1911 (Quoted in Hagman, D.G & Juegrensmeyer J.C *Urban Planning and Land Development Control, Law*, 2ed, West Publishing Company (1986) 19.

<sup>8</sup> Ibid.

<sup>9</sup> Walsh, E.M. *Planning and Development Law*, ILSI (1984) 12.

<sup>10</sup> *Id*

## **2.1.2 The New City's Master Plan**

### **(a) The Basis for its Conception, Objectives and Preparatory Process**

#### **(i) Its Conceptual Basis**

The New Kigamboni City Master Plan's conception is based on six main objectives as set out in the New Kigamboni City Master Plan Report. First, is the decision by the government through the Ministry of Lands, Housing & Human Settlements Development to establish a new satellite city – one with self identity but one linked with Dar –es-Salaam city, and able to accommodate more than 500,000 people by 2030. Second, the Master Plan concept is based on the current development status of Kigamboni as a planning area, hence the need to resettle its people and properties in order to implement new plans. Third, is the need to achieve sustainable development and to promote economic growth of the new planned city taking into account the industrial sector of Dar-es-Salaam, the port and socio-economic activities of the proposed new city. The fourth is the fact that the new proposed city is an 'Eco-City' which is intended to exploit the available Kigamboni natural resources in a sustainable manner. The fifth objective is the fact that the new city and Dar-es-salaam will need to play a major role as the eastern gateway to Tanzania and the rest of African countries in terms of tourism and transport development. The final basis for the Master Plan is the need to support and encourage social interactions of the people of Kigamboni through the new city structures and the community infrastructures to be developed.

#### **(b) Its Guiding Objectives**

In terms of its guiding objectives, as set out in the New Kigamboni City Master Plan Report, the Master Plan was prepared with a view to 'determine the requirements of each land use and infrastructure component.'<sup>11</sup> This vision takes into account 'the need to ensure that the design pattern is functional, economical and sensitive to the natural environs, beneficial to the social and cultural structures of the local people, and above all, meets the requirements, philosophical and aspirations of the nation at large, the present Kigamboni community, and the future generation of Tanzania, residents, visitors and tourists.'<sup>12</sup>

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<sup>11</sup> See *The Kigamboni Master Plan Report* (note 2) at 35.

<sup>12</sup> *Ibid.*

With this in mind, the Master Plan addresses the future land use plan in the planning area.<sup>13</sup> In particular, it contains a ‘vision for the future goals, policies and strategies to realise the vision.’<sup>14</sup> Its land use plans address nine important components, namely:

- goals, vision and policies for physical and social development of the new city;
- areas required for residential, commercial and industrial use and growth;
- the protection of wetlands and other natural resources found in Kigamboni;
- land requirements and the corresponding densities for different types of residential uses;
- land consumption based on phased and type of development;
- location and allocation of land for passive and active recreational activities and other recreational facilities;
- location and allocation of land for transport corridors;
- location and allocation of land for tourism purposes; and finally
- location and allocation of land for public utilities.

### **(c) Its Preparatory Process**

Concerning its preparatory process, the New Kigamboni City Master Plan Report<sup>15</sup> indicates that initial steps which were employed included establishing a liaison mechanism between the Ministry for Lands, Housing and Human Settlement Development, the Municipality Council, the people of Kigamboni and other stakeholders.<sup>16</sup> In the course of planning and developing the proposals for the project area, the Korean consulting firm – LH Consortium, took into account the need to understand the physical, social and economic conditions and forces that shaped or are still impacting on the development of Kigamboni area. In so doing, the contracted firm analyzed demographic trends and engaged in socio-economic data collection and analysis, including the analysis of the project’s physical settings. Previous and existing relevant urban plans were also reviewed to establish policy directions that could be adopted in the planning process.

According to the Report,<sup>17</sup> the methodology adopted in preparing the Master Plan also involved carrying out surveys in the project area.<sup>18</sup> Such surveys covered the whole

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> See *The Kigamboni Master Plan Report* 2010) (note 2) at pp.5-6, 13.

<sup>16</sup> See *ibid*, at 6.

<sup>17</sup> *Ibid*, at 5.



project area and the Report indicates that it involved ‘educating local leaders on the importance of baseline surveys.’<sup>19</sup> The extent through which the people of Kigamboni (other than the local leaders) were involved in the process is, however, not clear. Nevertheless, the Report notes the importance of people’s involvement stating that: ‘[s]ince New Kigamboni City is for the people it is imperative to collaborate with stakeholders during its preparation.’<sup>20</sup> It is further noted in the Report that:

‘[t]he determination of demographic trends, social and economic data collection and analysis and mapping of existing land use patterns were among planning study activities carried out in a participatory manner. Stakeholders’ participation is crucial to this project as it creates ownership and therefore leading to winning smooth implementation at later stages.’<sup>21</sup>

The Consultant, in consultation with stakeholders, focused on exploring and defining a vision derived from the objectives earlier provided by the Client (MLHHS), and a Task Force Committee organized stakeholders’ workshop and later the Steering Committee for this project. A vision statement for the development of New Kigamboni City was then arrived at, and taking into consideration the desired vision and needs of key stakeholders, the consultant prepared and presented a Draft Master Plan Report, supported by its other Technical Supplements. This draft contained all elements of a Master Plan. In January 2009, the draft was submitted to the Client for final revision before proceeding to the stage of preparing the Final Master Plan Report for New Kigamboni City. In March 2009, the Client’s opinions were incorporated in the Draft Master Plan, and reflected the existing related plans (e.g., the 20,000 Plots Project). Finally, in May 2010, the final version of the New Kigamboni City Master Plan proposal, with its corresponding Technical Supplements, was submitted to the client for further necessary actions and implementation purposes.

#### **(d) The Master Plans’ Significance**

As pointed out in 2.1.1 above, a Master Plan is a tool for guiding future developments in a designated planning area. As such, the New Kigamboni City Master Plan is of great significance because it provides a solid foundation to ensure that ‘regulatory tools such as land use zoning order, subdivision regulations, building heights and capital improvement projects etc. are developed.’<sup>22</sup> Such regulatory tools, as noted in the Kigamboni Master Plan

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, at 7.

<sup>21</sup> Ibid, at 13.

<sup>22</sup> Ibid, at 3.

Report,<sup>23</sup> ‘help to create a basis for the enforcement and evaluation of the Master Plan’s implementation consistency to all development activities and projects’ in the envisaged new city.<sup>24</sup> Its comprehensive land use and implementation plans are worth noting.

**(a) Its Comprehensive Land Use Plan**

The New Kigamboni City’s Master Plan has envisaged a comprehensive land use development policy of the city through creation of zones. Through the zoning policy, five zones have been created, namely:

- International Business Zone
- Industrial Zone
- Tourism Zone
- Residential Zone
- Public facility Zone.

Development activities in these zones must be done in accordance with specific guidelines relevant for each zone.

**(b) Its Implementation Plan**

The implementation of the project and all what its Master Plan envisages is procedurally guided. The initial step, however, was to establish the liaison mechanism among the following: (i) Ministry of Lands, Housing and Human Settlements Development (ii) the Temeke Municipal Council (iii) the Consultant (iv) the people of Kigamboni and (v) other stakeholders. The roles and responsibilities for each party were clarified and a common understanding of the planning process was therefore reached.<sup>25</sup> Overall, according to the final Kigamboni Master Plan Report, the implementation map of the project and its Master Plan envisages six steps. These are: (a) project planning, (b) land acquisition, marketing and management, (c) site planning and engineering, (d) construction, (e) residents move into the new city and (f) completion of the project.

The six-staged practical steps, however, fall within three implementation phases. Phase I of the project runs for a period of 10 years (i.e., 2011-2020).<sup>26</sup> Under this phase, the following activities will be done: resettlement of the existing Kigamboni residents, payment of compensation to all affected persons, and creation of detailed designs. As regards these activities, and in particular the Resettlement and compensation of the current population from

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid, at 12.

<sup>26</sup> Ibid, at 207.

the project area which needs to end in 2014, the New Kigamboni City's Main Report<sup>27</sup> has put a caveat noting and recommending that:

[r]esettlement of people and property has always faced resistance all over the world. It is true that, as human being, no one would like to be displaced from a place he has lived and invested for most of one's lifetime. However, from experience it is also true that displaced people are rarely consulted during the assessment of the value for compensation and resettlement program. It is recommended that all affected people and properties in Kigamboni area be involved with full participation during the entire process (survey for assessment of value for property, compensation schedule, resettlement and management procedures).<sup>28</sup>

It is further noted that the resettlement program should seek to 'provide sufficient investment resources to give the people who will be displaced by the Master Plan project the opportunity to share the project benefit.'<sup>29</sup> In particular, it is recommended in the Report that:

[d]isplaced and compensated people should be assisted in their efforts to improve their livelihood and standards of living or at least to restore them in real terms to the pre-displacement levels or levels prevailing at prior to the beginning of project implementation whichever is higher.... Mass communication and mobilisation of people of Kigamboni should continue to be done for the better understanding of the project and its implementation process'<sup>30</sup>

These recommendations sound good. The issue is whether they are being or will be fully and promptly implemented. Phase II, which is set to begin in 2020-2025 will involve making the new city self-sufficient while Phase III (2025-2030) will involve further developments and the completion of the implementation of its Master Plan.

## **2.2 Status of the Present Project and the Perception of the People**

The current status of the Kigamboni Project is that it is still at its infant stage. As noted above, at present, the preparation of the New City Master Plan has been finalised and reports to that effect have been submitted to the relevant authorities. According to information obtained during field survey conducted in the course of preparing this report, preliminary inventory of existing developments, in terms of the properties to be affected in the project area, has been made.

The final Kigamboni Master Plan Report presented to the Client by the Project consultant indicates that, a total number of houses in the Kigamboni project area are 13,883 against a population of 82,808 people. The report notes that a lot of people live in rented

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<sup>27</sup>See note 2.

<sup>28</sup>Ibid, at 216.

<sup>29</sup>Ibid.

<sup>30</sup>Ibid, at 217.

room accommodation representing 52% of the total housing stock.

The Report also notes that, a study conducted in September/October 2009 revealed that most of these houses are privately owned and were built through owner's source funding. Most of these houses are linked to planned and unplanned locations. Generally, contrary to the situation found in Dar es Salaam City, the housing stock in unplanned areas of Kigamboni project area is characterized by permanent houses. Houses built on planned areas are mostly found in Kigamboni Ward and the 20,000 plots project areas of Kisota, Vijibweni and Kibada. Otherwise the rest of the project area is located in unplanned areas. Despite all these facts, it was clear that the area lacked necessary infrastructural services like water, electricity and roads, thus making its environment less comfortable and insanitary for the residents.

In terms of major sources of employment, the Report submitted to the Ministry by the Consultant indicates that housing construction industry is among the major sources of income in the area especially for artisan part time jobs. Since the ministry issued a stop order which put to a halt all development activities in the project area, it is obvious that many people, whose employment emanated from house-construction and other associated activities, have been affected.

As pointed out above, inventory of the kind of properties to be affected in the project area is the only recent activity that has so far taken place from the time when the Ministry's order to stop further activities in the project area. While it is necessary, and indeed appropriate, to undertake an inventory of which property or who is to be affected and to what extent, the level of participation of the local people in this exercise is, however, questionable. In view of this, people have quite different perceptions about this project despite its overall good objectives.

Generally, although the government, including the Final Master Plan Report, suggests that the people of Kigamboni were involved in the initial planning of the project and the preparation of its Master Plan, views obtained from the residents present an opposite position. Indeed, although the residents of Kigamboni do not oppose the project, the existing dichotomy cast doubt on the quality of their involvement. It is clear, for instance, that some of the residents interviewed in the course of preparing this report feel that they have been alienated from its day-one planning and for that reason they view the project as lacking their voices and wishes. Others feel that they have not been given audience and information about the progress of the project and its implementation plan and, for that reason, they consider themselves as people who have been left in the dark in many respects.

From a wider perspective, the people's perception about the project is that it is not for their own benefits but rather a project with foreign interests in it. Some even claim that their land is being grabbed to pave ways for certain foreign big-wigs' investments in the country. According to a weekly news paper '*MwanaHALISI*' of Wednesday 7-13 December 2011, such views, though vehemently refuted by the government, have not been cleared through rendering comprehensible explanations to the *wananchi* by the relevant authorities.<sup>31</sup> Statements made to the Parliament by the Ministry officials are also somewhat contradictory. For instance, they have held, at some point, that the affected Kigamboni residents are allowed to proceed with their own projects and that permits are being issued while it is well settled that for the past two years the Kigamboni residents were estopped from engaging in any developmental activity within the planned project area.

### **2.3. Conclusion**

As noted above, the Kigamboni Master Plan Report points out the importance of involving all affected people and properties in Kigamboni area in the entire process of during of conducting survey for the purpose of assessing the value for property, as well as preparing the compensation schedule, resettlement plans and management procedures. Although such a recommendation is indeed necessary, as stated in this chapter, it seems that many people were left out during the initial planning of the project and its Master Plan. More to say, many people do not understand the Master Plan itself. Lack of proper participatory mechanism creates a negative picture concerning the project and cast doubts on its successful implementation and its sense of ownership. All these are furthermore compounded by the lack of information and transparency. If these issues are not cleared they will continue to create mistrust between the *wananchi* and their government, hence affecting the full implementation and success of the entire project.

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<sup>31</sup> See Nyaronyo Kicheere 'Tibaijuka anatomika kuhlalisha uporaji ardhi Kigamboni' *MwanaHALISI*, (Wednesday, December 7-13, 2011) at p.15.

## **CHAPTER THREE: REVIEW OF RELEVANT LEGAL AND POLICY FRAMEWORKS**

### **3.0 Introduction**

This chapter examines the legal and policy frameworks regarding execution of planning schemes and in particular the Kigamboni project. It endeavours to underpin the crucial steps and procedures that must be considered in development and implementation of schemes of development and the path that has been followed in regard to the New Kigamboni City. Various laws and policies including both macro and sectoral policies that pertain to property and social economic development have been analysed in view of the project context and legality.

### **3.1 The Policy Framework**

#### **3.1.1 Macro-Policy Framework**

According to Tanzanian Vision 2025, by the year 2025 Tanzania needs to achieve a high quality livelihood for its people and attain good governance through the rule of law.<sup>1</sup> As to how the rule of law will be realized, governance is emphasized to be made an instrument for the promotion and realisation of development. According to the Vision2025, good governance needs to permeate the modalities of social organization, coordination and interaction for development. In view of this, an institutional framework which is capable of mobilizing all the capacities in society and coordinating action for development will be established. Incentives must be provided for good performance and sanctions should be imposed.<sup>2</sup> The rule of law must also ensure involvement of the public in various matters in the society. It further notes that development activities; should not adversely affect future generations but ensure sustainable use of natural resources and avoiding harmful effects on the environment and people's livelihoods. That being the case, deliberate efforts must be made to empower the people and catalyse their democratic and popular participation. Overall, the core strategy envisaged in the Vision 2025 entails empowering of local governments and communities and promoting broad-based grassroots participation in the

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<sup>1</sup> URT National Vision 2025, Clause 3.0.

<sup>2</sup> Ibid.

mobilization of resources, knowledge and experience with a view to stimulating initiatives at all levels of society.<sup>3</sup>

It is also worth noting that the MKUKUTA has been committed to ensuring that development activities today do not adversely affect the development needs of future generations. Emphasis has been on sustainable use of the country's natural resources and avoiding harmful effects on the environment and on people's livelihoods. The MKUKUTA has also advocated for people-centred development.<sup>4</sup> In 2010, the Strategy was revised. The revised version namely, MKUKUTA II builds on and broadens the space for country's ownership of the development agenda by fostering effective participation of civil society, private sector, and other stakeholders while also forging fruitful local and external partnerships and boosting its commitment to regional and other international initiatives for social and economic development, such the Millennium Development Goals.<sup>5</sup>

In general the existing socio-economic macro-policies put emphasis on broad public participation in matters relating to development. They note that the public should be involved from the grass root level in pursuing the Millennium Development Goals.<sup>6</sup> In that way development envisaged can be sustainable and more people-centred. It is debatable, however, how these policy frameworks have been effectively put into practice.

### **3.1.2 Sectoral Policy Framework**

According to the Population Policy (2007), the implementation of Vision 2025 through the National Strategy for Growth and Reduction of Poverty (NSGRP) demands the involvement of both public and private sectors in implementing the three clusters, namely, economic growth and reduction of income poverty; improved quality of life and social well-being, and good governance and accountability.<sup>7</sup> The Policy notes the linkages between population, poverty and development. The goals and objectives of the National Population Policy (2007) are to provide a framework and guidelines for integration of population variables in the development process. It provides guidelines that determine priorities in population and development programmes as well as strengthening the preparation and implementation of

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<sup>3</sup> URT National Vision 2025, Clause 4.3.

<sup>4</sup> URT MKUKUTA (2002) Clause 4.2.8.

<sup>5</sup> URT, MKUKUTA II (2010) Clause. 2.3.4.

<sup>6</sup> Ibid.

<sup>7</sup> Population Policy (2007), Clause 2.1.4.

socio-economic development planning.<sup>8</sup> The policy notes that the overriding concern of the population policy is to enable Tanzania achieve an improved standard of living and quality of life for its people.<sup>9</sup>

The specific goals of this policy are to contribute to sustainable development and eradication of poverty and increased and improved availability and accessibility of high quality social services to mention a few. However, there has been limited capacity at the national, sectoral and district level for effective integration of population variables into development planning. Sometimes there is non-recognition and hence non-guidance of involvement by the private sector, local communities and households in matters pertaining to population and development. As a result to ensure participation by the private sector and the people in development initiatives the policy aims to promote political will for and commitment to population and development issues.<sup>10</sup>

As further noted in the National Environmental Policy (1997), if sustainable development is truly to be our common goal, it must engage the interests and actions not only of government experts but all Tanzanians in all walks of life.<sup>11</sup> The major responsibilities of government institutions and non-governmental organizations at this level are to assist local communities become aware of their own situation and support them to become responsible for their own destiny.<sup>12</sup> Local communities will participate if they are persuaded that it is right and necessary to do so; when they have sufficient incentive, required knowledge and skills.<sup>13</sup>

In 1995, the government of Tanzania formulated the National Land Policy (1995) as revised. The Policy articulate that all land in Tanzania should continue to be public land vested in the President as trustee on behalf of all citizens. It also suggested that land should have value but also the rights and interests of citizens in land should not be taken without due process of law, where full, fair and prompt compensation is paid. The power of the executive with respect to land administration was to be subject to limitations embedded in the laws and procedures.<sup>14</sup> The Policy notes that planning for urban development has been based on comprehensive Master Plans.

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<sup>8</sup> Ibid, Clause 3.0.

<sup>9</sup> Ibid, Clause 4.1.

<sup>10</sup> Ibid, Clause 4.2.2.

<sup>11</sup> National Environmental Policy (1997) Clause 34.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, Clause 36.

<sup>14</sup> National Land Policy (1995), Clause 4.1.1.



By the Policy definition, a Master Plan is a blue-print plan for the physical, social and economic development of a town over a long time period of usually 20years. The planning process prescribes a fixed physical structure as a basis for social and economic activities.<sup>15</sup> In view of that, master plans are inflexible and cannot be easily adapted to constantly changing circumstances.<sup>16</sup> So, the Government will adopt less costly methods to prepare and execute urban plans including; promotion of local community participation in planning, integrating and coordinating the actions and resources of various sectoral implementing agencies including those in the private and popular sectors.<sup>17</sup>

In the same vein, the 2000 National Human Settlement Policy (2000) reiterated that the goals of the human settlement policy as to promote development of human settlements that are sustainable.<sup>18</sup> On that basis the main objectives of the policy includes; to promote and include the participation of the private and popular sectors, community based organizations (CBOs), Non-Governmental Organizations (NGOs), Cooperative and community in Planning, development and management of human settlements.<sup>19</sup> The increasing need of public participation was given due consideration in the Community Development Policy of 1996. Under the Policy one of the objectives of the policy is ensuring that the people participate fully in formulating, planning, implementing and evaluating development plans and ensure that all community development plans and activities are gender sensitive.<sup>20</sup>

So, from the above policies, it is clear that public participation in developmental programmes has been given central focus. It is such participation that enables the public to make informed decision; but it is also such participation that guarantees their right to information. According Article 18(2) of the URT Constitution 1977 as amended,

‘Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.’

Consequently, the right to information is well articulated in the Constitution. But such right becomes vivid where the public is given the right to participate and make inquiries as they deem necessary. Where a project lacks participation it runs the risk of denying the public of vital information.

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid, Clause 6.8.1.

<sup>17</sup> Ibid.

<sup>18</sup> National Land Policy (1995) Clause 3.1.

<sup>19</sup> Ibid, Clause 3.2.

<sup>20</sup> Ibid, Clause 16.

Under the principles of right to information, the public has the right to get right information at the right time or when needed and the information has to be relevant.<sup>21</sup> With meaningful participation the public can contribute positively to the sustainability of the project but they may raise issues that could negatively affect their interests and general welfare timely. Participation becomes meaningful where the public is engaged from the formative stage to the execution stage. Even where the idea has been conceived by the government, it is still important for the public to be informed of what is being planned and what such plan means to them and the manner they should participate. Meaningful engagement will do away with possible and sometimes unnecessary oppositions to project and also possible eventual infringement of lawful interests. Various literatures have underscored the pertinence of the bottom up approach as against the top down approach.<sup>22</sup> It is therefore increasingly important for a mega project like the New Kigamboni City to involve the people of Kigamboni from the inception on the basis of the above policy formulation and /or as the law mandates.

### **3.2 The Legal Framework**

This section looks at the legal framework that regulates rights and interests in land. It looks at the principles espoused in these laws and their implication. It considers statutes like the Land Act, Village Land Act, the Land Acquisition Act and the Urban Planning Act. Under this section, substantive issues of law and procedural aspects in cases of project implementation will be underpinned.

#### **3.2 1 Land Act, Cap 113 (R.E 2002) & Village Land Act, Cap 114 (R.E 2002)**

In 1999, the Land Act Cap 113 R.E 2002 was enacted. Under section 181 of the Act, the Land Act applies to all land in Mainland Tanzania and any provision of any written law applicable to land which conflict or is inconsistent with any of the provisions of the Act shall cease to be applicable to land or any matter connected with land in Mainland Tanzania as far as that conflict or that inconsistency is concerned. In other words, in the event of any

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<sup>21</sup> See, for instance, the Aarhus Convention 1998.

<sup>22</sup> See, for instance, Chamaret, A., Récoché, G & O'Connor, M., 'Proposal for a top-down/bottom-up approach to build up indicators of sustainable development for use in the mining industry in Africa,' in R.W.TH Aachen (ed.) *Sustainable Development Indicators in the Minerals Industry* University - Virginia Tech University - Technical University of Crete (2005). See also Freeman, E. A. *Strategic Management. A Stakeholder Approach*. Boston: Pitman Press (1984); O'Connor, M. 'Social Costs and Sustainability' in: Daniel H. Bromley and Jouni Paavola (eds) *Economics, Ethics and Environmental Policy: Contested Choices*, Edward Elgar, Cheltenham (2002) 181-202.

conflict between a provision of the Land Act and any other written law regarding right or interest in land, the Land Act prevails.

Section 3 of the Land Act Cap 113 (R.E 2002) and the Village Land Act Cap 114 R.E 2002) provides for, among other things, the fundamental principles of national land policy in Tanzania Mainland. The section gives force of law to crucial principles of the National Land Policy (1995). It does so by adopting the principles of the National Land Policy as the objective of the Acts. Hence, all persons exercising powers under the Act or applying or interpreting the Act must take them into account<sup>23</sup> failure of which will render any act or decision made challengeable. Among the principles that have been incorporated in the Act are the recognition that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens.<sup>24</sup> This principle is amplified further by section 4(1) that provides that;

‘all land in Tanzania continues to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania. In discharging this function the President is required to act on trust relationship so as to advance the economic and social welfare of the citizens.’<sup>25</sup>

Under this principle, the President has been vested with custodial duty over all land in Tanzania. He can make decisions that seem to be for the beneficial interest of the citizens of Tanzania. On that basis it is clear that the president is not the final authority in land but the public. The decisions he take must not be imbued in self-interest but what is beneficial to the citizens on comparative basis. His custodial duty is that of an overseer and not of authority to dictate terms and conditions. Under that jurisprudential inference decisions that are likely to affect the citizens right to land must obtain their consent through the principle of public participation in decision making.

As stated under section 4(3) every person lawfully occupying land, under a right of occupancy, whether granted, or deemed to have been granted, or under customary tenure, the occupation of such land shall be deemed to be property and include the use of land from time to time for depasturing stock under customary tenure. It is also important to note that in dealing with land, all existing rights in land and recognised long-standing occupation or use of land must be protected. In fact under this principle, long occupation or use of land amounts to property in law. In addition, every existing right in land must be identified (through proper

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<sup>23</sup> Section 3(1) of the Land Act, 1999.

<sup>24</sup> Section 3(1)(a) of the Land Act, 1999.

<sup>25</sup> Section 4(2) of the Land Act, 1999.

inventory) and considered judiciously in case the land is to be acquired.<sup>26</sup> On that basis, the occupier is entitled to full, fair and prompt compensation where the right of occupancy<sup>27</sup> is revoked or interfered with to his detriment by the State under the Land Act or is acquired under the Land Acquisition Act, Cap 118, (R.E 2002).<sup>28</sup> In assessing such compensation the concept of opportunity which takes into account (i) market value of the real property; (ii) disturbance allowance; (iii) transport allowance; (iv) loss of profits or accommodation; (v) cost of acquiring or getting the land; (vi) any other costs/ loss of capital expenditure incurred to the development of the land; and (vii) interest at market rate applies.<sup>29</sup>

### **3.2.2 The Land (Compensation Claims) Regulations, 2001**

The regulations<sup>30</sup> provide for who may claim compensation. According to the regulations, people who may claim compensation, include a holder of a customary right of occupancy where the land becomes the subject of a granted right of occupancy in favour of another person and such holder is moved or relocated under Section 34 of the Land Act.<sup>31</sup> The occupier of land in any urban or peri-urban area where such land is acquired by the President under section 60 of the Land Act also deserves compensation.<sup>32</sup> Where such land has been acquired, the Land (Assessment of Value for Compensation) Regulation 2001 applies in the application or claim for compensation<sup>33</sup>.

According to the Regulations the compensation that may be claimed by any person occupying land is the value of unexhausted improvements on the land he is occupying<sup>34</sup> including grazing land.<sup>35</sup> Before carrying out the exercise of compensation the Commissioner or authorized officer must cause a notice to be published on a public notice board and serve a notice in a prescribed form to every occupier (i) notifying the occupier of the land which is the subject of compensation; (ii) requiring the occupier to submit his claim for compensation; and (ii) requiring the occupier to appear physically on such date, time and place where assessment shall be done.<sup>36</sup> It has also been provided that compensation takes

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<sup>26</sup> Section 3(1)(b) of the Land Act, 1999.

<sup>27</sup> Granted right or customary right.

<sup>28</sup> Section 3(1)(g) of the Land Act, 1999.

<sup>29</sup> Ibid., see also GN 78 published on 4/5/2001 THE LAND (ASSESSMENT OF THE VALUE OF LAND FOR COMPENSATION) REGULATIONS, 2001.

<sup>30</sup> GN 79 published on 4/5/2001.

<sup>31</sup> Reg. 4(c).

<sup>32</sup> Reg 4(e).

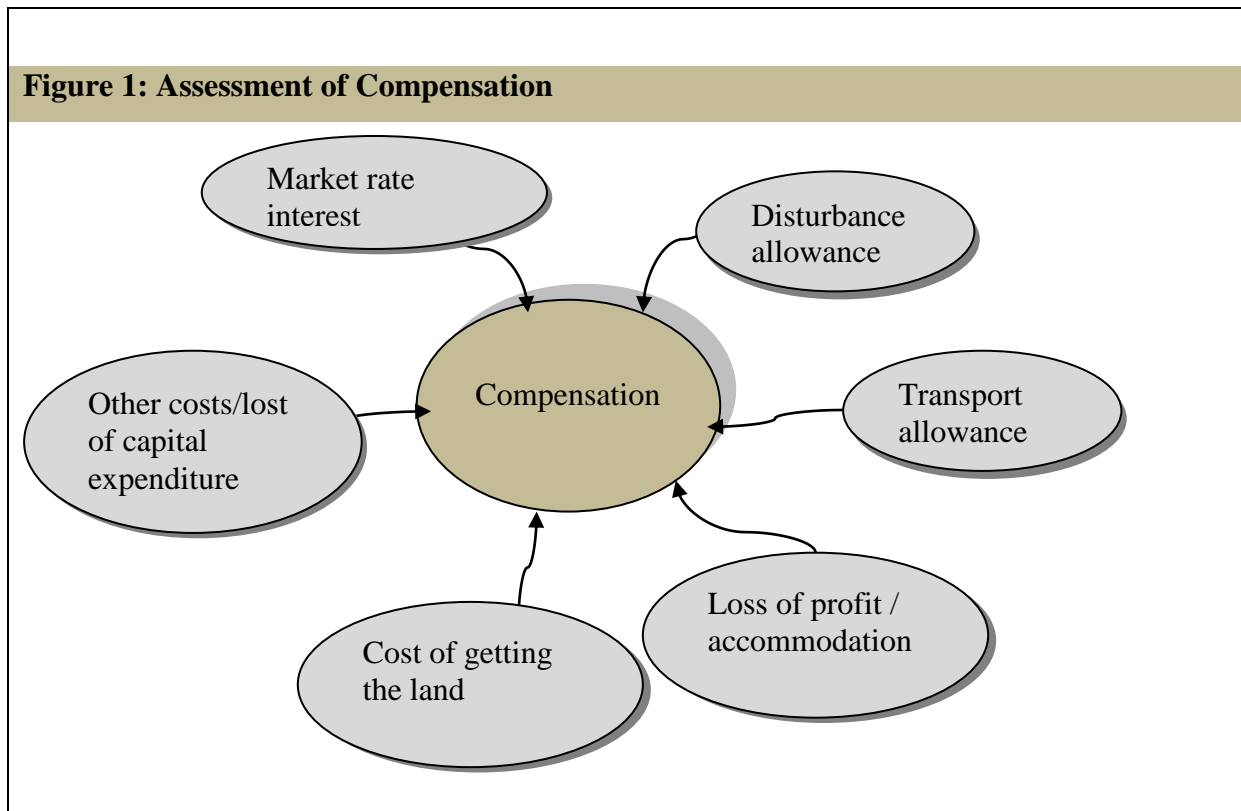
<sup>33</sup> Reg 5(1).

<sup>34</sup> Reg. 5(2) (a).

<sup>35</sup> Reg. 5(2)(b).

<sup>36</sup> Reg 6.

the form of money but at the option of the government, it may take the form of all or a combination of or any of the following:(i) a plot of land of comparable quality, extent and productive potential to the land lost; (ii) a building or buildings of comparable quality extent and use comparable to the building or buildings lost; (iii) plants and seedlings;(iv) regular supplies of grain and other basic foodstuffs for a specified time.<sup>37</sup>



The major challenge on assessment of compensation has been on the reality of the so called market value. Sometimes the value has been fairly low below the market value or the assessment has failed to take into account all the aspects of opportunity cost. In some other cases the value estimated by the affected occupiers has been on the high side leading to disputes. For instance, it has been noted that the public feels that compensation for crops should consider the growth period, market price per unit, replacement cost for the whole growth period, caring cost during the growth period. Different considerations should also be given to crops and trees according to their nature and beneficial value.

The other principle is efficient, effective, economical and transparent system of land administration.<sup>38</sup> It is legitimately expected under this principle that the government and all

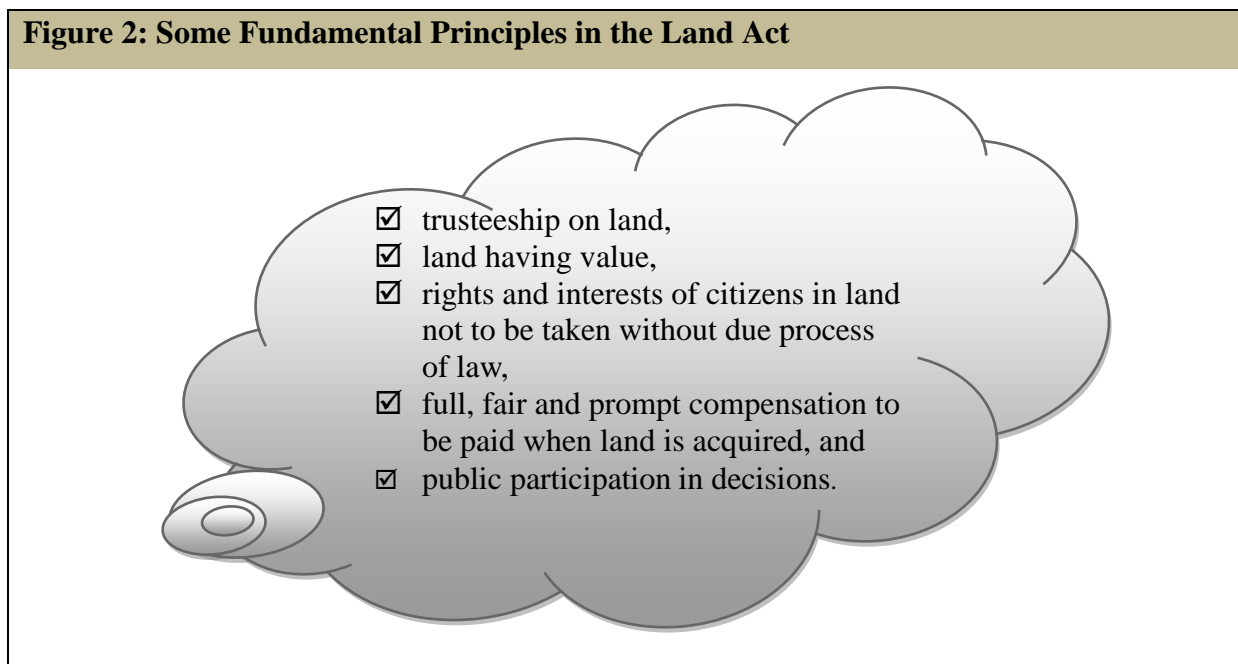
<sup>37</sup> Reg. 10.

<sup>38</sup> Section 3(1)(h) of the Land Act, 1999.

institutions dealing with land will put in place structures that guarantee transparency and more efficient administration of land in the country. On that basis decision affecting land have to be transparent enough to enable the public to make well-informed choices. Related to this principle, is the principle of citizens participation in decision-making on matters connected with their occupation or use of land.<sup>39</sup> This is one of the cornerstones of democratic governance in land. With this principle the public has the right to be involved in every decision that affects their occupation of use of land. The theory behind is to make them contribute positively in the conception of any project, planning and implementation. It also ensures sustainability of the project or plan for the betterment of the people affected and the entire society. Quite often however, this principle has been ignored or implemented partially with the public left in the doldrums. Also, it has had the effect of denying citizens necessary legitimacy and stake in the projects.

Under careful consideration, one will note that all the Land Act 1999 has established itself as the principal statute in land matters. It does also recognize certain fundamentals that have been spelt out in the policy frameworks like trusteeship on land, land having value, rights and interests of citizens in land not to be taken without due process of law, full, fair and prompt compensation to be paid when land is acquired and public participation.

**Figure 2: Some Fundamental Principles in the Land Act**



<sup>39</sup> Section 3(1)(i) of the Land Act, 1999.

The Land Act has also upheld the status of land occupiers and protected their rights. It does that by providing for essential principles which vindicate their right to participation, compensation and access to justice. But also being the first among equal on land matters it means that all policies and other laws must work for good to uphold its spirit. An person executing a duty or assignment on land he has to ensure that he observes the fundamental principles of the National Land Policy as outlined under section 3 of the Land Act. He must, *inter alia*, ensure transparency and give room to the public to participate. As to what extent such legal requirements are adhered to it will be examined later. At this juncture it is necessary to look at the powers vested to Local Government Authorities in relation to promoting planning and socio-economic development.

### **3.2.3 Local Government (Urban Authorities) Act, Cap 288 (R.E 2002)**

Each urban authority has various functions. Among those functions are to promote the social welfare and economic well-being of all persons within its area of jurisdiction;<sup>40</sup> as well as furthering the social and economic development of its area of jurisdiction.<sup>41</sup> Also, the authority has the duty to provide for the treatment of congested area, for the closure and demolition of buildings or parts of buildings unfit for human or other habitat from structural or sanitary causes. Demolition may also result from the narrowness, closeness or bad arrangement of those buildings or of the streets; and for the prohibition of the use of such buildings for such habitation; and to pay compensation if it thinks fit.<sup>42</sup> In doing so, the authority has the power to design the layout of streets, building areas and other areas. It may provide for and authorise the adoption of measures with respect to expropriation or limitation of user, and with respect to the assessment and time of payment of compensation, as it may consider necessary or desirable for the purpose of the convenient design and construction of such layouts. Before any layout is made, the plan or plans of such layout or alteration must be submitted for the approval of the Minister.<sup>43</sup>

The Act has conferred more powers to the authority through entering into agreement and with the prior approval of the Minister, to acquire any land or right over or to the use of

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<sup>40</sup> Section 60(1)(b) of the Local Government (Urban Authorities) Act, Act No 8 of 1982, Cap 288, (R.E 2002)

<sup>41</sup> See Section 60 (1)(c) of the Act.

<sup>42</sup> Section 62(1)(d) of the Act

<sup>43</sup> Section 66(e) of the Act

any land, within or without its area of jurisdiction, for the purposes of any of its functions.<sup>44</sup> With the approval of the Minister it may request the President to exercise the powers to acquire land conferred on him under the Land Acquisition Act, Cap 118 (R.E 2002), in respect of any land whether within or without the area of its jurisdiction.<sup>45</sup> It may also request the President to exercise the power conferred on him by the Land Act to revoke a right of occupancy in respect any such land concerned.<sup>46</sup> Where the President agrees to [such] request the purpose for which the authority made the request shall be deemed to be a public purpose for the purposes of the Land Acquisition Act<sup>47</sup> and good cause for the revocation of a right of occupancy within the meaning of section 10 of the Land Act.<sup>48</sup> Regarding expenses for compensation all expenses and compensation incurred in respect of acquisition of any land by the President or the revocation of any such right of occupancy shall be paid by the President but the authority shall pay to the President the sum as the President may determine.<sup>49</sup>

### **3.2.4 Land Acquisition Act, Cap 118 (R.E 2002)**

Apart from the land Act, the Land Acquisition is vital to be discussed. It has been seen that the Land Act vests all land in the President. In addition to the custodial duty of the President under the Land Act, he has also been vested with immense power to acquire any land for any estate or term where such land is required for any public purpose.<sup>50</sup> Before the acquisition, however, the Minister must give notice of intention to acquire the land to the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same, or to such of them after reasonable inquiry has been conducted.<sup>51</sup>

For the purposes of land acquisition, public purpose is defined to include land for exclusive Government use, for general public use, for any Government scheme, or for the provision of sites for industrial, or commercial development, social services or housing;<sup>52</sup> and land for or in connection with the laying out of any new city, municipality, township or minor

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<sup>44</sup> Section 67(1) of the Act

<sup>45</sup> Section 67(2)(a) of the Act

<sup>46</sup> Section 67(2)(b) of the Act

<sup>47</sup> Section 67(3)(a) of the Act, See the definition of public purpose under Section 4 of the Land Acquisition Act.

<sup>48</sup> Section 67(3)(b) of the Act

<sup>49</sup> Section 67(4) of the Act

<sup>50</sup> See s 3of the Land Acquisition Act, 1967.

<sup>51</sup> See s 6 of the Land Acquisition Act, 1967.

<sup>52</sup> See s 4(1)(a) of the Land Acquisition Act, 1967.



settlement or the extension or improvement of any existing city, municipality, township or minor settlement.<sup>53</sup>

It is also important to note that, where the President considers it desirable that land in any locality should be examined with a view of possible acquisition for public purpose, any person with authority from the Minister may enter that land. Upon entry he may do the following: survey, and take levels of land;<sup>54</sup> dig or bore under the subsoil;<sup>55</sup> do all other acts necessary to ascertain whether the land is adapted for the intended purpose;<sup>56</sup> clear, set out and mark the boundaries of the land proposed to be taken and the intended line of work proposed to be made thereon.<sup>57</sup> In case of a building or enclosed court or garden attached to a dwelling house consent of the occupier thereof will have to be sought by giving the occupier at least three days' notice. Where there has been damage out of the activities carried out compensation may be sought for such preliminary operations.<sup>58</sup>

Also, where any land is acquired by the President under section 3, the Minister is required to pay out of moneys provided for the purpose by Parliament, compensation as may be agreed upon or determined in accordance with the provisions of the Act.<sup>59</sup> The President may grant to the person entitled to compensation a grant of public land not exceeding the value of the land acquired. In case of an estate, the value should not exceed the value of the estate acquired and the terms and conditions must be similar to those of the land acquired.<sup>60</sup> Regarding the best option in the circumstance, the consent of the person entitled to compensation must be sought. According to Kombe, 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.<sup>61</sup>

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<sup>53</sup> See s 4(1)(c) of the Land Acquisition Act, 1967.

<sup>54</sup> See s 5(1)(a) of the Land Acquisition Act, 1967.

<sup>55</sup> See s 5(1)(b) of the Land Acquisition Act, 1967.

<sup>56</sup> Section 5(1)(c) of the Land Acquisition Act, 1967.

<sup>57</sup> See s 5(1)(d) of the Land Acquisition Act, 1967.

<sup>58</sup> See s 5(2) of the Land Acquisition Act, 1967.

<sup>59</sup> See s 11(1) of the Land Acquisition Act, 1967.

<sup>60</sup> Section 11(2) of the Land Acquisition Act

<sup>61</sup> Kombe W., Land Conflicts in Dar es Salaam: Who gains? Who loses? p 3 at (available from <http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries2/WP822.pdf> accessed on 18.12.2011).

Apparently, 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.<sup>62</sup>

### **(a) Declaration of Redevelopment Areas**

Section 34 of the Land Acquisition Act empowers the Minister to declare a scheme of redevelopment. The criteria for declaration of scheme of redevelopment are (i) the area must be within an urban area or peri-urban area (ii) the area is one developed principally for housing and that the greater number of houses therein are unsuitable as urban dwellings by reason of their bad arrangement or manner of construction, or of the materials used therein, or of the lack of sanitary facilities or facilities for the storage of food, the houses are not of permanent construction; or are unfit for human habitation; (iii) provision of improved standards of housing will be provided but redevelopment cannot be carried out expeditiously or conveniently by the owner or owners. In that case, the Minister may, publish an order in the *Gazette*, declaring the area to be a redevelopment area.<sup>63</sup> *Where the Minister declares any area to be a redevelopment area, he must cause the area to be defined on a map and he must cause copies of the map to be exhibited at the offices of the local government authority within whose jurisdiction the redevelopment area or any part thereof is situated.*<sup>64</sup>

In line with the above section, section 73 of the Urban Planning Act empowers the Minister with the consent of the landholders concerned signified by resolution in a meeting convened by a planning authority, redistribute land in an area to which a detailed planning scheme is in operation.<sup>65</sup> In doing so, he may advise the President where necessary to acquire land, for the areas requiring redevelopment in urban areas.<sup>66</sup>

Suffice it to point out at this juncture that although the Land Act provides for incidents of regularization of interests in land the area in question does not fall under regularization. Regularization of land rights is defined as a scheme of land reform designed to facilitate the recording, adjudication, classification and registration of occupation of land

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<sup>62</sup> Ibid.

<sup>63</sup> Section 34(1) of the Land Acquisition Act.

<sup>64</sup> Section 34 (2) of the Land Acquisition Act

<sup>65</sup> Section 73(1) of the Urban Planning Act, no 11 of 2007.

<sup>66</sup> Section 73(2) of the Urban Planning Act, No 11 of 2007; see also the 2<sup>nd</sup> Schedule to the Act part (h) on breadth of redevelopment scheme and contents thereof.

rights and interests by those persons living or working in a given area.<sup>67</sup> In particular, land regularisation is used to upgrade components of informal settlement in developing countries. The purpose of regularisation is to determine the interests in land which exist in the large unauthorised settlements in and around the urban areas, record them and allocate them to the occupiers and users of land in those areas.<sup>68</sup>

However, as stated above unlike schemes of regularization the current project, impacts on both formal and informal occupancies in the area. Furthermore as stated in the previous chapter the project has been conceived in the realization of a planned urban development of a new city within the context of Dar-es-Salaam City and to promote enhanced utilisation of inherent potentials of the area for socio-economic development of the country. So the project is more tailored to the benefits of the large section than the people of Kigamboni themselves thus not falling in the context of regularization. It foresees the potential inherent in the area and the need to tap it for betterment of the general public.

### **(b) Extinction of private rights**

In case of redevelopment, all interests in or over land within the redevelopment area, once acquired becomes extinguished. All land in such area becomes under the control and subject to the disposition of the President on the appointed day.<sup>69</sup> Except where a person entitled to any rights extinguished is eligible for a grant of a right of occupancy under section 36, or provision is made for the preservation of such rights in accordance with section 36 or section 37, of the Land Acquisition Act, no compensation is payable for the extinction of any right under section 35.<sup>70</sup> Any agreement made for the disposition of any interest in or over land in a redevelopment area but is not given effect before the appointed day becomes void.<sup>71</sup>

### **3.2.5 Urban Planning Act, No 16 of 2007**

The Land Acquisition when read together with the Urban Planning Act (2007) raises pertinent issues of procedure. Under section 8(1) of the Urban Planning Act, the Minister may, publish an order in the *Gazette*, to declare any area of land to be a planning area. The areas so declared must have defined boundaries<sup>72</sup> and a copy of the order together with a map

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<sup>67</sup> See further Tenga W.R and Mramba S.J., *Theoretical Foundation of Land Law in Tanzania* (2008) 218.

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

<sup>69</sup> Section 35(1) of the Land Acquisition Act.

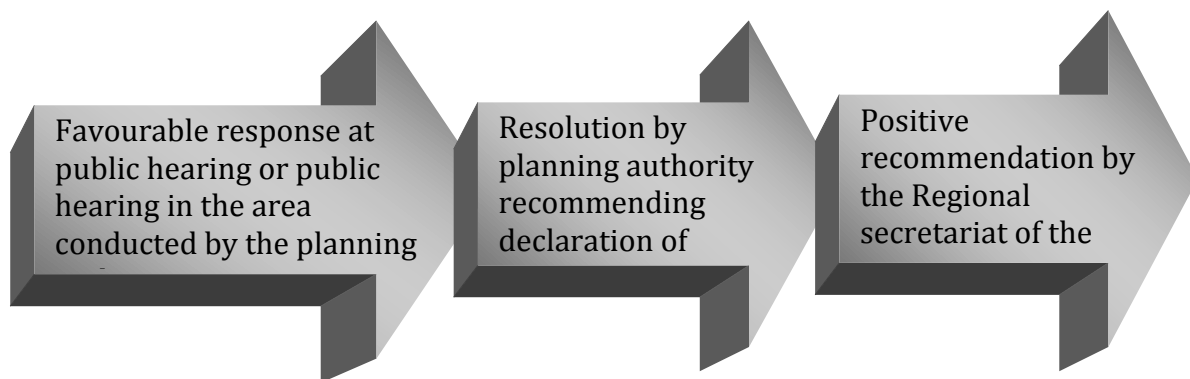
<sup>70</sup> Section 35(2) of the Land Acquisition Act

<sup>71</sup> Section 35(3) of the Land Acquisition Act

<sup>72</sup> Section 8(2) of the Urban Planning Act

of the area, has to be posted by the planning authority at such public places within the planning area.<sup>73</sup> The process for the declaration of planning area requires (a) *favourable response at public hearing or public hearing in the area conducted by the planning authority*; (b) resolution by planning authority recommending declaration of planning area; and (c) positive recommendation by the Regional secretariat of the respective region.<sup>74</sup> It is therefore vital for the Minister to consider the process as regarding declaration of a planning area. Although the rest of the stages may be simple, the most controversial one is securing favourable response from affected parties which may tempt skipping the procedure.

**Figure 3: Process for Declaration of Planning Area**



### 3.2.5. 1 General and Detailed Schemes

The Act envisages two types of planning schemes namely; general planning scheme and detailed planning scheme. The purpose of a general planning scheme is to coordinate sustainable development of the area to which it relates in order to promote health, safety, good order, amenity, convenience and general welfare of such area as well as efficiency and economy in the process of such development. General planning scheme focuses at improving the land and provide for the proper physical development of such land, and to secure suitable provision for transportation, public purposes, utilities and services, commercial, industrial, residential and recreational areas, including parks, open spaces, agriculture and reserves and for the making of suitable provision for the use of land for building or other purposes.<sup>75</sup> A general planning scheme may provide for planning, re-planning, re-development or

<sup>73</sup> Section 8(4) of the Urban Planning Act

<sup>74</sup> Section 8(3) of the Urban Planning Act

<sup>75</sup> Section 9(2) of the Urban Planning Act, 2007.

reconstructing the whole or part of the area comprised in the scheme, and for controlling the order, nature and direction of development in such area.<sup>76</sup>

**(a) General Scheme**

As noted in section 8 prior to the preparation of general scheme, the Minister must have declared the area to be a planning area. In preparing a general planning scheme, the planning authority is supposed to- (a) carry out surveys of the whole of the planning area; (b) prepare an inventory of planning resources in that area; and (c) compile a survey report maps and other descriptive matters.<sup>77</sup> Preparation of a draft general scheme has to be preceded by a resolution of the planning authority in respect of a planning area. The authority has to cause publication of such resolution in the *Gazette*.<sup>78</sup>

The draft general scheme has to be prepared within 6 months from the time of publication of the resolution and be submitted to a meeting of all stakeholders, comprising of all landholders, public and private institutions, Community Based Organizations and Non-Governmental Organizations in the area.<sup>79</sup> In the event of a positive resolution passed by the meeting, the planning authority, it shall deliberate upon the draft general scheme and in the event of endorsement signified by a resolution, the planning authority shall submit the general scheme to the Regional Secretariat within two months following passing of the resolution.<sup>80</sup> The Regional Secretariat has to deliberate upon receipt of the draft general scheme, and shall within two months of receipt reject or submit the plan to the Director together with recommendations and comments.<sup>81</sup>

The Director of planning is supposed to make the draft general planning scheme available to the public by publication in one local newspaper and any other means.<sup>82</sup> Within three months of such publication the planning authority shall conduct a public hearing in the planning area the proceedings of which shall be recorded and be submitted to the Director.<sup>83</sup> The Director may, make alterations or modification to the general planning scheme after taking into account the public hearings and views of the Region Secretariat.<sup>84</sup> Upon satisfaction, the Director shall approve the general planning scheme and thereafter submit the

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<sup>76</sup> Section 9(3) of the Urban Planning Act, 2007.

<sup>77</sup> Section 10(1) of the Urban Planning Act, 2007.

<sup>78</sup> Section 11(1) of the Urban Planning Act, 2007.

<sup>79</sup> Section 11(2) of the Urban Planning Act, 2007.

<sup>80</sup> Section 11(3) of the Urban Planning Act, 2007.

<sup>81</sup> Section 11(4) of the Urban Planning Act

<sup>82</sup> Section 12(1) of the Urban Planning Act

<sup>83</sup> Section 12(2) of the Urban Planning Act

<sup>84</sup> Section 12(3) of the Urban Planning Act

scheme to the Minister.<sup>85</sup> Upon receipt of the scheme, the Minister is supposed to order the general planning scheme to be published in the *Gazette*.<sup>86</sup>

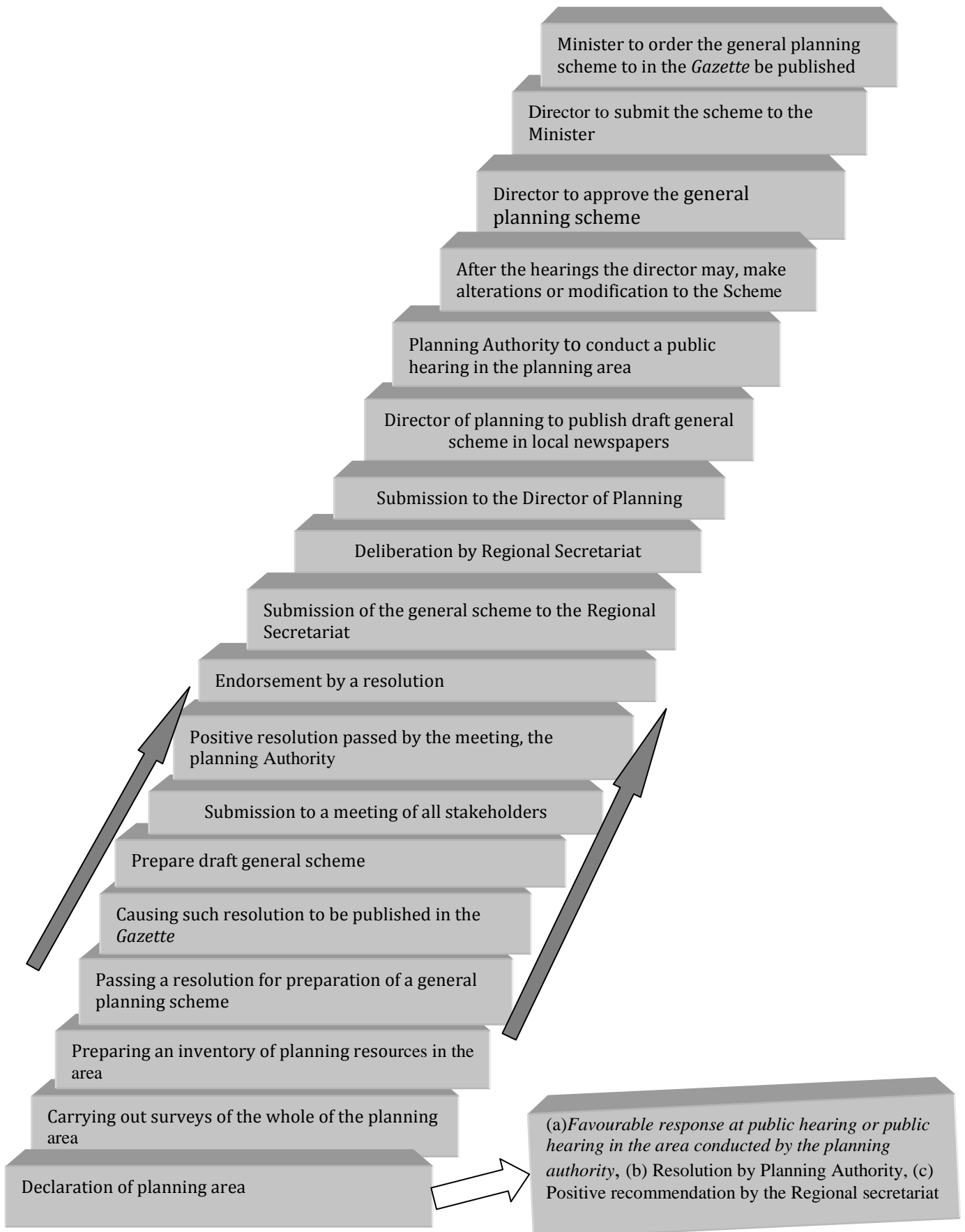
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<sup>85</sup> Section 12(4) of the Urban Planning Act

<sup>86</sup> Section 12(5) of the Urban Planning Act

The process for preparation of detailed scheme is as follows:

**Figure 4: Illustrative process for General Planning Scheme**



## **(b) Detailed Scheme**

It is worth-noting also that, a planning authority may on its own motion prepare a detailed planning scheme in respect of all or any land situated within a planning area notwithstanding that a general planning scheme has not been prepared for the planning area.<sup>87</sup> As it is for every detailed planning scheme, it must specify and define the area in which it relates including a plan in which shall be shown the extent of the scheme and such other matters as may conveniently be included therein.<sup>88</sup> The objective of every detailed planning scheme should be to coordinate all development activities, to control the use and development of land including intensive use of urban land and, in particular, vertical and compact urban development.<sup>89</sup> A detailed planning scheme may be a long-term or short-term physical development scheme or for renewal or re-development of any part of the planning area.<sup>90</sup> A detailed planning scheme consists of- (a) a survey in respect of the area to which the scheme relates and carried out in a manner as may be prescribed; and (b) maps and descriptions as may be necessary to indicate the manner in which the land in the area may be used.<sup>91</sup> A detailed planning scheme may make provision of matter set out in the Second Schedule to this Act.<sup>92</sup> According to the Act a detailed planning scheme shall have the force of law and may be enforced by a court of competent jurisdiction.<sup>93</sup>

The preparation of a detailed planning scheme by a planning authority passes through the several stages namely:- initiate the process by passing a resolution of intention to prepare a detailed planning scheme;<sup>94</sup> convene a meeting of all stakeholders, including landholders, public and private institutions, Community Based Organizations and Non-Government Organizations in the area to be affected;<sup>95</sup> in the event of a positive resolution by the said meeting, endorsing the proposal and the planning authority shall proceed to prepare a detailed planning scheme;<sup>96</sup> within three months of the making of the scheme the planning authority shall conduct a public hearing or hearings in the planning area;<sup>97</sup> and make alterations or modifications if any, by taking into account the results of public hearing before

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<sup>87</sup> See s 15(1) of the Urban Planning Act, 2007.

<sup>88</sup> See s 15 (4) of the Urban Planning Act, 2007.

<sup>89</sup> See s 16(1) of the Urban Planning Act, 2007.

<sup>90</sup> See s 16 (2) of the Urban Planning Act, 2007.

<sup>91</sup> See s 16(3) of the Urban Planning Act, 2007.

<sup>92</sup> See s 16(4) of the Urban Planning Act, 2007.

<sup>93</sup> See s 18 of the Urban Planning Act, 2007.

<sup>94</sup> See s 19(1)(a) of the Urban Planning Act, 2007.

<sup>95</sup> See s 19(1)(b) of the Urban Planning Act, 2007.

<sup>96</sup> See s 19(1)(c) of the Urban Planning Act, 2007.

<sup>97</sup> See s 19(1)(d) of the Urban Planning Act, 2007.



submitting it to the scheme for its approval.<sup>98</sup> A detailed planning scheme cannot be prepared by the planning authority contrary to any of the stated stages.<sup>99</sup>

The Director may, by notice published in the *Gazette* and after consultation with the relevant planning authority, declare any area with unique development, potential or problems, as a special planning area for the purpose of preparation by the relevant planning authority of a planning scheme irrespective of whether such area lies within a planning area or not.<sup>100</sup> Also, the Director may, by notice published in the *Gazette*, suspend for a period of not more than two years, any development as deemed necessary in a special planning area until the detailed planning scheme in respect of such area has been approved.<sup>101</sup> Where, before the declaration of a special planning area and a planning consent has been granted by a planning authority for development in the area, such permission shall not be affected by the suspension if the development in respect of which the permission is granted has been commenced not less than six months before the suspension of development of the kind in the special planning area.<sup>102</sup>

Government awareness of the legal process was reflected in the Master Plan that the power to create and prepare a Master Plan Scheme for New Kigamboni City comes from Sections 5 through to 7 of Part III and Sections 8 through to 14 Part IV of the Urban Planning Act of 2007. These sections of the Act empower Minister to initiate and issue guidelines to planning authorities on the proposals for declaration of planning areas, (in this case) the preparation of a General Planning Scheme (Master Plan), land use plans and Detail Planning Schemes in order to guide future physical development and improvement of current Kigamboni project area status to the envisaged new city entity. While the preparation of the Master Plan for New Kigamboni City was deemed to be in line with the governing laws of Tanzania any procedural failure is not attributable to lack of knowledge.<sup>103</sup>

### **Figure 5: Illustrative process for Detailed Planning Scheme**

<sup>98</sup> See s 19(1)(e) of the Urban Planning Act, 2007.

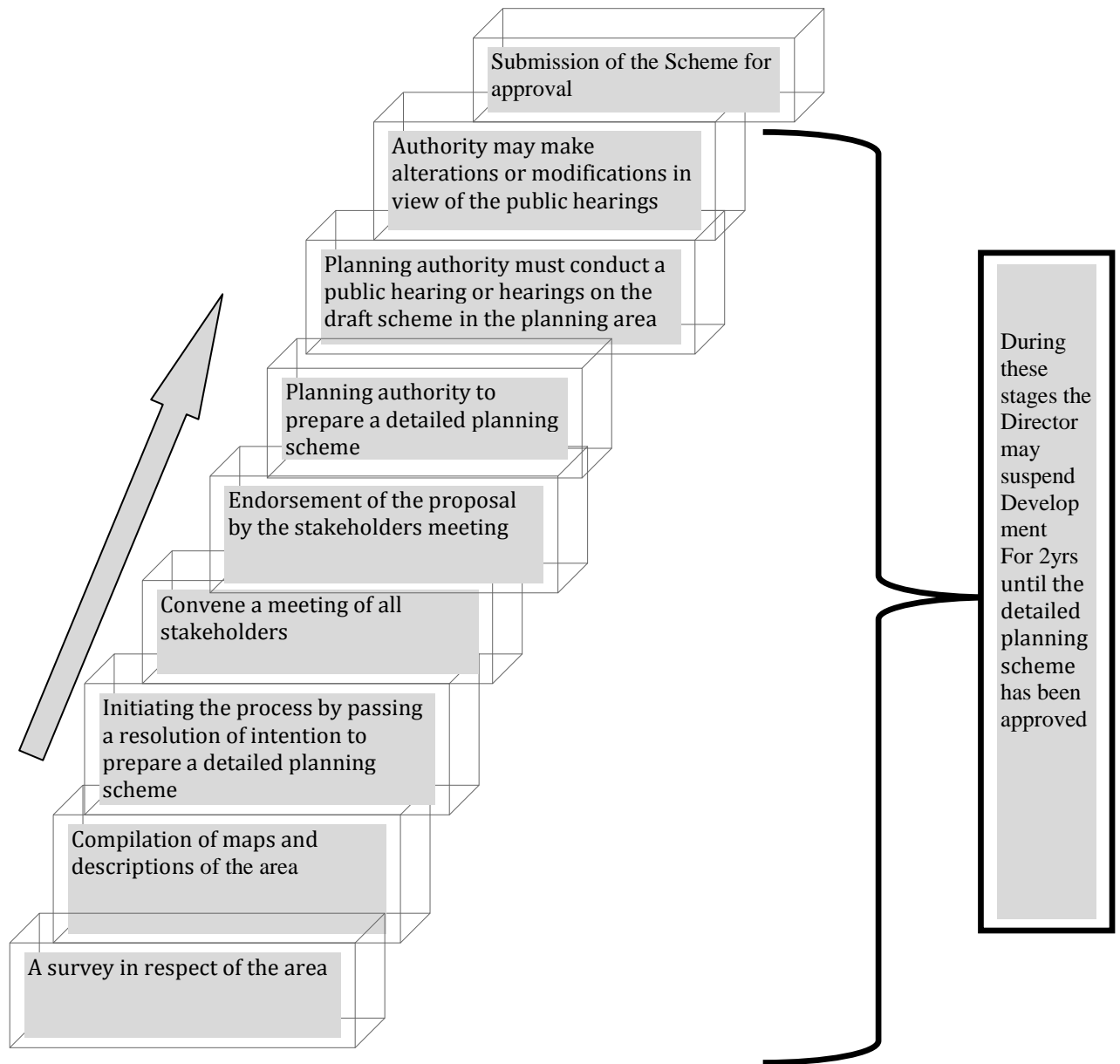
<sup>99</sup> See s 19(3) of the Urban Planning Act, 2007.

<sup>100</sup> See s 24(1) of the Urban Planning Act, 2007.

<sup>101</sup> See s 24(2) of the Urban Planning Act, 2007.

<sup>102</sup> Section 24(3)

<sup>103</sup> Master Plan Kigamboni New City, P 7



The value of any land within a planning area shall, for the purposes of determining the amount of compensation payable, be calculated in accordance with the provisions of the Land Act.<sup>104</sup> In giving planning consent under the provisions of this Act to the temporary development of any land within a planning area, the planning authority concerned may give such planning consent on the condition that the value of such temporary development shall not be taken into account for the purposes of assessing any compensation payable to the landholder of such land and, in such case the value of any temporary development shall not be taken into account for the purpose of assessing compensation payable.<sup>105</sup>

<sup>104</sup> Section 64(1) of the Urban Planning Act, 2007.

<sup>105</sup> Section 64(2) of the Urban Planning Act, 2007.

### 3.3. Discussions and Legal Analysis

Despite the above procedural requirements the government through GN 229/14/10/2008 Land Acquisition Act; 1967, Cap 118 under sect 34 declared certain areas of Kigamboni to be redevelopment areas. Under the order entitled Land Acquisition (Redevelopment Areas) Kigamboni, Vijibweni, Mjimwema and Kibada Areas Order 2008; it stated that;

‘Whereas, I..... Minister for Lands, Housing and Urban Settlements Development being satisfied (a) that the areas within Temeke Municipality which excludes 20,000 plots project areas and which is delineated in red on the Town Planning Drawing No 1/38/5008 are declared redevelopment areas, and (b) that a scheme for redevelopment of the said area and the provision of housing shall be prepared by the Minister for Lands, Housing and Human Settlements Development in collaboration with Temeke Municipal Council; and (c) that such redevelopment cannot be expeditiously or conveniently carried out by owners of the houses in the said area; Now therefore I do hereby make the following order in accordance with section 34 of the said Act;

1. This Order may be cited as the Land Acquisition (Redevelopment Area) Kigamboni, Vijibweni, Mjimwema and Kibada Areas) Order, 2008.
2. The area in Temeke Municipality delineated in red on the town Planning Drawing No. 1/38/5008 which is deposited by the Director of Physical Planning is declared a Redevelopment Area.
3. Copies of the said Plan may be inspected at the offices of the Director of Housing and Human Settlements Development Ardhi House Dar Es Salaam and Temeke Municipal Council.’

Thus, according, to the Order the areas of Kigamboni, Vijibweni, Mjimwema and Kibada were officially declared to be a redevelopment area. The Order called upon the public to inspect the map at the offices of the Director of Housing and Human Settlements Development Ardhi House Dar-es-Salaam and Temeke Municipal Council. However, despite the Order a project affecting so many people and properties required more thorough consultation but also the means of communication leaves many without adequate or even accurate information. Most of those who cannot make it to the mentioned offices will rely on hearsay.

The Government did also issue a government notice on newspapers. The notice which bore the heading, Government Notice: Government Plan to Develop the Kigamboni Area Dar Es Salaam, stated that the MLHSD in collaboration with the Municipal Council of Temeke and the City of Dar Es Salaam was preparing a Master Plan for the New Kigamboni City which shall be the centre for social, economic, technological services of the city of Dar Es Salaam. According to that notice preliminary steps for announcing and outlining the area coverage for the Master Plan had been finalized. It reiterated that the area had been gazetted through GN 229 issued on 24<sup>th</sup> Oct 2008. It further stated the beneficial effects of the project to the city of Dar Es Salaam, economically, socially, and culturally. So, in brief it endeavoured to be a forum for knowledge regarding the envisaged city. The notice also lambasted on rumours that were being spread regarding the project. The rumours were deemed to cause panic to the public especially occupiers of Kigamboni area who fall within the project area. The government consider the people who were spreading the rumours as ignorant of the project, misinformed or wanted to breach peace and enemies of development. Through the notice the government assured those who would be affected that their rights and interests would be taken into account. Those who owned land in the project area were advised not to sell their plots randomly It was made clear that the exercise

will be coordinated by the Ministry, Temeke Municipality and the Dar Es Salaam City Council and all stakeholders were called upon to offer their cooperation in planning, getting information and relevant data from the stated institutions. It was on the basis of that notice that any improvements in land in the project area were stopped until the completion of the planning of the New City with exception to areas under the 20,000 plots project. (Issued 30<sup>th</sup> Oct 2008).

In 2011, the government issued another notice to the public regarding the preparation of the Master Plan for the Development of the New City of Kigamboni. Under the notice it was stated that the MLHSD in collaboration with the Temeke Municipal Council was still going on with the preparation of the plan for the development of the New Kigamboni City Master Plan. The areas to be affected are Kigamboni, Tungi, Vijibweni, Mjimwema and Kibada wards together with the streets of Kizani, Mbwanaji both in the Somangila ward.

According to the notice, the process for the preparation of the Master Plan commenced by declaring the relevant area in the Government Gazette. After that the Ministry gave three notices to the public on the 30<sup>th</sup> Oct 2008, 23<sup>rd</sup> July 2009, and 17<sup>th</sup> Sept 2009 to direct the public to stop any developments in the project area until the completion of the Master Plan.

The general election was singled out as one of the reasons for failure to complete the Master Plan within 2 years as planned. *The notice further stated that the draft Master Plan was competed and copies could be bought at 100,000Tsh for electronic version or 200,000Tshs for hard copy. The public was further called upon to visit the office of the Director of Planning or the director of Temeke Municipality to peruse the draft.*

Under the notice it was provided that the Ministry and the Temeke Municipal Authority will undertake public meetings in the project area to get *citizens final views* regarding the Plan. After such meetings steps would be taken to finalize the Master Plan and to approve it through the municipal and Government authorities.

The public was strongly warned not to build in the project area without a valid building permit issued by the Temeke Municipality in conjunction with the Ministry of Lands. (Dated 28<sup>th</sup> Febr.2011).

Among the issues that caused public outrage was on the cost of the draft Master Plan. Majority of the residents of Kigamboni depend on petty business and those who are employed they earn the minimum wage or slightly above the minimum wage. Expecting such people to spend 100,000/Tsh or 200,000/Tsh to procure a draft plan so that they may know its contents and how they will be affected was miscalculated. According to the research observations, many people in the area were computer illiterate so for them to buy a soft copy of the plan was another paradox. But also in a situation where the views of the public were not adequately collected and yet the notice provides for a sign of ending the exercise of consultation, it made the public feel denied of vital right to participate. In an interview with the Land Officer of Temeke Municipality<sup>106</sup> he clearly pointed out that the government is planning to have a series of public meetings in the project area before the Plan is finalized. This still shows the glitches overshadowing the entire process regardless of the opposition already shown by the residents of the area. It is under the Order that the residents were warned not to effect any develop in the area without a valid permit.

Apparently, to the Master Plan the process for its preparation involved conducting

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<sup>106</sup> Interview held on 16.12.2011 at the Temeke Municipal Offices.

stakeholders' workshops. As noted since the New Kigamboni City Master Plan is for the people, it was imperative to collaborate with stakeholders during its preparation. Conducting workshops was one of the way of networking with the people. It was therefore necessary to gather opinions and advice through such avenue including direct consultaion with the Client and other key stakeholders. These feed-back presentations were conducted between 2 to 4 Dec. 2009 involving the Client, Temeke Municipality and key stakeholders. The three events produced valuable responses that were recorded by the Consultant for deliberations in the proceeding stages.<sup>107</sup> It is considered that, the planning process was structured to facilitate a wide range of community perspectives.

However, according to the Community views solicited through the New Kigamboni City Committee; everything has been done in secret. So far, the residents of Kigamboni are not properly informed of the envisaged development. Also they do not know their fate as the life style will not be the same. The residents have not been told what will be their options under the Master Plan; whether compensation, resettlement or just to comply. It would seem all must shift. Also notably, the residents of Kigamboni have not been facilitated to be able to invest in the area and take advantage of the proposed new City. They seem to end up rubber stamping the project in its formative stage before they are technically forced out.

The preparation of the General planning Scheme was to involve the public as it is provided under section 11(2) of the Urban Planning Act 2007. The Planning Authority was supposed to submit a draft scheme to all stakeholders including land holders. Even the detailed planning scheme had to follow the procedure outlined above but it was not followed. Section 19(1) of the Urban Planning Act 2007 provide for the stages if detailed planning scheme; (a) resolution (b) convene meeting of all stakeholders including land holders but it was not done. According to section 19(2) if the procedure is not followed there cannot be a detailed plan. Therefore the so called detailed plan appears to be conceived out of irregular procedure. To the dismay of many the plan is deemed to be in its final stages for submission to the cabinet for approval.

It was also noted that after the public meeting that was held at Chadibwa there were ward meetings which do not follow the sequence stated in the law. Although the intentions of the meetings were *inter alia* raising public awareness failure to initiate the public hearings made the public over-cautions and under constant trauma. So the trend was issuance of Government Notice on the 24<sup>th</sup> of Oct.2008 then Chadibwa meeting on the 16<sup>th</sup> of Jan.2009.

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<sup>107</sup> Kigamboni Project Master Plan (2010) 11.

Public meetings by the Minister (ward to ward) on how they will benefit followed. The meetings did not however, commence on Dec 2009 but Jan 16/1/2009 and did not amount to public hearings. The declaration required people to get development permits before building a plot while the plan was not yet approved.

Under section 18 of the Urban Planning Act the plan once approved is recognized by a court of law but the plan is not approved and the process seems flawed. In July 2011 the government wanted to start giving compensation for a process that the President had not acquired the land, and even the plan has not been approved and the public has not been involved. It appears that people's rights are held at stake and not safeguarded. Although there are now plans to constitute a management organ such as (Kigamboni Development Authority (KDA) to be established directly under the Prime Minister's Office-Regional Administration and Local Government, it disappoints the public as the procedures for the Master Plan seem questionable. According to the Land Officer for Temeke Municipality the Steering Committee for the New Kigamboni City was in the plan of visiting the Capital Development Authority-Dodoma (CDA) for consultation on modalities to develop the new city.<sup>108</sup> The Master Plan notes that the establishment of the Authority is inevitable as the implementation process requires commitment, strong leadership, coordination, detail planning, design guidelines and development control and many players in the field that will require prompt decision to avoid project delays and cost escalation. Hence such organ will avoid government bureaucracy.<sup>109</sup>

Among the functions that the KDA will discharge include Managing of project; land acquisition, sales, compensation and resettlement; land development with other stakeholder; marketing and promotion for investment; Master Plan policy enforcement; and any other duties as may be charged by the government.<sup>110</sup>

On the modalities of developing the new city given its size, it has been recommended to have various development methods where the KDA will play a central role. In the proposed methods the first is the public development method in which the KDA purchases the land and develops it directly. This has been deemed by the Master Plan as the

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<sup>108</sup> The CDA was established by an Executive Order; see the Capital Development Authority (Establishment) Order GN. Nos.230 of 1973 as amended by 230 of 1984 and 32 of 2001 that establishes the Capital Development Authority as a public corporation with functions to implement the decision to transfer the capital of Tanzania to Dodoma; to prepare plans for the development of Dodoma as the capital of Tanzania and submit the same to the President; and further to implement the plans approved by the President; to carry out and effect the necessary development of Dodoma so as to render the same suitable for the capital of Tanzania; to advise and assist the Government on an orderly transfer to Dodoma of various Government and other public officers; to acquire and hold, subject to the directions of the President, land and other immovable properties etc.

<sup>109</sup> MLHSD Master Plan p 246

<sup>110</sup> Id

best method to develop the city on time and it is recommended to be mostly applied in the New Kigamboni City project. The second is the owner development method where land owners develop their own lands according to the Master Plan. The third method is a substitute lot where by the KDA develops land on behalf of the land owners and therefore does not compensate land. After land development, sales of property are distributed between KDA and land owner at the agreed price. The fourth is the public and private partnership (PPP) method where by KDA and private companies invest capital together and establish joint-venture company.<sup>111</sup>

As it can be noted there are four options suggested in the Master Plan. For the first option, the assumption is the KDA will purchase land from those residents who may fail to comply with the new guidelines or those who will be will to sell it. In the second option the residents or land owners will develop their own land presumably under the supervisions of the KDA to ensure that all requirements are complied with. This may prove difficult due to the intricacies of obtaining financial loans much as it will pose a challenge to the project goals due to possible delays. The third option could be the better option as it will allow the landowners to benefit outright from the project development. This could allow the landowners to have equity share in the eventual development of the project. This will also be in tandem with the Government's position as stated by the Deputy Minister, MLHSD in the Parliament regarding the inclusion of the residents of Kigamboni that ‘

‘... kuhusu ushirikishwaji wa wananchi katika uwekezaji napenda kulijulisha Bunge lako Tukufu kwamba Sera ya Serikali yetu ni kuhakikisha kwamba wananchi wanakuwa wabia katika miradi yote ambayo inawekezwa na wageni. Tusingependa kuona Mji wa Kigamboni, tungesema kwa Kiingereza unakuwa wa *foreigners* tungependa kuona kwamba Mji ule mandhari inabadilika lakini unabaki kwa Watanzania kwa maana ya kwamba wamiliki wa ardhi pale Kigamboni hivi sasa wanaendelea kuwa ni Watanzania wenyewe. Mheshimiwa Mwenyekiti, hivi sasa kuna wawekezaji kadhaa wameanza kuwekeza hapa nchini na sisi pale ambapo tumeshiriki katika kujadili taratibu za uwekezaji tumehimiza kwamba walau basi Serikali katika eneo hilo au wananchi kupitia Serikali yao wamiliki kiwango kisichopungua asilimia 25 ya kile kitakachowekezwa katika eneo hilo. Kwa hiyo natoa wito kwa wananchi wa Kigamboni kwamba wale wote wanaomiliki maeneo katika eneo hilo wajitokeze wakitaka wao wenyewe waalike wawekezaji popote wanapopatikana waje washirikiane wajenge kile ambacho kimesanifiwa katika eneo la Mpango wa Mji mpya na Serikali itaidhinisha.’<sup>112</sup>

Even regarding the public-private partnership this could still provide

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<sup>111</sup> Ibid p 250

<sup>112</sup> Hansard Fifth Meeting, Fourth Session, 11<sup>th</sup> November, 2011 Ministry's Response to a question asked by Hon. ESTER A. BULAYA (on behalf of Hon. DR. FAUSTINE E. NDUGULILE the MP for Kigamboni Constituency, p 17

opportunity for few financially-able people to enter into joint venture with the government in effecting development. Although this is generally a common practice the larger section of the society could be left out due to lack of necessary financial basis thus technically forcing the residents out.

As partly pointed out in the Plan, the Master Plan for New Kigamboni City will affect many existing properties in Kigamboni, Vijibweni and Mjimwema wards) in Kigamboni which require to be relocated to other areas within the planning area. Implementation of the Master Plan will therefore require acquisition of land for development of the new city before any project implementation starts on ground. In the course of the interviews it was evident that many people have apprehension of fear regarding their relocation although at the time of the research no resettlement/ compensation had been effected. Also despite the plan that the project will be implemented in three phases, this year there were indications that the port which was earmarked to commence in the second phase was to this year. People who happened to be in the area to be covered by the port were approached for possible compensation procedures. This further confused the public as the information they had received the project won't start at once but in successive phases. It has further made them to distrust any information they get regarding the project. To them after the compensation one must leave after 14 days but they have not been prepared for the challenges of new life as a result majority refused the compensation. On the criteria for compensating the properties, the public is against the compensation schedule for various properties (real including plants such as coconut trees; the criteria is not realistic. i.e. one coconut tree is 240coconuts pr yr @ 1,000/-=240,000 but for the coconut to bear fruit it is 10 years. So the value should be  $240,000 \times 10 = 2,400,000/-$ ).

The government is of the view that the methodology that was deployed was extensive involving, project initiation and preparatory work included physical site inspection, review of relevant available secondary data, socio-economic surveys and analysis and existing land use surveys and analysis. Adequate surveys are deemed to have been conducted covering the whole of Kigamboni project area. According to the information in baseline surveys, the exercise commenced by educating local leaders on the importance of the baseline surveys. The data collectors were selected amongst Kigamboni communities and about 450 enumerators were deployed in the new city area where each covered about 50 houses. It was further noted that the Consultant conducted two days seminar on data collection techniques. And there after two weeks were given to data collectors to complete data collection exercise.



All questionnaires were dully filled resulting to 100% coverage.

Despite such view, the residents of the project area considered the exercise to have been conducted by inexperienced persons. To them, even the task of property inventory lacked the requisite diligence thus devoid of legitimacy. Also as there was gross lack of clear information the public did not participate fully in the exercise. Hence the process started more informally. Due to such procedural inadequacies the community formed a representative committee of 12 people in 2009 to make follow on the project. The committee has been working and at the time of the research, it was considered to have legitimacy from the people. It managed to hold various meetings with different officials in the Ministry and the municipal council. It also succeeded to engage the affected community in diversity of gatherings like general public meetings and religious groupings. At the time of the research the committee had conducted several meetings. It also managed to run various media programmes on radio and Television to raise awareness of the general public on their fate in the Kigamboni project.

As it has been seen the procedure under the Urban Planning Act, was flawed leading to atmosphere of distrust between the community and the government. The procedure was to *inter alia* conform to part IV of the Act (a) 8(3) declaration of planning scheme, 8(1-4). The declaration of the scheme was not preceded by favourable hearings as required. In planning issues, participation is not a privilege. The 1<sup>st</sup> meeting would have allowed the public to air their views, lack of participation denied them useful right and opportunity. But also, in the committee that was appointed for the project only one member, the Member of Parliament is from the project area. To the residents of Kigamboni, such kind of involvement is not meaningful and it lacks necessary credibility to make it valid as stated under section 8 and 9 of the Urban Planning Act 2007.

It would appear that although the intention might be good the process has been flawed which makes it illegal for want of procedure. It has been and will continue to be perceived as a land grabbing mechanism plotted by the government against its own people resulting into internal displacements. The inception of the project, the preparation of the Plan and its submission to the public and the manner of implementation has lacked the requisite transparency and involvement.

The citizens also recall the response of the Deputy Minister MLHHS D when responding to a question in the Parliament asked by Hon., Faustine Ndungulile (Dr.), Member of Parliament-Kigamboni that there are complaints that the residents of Kigamboni were not fully involved; i.e.

‘Kuna taarifa na malalamiko kutoka kwa wananchi wa Kigamboni hususan wanaohusika kwamba *Master Plan* ya Mradi Mpya wa Ujenzi wa Kigamboni haikuzingatia Sheria ya Ardhi Na. 4 ya Mwaka 1999 na Sheria ya Mipangomiji ya Mwaka 2007 ambayo pamoja na mambo mengine inaitaka Wizara kabla haijaanza kubadilisha matumizi ya eneo husika hususan ambayo ina makazi ya watu kwenda kufanya vikao na wananchi na kupanga ni jinsi gani ambavyo huo mradi utaendeshwa na makubaliano yote kuhusiana na gharama kitu ambacho hakijafanyika kama sheria ambavyo inataka. Je, Serikali haioni kwamba ni wakati muafaka wa kurudi na kuanza mchakato mpya kwa kuwashirikisha wananchi wa Kigamboni kwa kufanya vikao na kukubaliana kabla ya wataalam kuingiza mpango huo kwenye makaratasi kwa ajili ya utekelezaji ili kuondoa *contradiction* na malalamiko yaliyojitokeza sasa hivi kwamba kuna mazingira ya dhulumati kuhusiana na suala zima la fidia kutokana na ardhi kuwa na thamani.’<sup>113</sup>

In his response the deputy minister emphasized that the citizens of Kigamboni were fully involved in the preparation of the Master Plan. In particular according to his response every house was involved. To quote the Deputy Minister MLHSD had the following to say;

‘...kwanza kuhusu ushirikishwaji wa wananchi wa Kigamboni katika maandalizi ya Mpango Kabambe wa Kigamboni napenda kulihakikishia Bunge lako Tukufu kwamba wananchi wa Kigamboni walishirikishwa vilivyo. Mikutano ya hadhara iliendeshwa katika Kata na Mitaa yote ya Kigamboni kuanzia tarehe 2 Desemba, 2008 hadi tarehe 24 Machi, 2009. Mheshimiwa Mwenyekiti, zaidi ya hayo mapema mwaka huu Waziri wa Ardhi, Nyumba na Makazi alifanya Mikutano ya hadhara katika maeneo ya Kigamboni ili kwa mara nyingine tena kuwashirikisha wananchi kuwaelevesha umuhimu wa wao kushiriki sio kuwa watazamaji tu bali kushiriki kwa vitendo kuwekeza katika Mji Mpya wa Kigamboni...’<sup>114</sup>

The response leaves a lot of questions to the citizens of Kigamboni as it is not established what residents were involved. Lack of involvement necessitated the citizens of Kigamboni to constitute their own committee to seek room for involvement but it was not met with the immediate response they expected. Although the residents of Kigamboni might not be interested to participate, their vested interests in the project area make them restless.

The case of *Saramaka v Suriname*,<sup>115</sup> could be of great assistance at this point in time. In para 133 [the] Court stated that in ensuring the effective participation of members of the [...] people in development or investment plans within their territory, the State ha[d] a duty to actively consult with [the] community according to their customs and traditions. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, the [people] [had to] be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain

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<sup>113</sup> Hansard Ibid p 18

<sup>114</sup> Hansard p 17

<sup>115</sup> (IACtHR, 28 Nov 2007) see also Tenga W., & Mramba S., *Theoretical Foundation of Land Law in Tanzania* (2008) p 112.

approval from the community. Early notice provides time for internal discussion within communities and for proper feedback to the State. The State must also ensure that members of the [...] people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily. Finally, consultation should take account of the [...] people's traditional methods of decision-making. The court fortified its position in view of its previous decision in *Maya Indigenous Communities of the Toledo District v. Belize*,<sup>116</sup> where the Inter-American Commission observed that States must undertake effective and fully informed consultations with indigenous communities with regard to acts or decisions that may affect their traditional territories. In the said case, the Commission determined that a process of “fully informed consent” requires “at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives”.<sup>117</sup>

On para 134, the Court consider[ed] that, regarding large-scale development or investment projects that would have a major impact within the [area], the State has a duty, not only to consult with the [people], but also to obtain their free, prior, and informed consent, according to their customs and traditions [if any]. On para 135. [the], Court considered the U.N. Special Rapporteur's [Report] on the situation of human rights and fundamental freedoms of indigenous people [where it had been] similarly observed that: wherever [large-scale projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. [...] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.

But also in the *Endorois* case<sup>118</sup>, even consultation of some leaders was deemed to be no consultation. ‘[that] some leader had been consulted the community had not been. The

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<sup>116</sup> Inter-American Commission on Human Rights, Report 40/04, Merits. Case 12.052

<sup>117</sup>Id.

<sup>118</sup> The *Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v Kenya*, Communication 276/2003, African Commission on Human and Peoples'

Commission held that consultation has to recognize unequal bargaining power, must be based on prior informed consent and be culturally specific.’

In yet another question whether the residents of Kigamboni will be compensated following the lapse of the two years stop order. The Deputy Minister’s response, towards the stop order was that ‘the citizens were not barred from developing their areas and there will be no compensation despite the failure of the project to kick-start on time’. But records show that the Ministry in more than one occasion issued notices to the citizens requiring them not to risk committing their resource to develop their properties in the project area. But another intriguing question is regarding the notice issued recently (Feb. 2011) that the Ministry will be collecting final comments regarding the project. While it is clear that the project is still in progress it is not the right time for the Ministry to start seeking final comments. The response of the government on the issues that affects the interests of the citizens in the project area has not been given due and fair consideration. But the citizens still feel that even the final comments that the Ministry is planning to solicit is un-procedural because they have not been asked to give initial comments.

According to the Deputy Minister MLHSD, when responding to a question in the Parliament regarding payment of compensation it was evident that the residents who could not sale or develop the areas cannot be compensated...‘Je, Serikali itakuwa tayari kulipa fidia kwa hasara na usumbufu kwa wananchi wa Kigamboni kwa kushindwa kuuza au kuendeleza maeneo yao?’ he responded that;

‘...Serikali haitalipa fidia wakazi wa eneo la mradi kwa sababu haikuwazuia wananchi wanaoishi kwenye eneo hilo kuendelea na shughuli zao za kawaida isipokuwa kwamba Tamko la Serikali la Oktoba 2008 lilisitisha maendeleo ya ardhi wanayomiliki ikiwemo ujenzi wa majengo mapya ya kudumu. Tamko hilo la Serikali lilitolewa kwa mujibu wa Kifungu cha 24 cha Sheria ya Mipangomiji Na. 8 ya Mwaka 2007 ambacho kinahusu kusitisha maendeleo ndani ya maeneo husika kwa muda wa miaka miwili. Vilevile Tamko la Serikali halikumzuia mmliki yeyote wa mali Kigamboni kuuza mali zao katika kipindi hicho cha Mpango. Mheshimiwa Mwenyekiti, napenda kuliarifu Bunge lako Tukufu kuwa amri ya kusitisha ujenzi ilikoma mwezi Oktoba, 2010. Baada ya hapo hakukuwepo na pingamizi la Kisheria la kuendeleza maeneo husika kuanzia wakati huo kwa kuzingatia matumizi ya ardhi ilioainishwa kwenye Mpango Kamambe wa Mji Mpya na maelekezo ya Kanuni ya 124 ya Kanuni za Udhibiti wa Ujenzi zilizotolewa chini ya Sheria ya Serikali za Mitaa (Sura 288) zinazoelekeza kwamba kila anayeendeleza eneo katika Mji ni sharti awe na kibali cha ujenzi kabla hajafanya maendeleo ya aina yoyote. Kwa kuzingati Kanuni hiyo mwezi Februari, 2011 Wizara ya Ardhi, Nyumba na Makazi ilitoa tamko lililowakumbusha wanaomiliki ardhi

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Rights, 2010., See also Tenga W., & Mramba S., *Theoretical Foundation of Land Law in Tanzania* (2008) pp 109-111

katika eneo la Mji Mpya kuwa hawana budi kuomba na kupewa vibali vya ujenzi kabla ya kufanya ujenzi wowote, ili ujenzi huo uzingatie matumizi ya ardhi yaliyoainishwa katika rasimu ya Mpango Kabambe wa Mji Mpya wa Kigamboni, kama ilivyotakiwa chini ya Sheria ya Mipangomiji, Kifungu cha 41.<sup>119</sup>

Para 138 of the of the *Saramaka v Suriname*<sup>120</sup> judgment addressed the question of compensation and benefit sharing. [According to the judgment] [t]he second safeguard the State must ensure when considering development or investment plans within [peoples' localities ] is that of reasonably sharing the benefits of the project with the [...] people. The concept of benefit-sharing, [...] can be said to be inherent to the right of compensation [...]which states that [n]o one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. The Court consider[ed] that the right to obtain compensation under Article 21(2) of the Convention the American Convention on Human Rights extends not only to the total deprivation of property title by way of expropriation by the State, [...] but also to the deprivation of the regular use and enjoyment of such property. In the [case], the right to obtain “just compensation” pursuant to Article 21(2) of the of the Convention was translate[d] into a right of the members of the [community] to reasonably share in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and of those natural resources necessary for their survival. [In] para 140, [...E]quitable sharing of benefits to be derived from such exploitation [must] be ensured.”

Thus, what is deemed to be final comments was supposed to be the initial comments regarding the response of the public to the project. Even at the time of doing property inventory it has been complained that the affected persons were not duly involved. It was alleged that the exercise was conducted informally without first giving notice to the property owners to be available and give correct information regarding their properties. As a result at the time of the exercise sometimes children and house helpers were consulted which resulted into wrong information. To prove that, the research team was shown names which did not correspond with the actual owners of the properties. In some cases, the names of the property owners were recorded in a different ward or the first name did not match the second or third names. Still many names are missing in the books of inventory which may result into serious problems during compensation. It is therefore required that for accuracy and fairness the

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<sup>119</sup> Hansard Fifth Meeting Fourth Session, 11<sup>th</sup> Novemba, 2011 response to a question by Hon. DR. FAUSTINE E. NDUGULILE MP for Kigamboni.

<sup>120</sup> Supra.

exercise of property identification/ inventory should be repeated.

### **3.4 Land Acquisition and Resettlement Management**

According to the Master Plan, the execution of the New Kigamboni City will inevitably require acquisition of land. The New Kigamboni City will affect some existing properties (especially in Kigamboni, Vijibweni and Mjimwema wards) in Kigamboni which require to be relocated to other areas within the planning area. The implementation of the Master Plan will therefore require acquisition of land for development of the new city before any project implementation starts on ground. This situation necessitates land acquisition, compensation and resettlement of affected people and properties within the planning area.

In addition the Master Plan notes that properties survey for valuation with a view to effect compensation must be done immediately after approval of the Master Plan. In order that this process is performed successfully, participation of affected people and properties must be observed. Laws governing this process should be observed and applied so that complaints from property owners are avoided. It has also been recommended that compensation values for properties should respect current market prices of land value and that it would be advantages if compensation for land acquisition for development of new city is done at once to avoid escalation of prices for land market and values in the future.<sup>121</sup> Nonetheless, this recommendation is likely to remain on paper with the residents suffering given the experience of related projects.

After completing land compensation, resettlement for the present residents should be performed before starting project development. The process of resettlement and compensation should be done carefully otherwise there may be severe complaints and conflicts about property values, the location for resettlement and financing responsibility of resettlement. All required legal procedures must be observed before resettlement plan is implemented.<sup>122</sup>

Although it has been noted that resettlement of people and property has always faced resistance the people are barely consulted during the assessment of the value for compensation and resettlement program as it happened during the property inventory exercise. All affected people should be give adequate information and should be facilitate

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<sup>121</sup> See Kigamboni Master Plan (2010) 266.

<sup>122</sup> Ibid at 240.

to participate fully in the entire process (survey for assessment of value for properties, compensation schedule, resettlement location and management procedures).

As noted as the exercise is involuntary resettlement and land compensation is unavoidable related activities should be carried out in a manner to promote sustainable development to give the people the opportunity to share in project benefits. Displaced and compensated people should be assisted in their effort to improve their livelihood and standard of living or at least to restore them in real terms to pre-displacement levels or to levels prevailing at prior to the beginning of project implementation, whichever is higher. Major means of their economic life before displacement must be provided in or close to the new resettlement areas.<sup>123</sup>

According to the Master Plan about 97,000 people (Dec. 2014) are required to be resettled in the southern part of the planning area in the first four years of implementation of phase 1. The government through the established authority has to establish resettlement plan and management for the affected. Also the new houses to be constructed should be designed to various sizes, scales, types that are affordable to people who will be resettled.<sup>124</sup> Given the clear words of the Plan it obvious therefore that relocation is not a negotiable deal but a must. According to the text of the proposed new city, the assumption is to relocate them within Kigamboni in areas B/L1-B/L5<sup>125</sup>, however, the kind of lifestyle that will be experienced in this new city is not one suited to low income earners.

Although the response of the Deputy Minister MLHSD to the question how will the kigamboni residents benefit from the project he stated that the residents will benefit from the new opportunities that will emerge, employment and decent houses; the response is short of clarity. To quote;

‘... wananchi wa Kigamboni watanufaika kutokana na ujenzi wa Mji Mpya Kigamboni kutokana na kupata fursa ya kuwa na makazi bora na kupata ajira wakati wa ujenzi wa mji huo. Vilevile watanufaika kutokana na miundombinu na huduma za kijamii kuboreshwa, na wataishi katika Mji wenye hadhi na mandhari nzuri. Wananchi wa Jiji la Dar es Salaam watanufaika kutokana na ujenzi wa Mji Mpya kwa kusaidia kupunguza msongamano wa shughuli, watu na magari katika eneo la katikati ya Mji na Watanzania wote watanufaika

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<sup>123</sup> Kigamboni Master Plan (2010) 267.

<sup>124</sup> MLHSD Master Plan p 267.

<sup>125</sup> Ibid p 268.

kutokana na upanuzi na uboreshaji wa miundombinu ya Jiji, hususan bandari ya Dar es Salaam ambayo sehemu yake ipo katika Mji Mpya.<sup>126</sup>

Commenting on a similar project in DR Congo the La Cite du Fleuve (River City-DRC), the Great Horn of East Africa (GHEA) Report notes that with most of the eight million people in Kinshasa living beneath the poverty line, the only people who will be able to afford the flats will be expatriates and the Congolese elite.<sup>127</sup> The report further noted that the question is who will benefit from the increase of standard of living. The fact that a three bedroom apartment will cost around \$200,000 makes it clear that the slum dwellers are not considered viable tenants in the city. Little surprise therefore that the poor and vulnerable in the Kinshasa Slums feel threatened. Satellite cities are more of a new development, particularly in their being promoted mostly by business.<sup>128</sup>

It is almost inevitable [in the New Kigamboni City] that that the poor will be displaced from their homes and livelihoods to make way for the new cities. Also while the Government of Tanzania promised that there would be limited displacement in the areas earmarked for Kigamboni Satellite City, a UN Habitat report expressed its doubts about this, noting that given the size of the development, a large proportion of existing landowners would have to be relocated.<sup>129</sup> In addition the design of satellite cities like New Kigamboni City will deepen the social division and exclusion urban areas. Their implications to ordinary and poor urban resident are almost inevitable. While some of the language and marketing sounds inclusive, the pricing is not. Even most fragile, intangible and precious quality of vibrant cities, a sense of shared space and experience, could be lost forever. In more concrete terms, the poor and vulnerable populations face the risk of further marginalisation and impoverishment. There is a risk that the project will exclude low-income households who cannot afford to live in the new planned neighbourhoods of the satellite cities.<sup>130</sup>

They will have to move to somewhere else as commodity prices, and the conflict between modern styles and traditional styles will not suit them. In addition the Master Plan has outlined what is deemed to be development conditions which must be

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<sup>126</sup> Hansard Fifth Meeting, Fourth Session 11<sup>th</sup> of Novemba, 2011, p 17.

<sup>127</sup> Society for International Development (SID), Are Satellite Cities the (official) future of GHEA's urbanisation? GHEA Outlook No 18 Satellite Cities p 8.

<sup>128</sup> Ibid p 2.

<sup>129</sup> UN-HABITAT, Citywide Action Plan for Upgrading Unplanned and Unserviced Settlements in Dar es Salaam TANZANIA, Nairobi, 2010, p 41.

<sup>130</sup> Society for International Development (SID), Are Satellite Cities the (official) future of GHEA's urbanisation? GHEA Outlook No 18 Satellite Cities p 8.



complied with in the New Kigamboni City. These include the size of the areas to be surrounded by road or some land for the planned development/arrangement and their making plan; limitation for building use, floor area ratio, or the highest or lowest limit for building coverage ratio and building height; allocation, type, and color of building or plan for the building line; type or color of gate and wall, or fence<sup>131</sup> to mention a few. So it is clear therefore that what is being envisaged here is a total new life style that many people will not afford. It is a life style meant to suit a certain cadre of people but not poor who struggles to make a single meal per day.

### **3.5 Conclusion**

From the above analysis, it is clear that the legal and policy framework in place does generally acknowledge the importance of community participation. This participation is not only at the final stages but at the initial stages. A project that fails to follow the legal procedures risks the chance of lacking required legitimacy and hence unacceptable. Local communities and all required stakeholders need to be given opportunity to make informed choices regarding projects and developments that are to be carried out in their areas or likely to affect them. It would appear that the communities around were not involved although the government is now attempting to conduct series of workshops to raise the awareness of the project regarding the project. As will be seen in the next chapter, projects of this kind not only affect lives of people in one way but multifarious ways. Some will have to be relocated, issues of compensation will have to come in but others will have to compromise their way of life and economic activities. .

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<sup>131</sup> MLHHS Master Plan, p 244.

## **CHAPTER FOUR: SOCIOECONOMIC IMPLICATIONS OF THE DELAYED PROJECT AND THE PROJECT IN GENERAL**

### **4.0 Introduction**

Since independence in 1961, Tanzania has been undertaking development projects to improve the quality of life of its people through planned development under the successive Five-Year Plans. Such projects include dams, power, mining, industrial and allied infrastructures, transport network, urban development, commercial forestry and other projects. Some of these projects have brought adverse effects in the form of displacement of people from their original place of habitation due to large-scale land acquisition. Development-induced displacement in the country has brought severe economic, social and environmental problems to the displaced people. Magnitude of people displaced and severity of the problems due to development induced projects is generally. They also lead to submergence of high quality of land, destruction of the watershed, disturb the delicate ecological balance and distort the surrounding environment, loss of wildlife and precious irreplaceable flora, etc. and most notorious problems of flooding, water-logging and salinity.

In Tanzania case, Master Plan approach was adopted from 1891-1990). From 1891-1960 there was low rate of urbanization in urban centres.<sup>1</sup> But also the experience of post-Independence period across the country suggests that the long drawn out process of displacement has caused widespread traumatic psychological and socio-cultural consequences. These include the dismantling of traditional production systems, desecration of ancestral sacred zones, graves and places of worship, scattering of kinship groups, disruptions of family system and informal social networks.

There is no sufficient literature on the socio-economic effects of displacement resulting from project-induced actions in the country, however the available literature indicate that the number of displaced individuals and communities is relatively high. Developmental villages (*vijiji vya maendeleo*) were introduced in mainland Tanzania over the period 1974-1982 as part of a large-scale resettlement program. The villagization programme was aimed

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<sup>1</sup>Magigi W.,and Majani B., 'Planning Standards for Urban Land Use Planning for Effective Land Management in Tanzania: An Analytical Framework for Its Adoptability in Infrastructure Provisioning in Informal Settlements' (available at [http://www.fig.net/pub/cairo/papers/ts\\_19/ts19\\_03\\_magigi\\_majani.pdf](http://www.fig.net/pub/cairo/papers/ts_19/ts19_03_magigi_majani.pdf) ( accessed on 18th 12.2011)).

at resettling the entire rural population into large, planned centre by replacing the traditional peasant households (frequently shifting cultivation from area to area to balance resources and requirements) with fairly large settlements each comprising at least some 250 families.

Between 1973 and 1975 as many as nine million rural inhabitants were shifted and by 1976 it was declared that practically all rural Tanzanians were living in these newly established 'development' villages. The participants in the settlements were more or less semi-workers<sup>2</sup>. Not surprisingly, some often resorted to withdrawal of labour-power as a form of protest. Peasants who considered themselves underpaid often left the settlement. The feelings of being disconnected and alienated from their home land among the displaced population were overwhelming and probably the cause a non productive attitude towards economic activities; such protests usually forced some changes in the amount deducted prior to paying the workers<sup>3</sup>.

Over the last decade, Tanzania has become Africa's third largest producer of gold, behind South Africa and Ghana. Since 1998, over 40,000 artisanal miners have been forced out of areas their families had mined for generations, and the number of marginalized small-scale miners continues to grow<sup>4</sup>. Ongoing perceptions of inequity and increased mining due to the rise in both price and demand for gold have exacerbated conflicts between international companies and the communities they dislodged. Failing to incorporate the needs of artisanal communities into gold sector development will contribute to environmental degradation and increased social instability, whether through violent conflict and theft against international companies or participation in the illegal buying and smuggling of rare earth minerals. However, past actions have hardened the mistrust of both the mining companies and local communities such that any future cooperation will be difficult.

Throughout the nation's history, communities in the Lake Victoria region have relied on the income derived from the mining and selling of gold, as well as income derived from other services associated with the industry to buy goods and services and supplement agricultural livelihoods. In the 1990s, as Tanzania worked to dismantle its state-owned institutions and stimulate a new wave of international investment in the mining sector, tens of

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<sup>2</sup>See Hall, A., 'Tanzania's Goals Sector: From Reforms and Expansion to Conflicts?' Foundation for Environmental Security and Sustainability (FESS) Issue Brief, June 2010 (available at [http://www.fess-global.org/Publications/issuebriefs/Tanzanias\\_Gold\\_Sector.pdf](http://www.fess-global.org/Publications/issuebriefs/Tanzanias_Gold_Sector.pdf) (accessed on 12/12/2011)).

<sup>3</sup> See Osako Kwaako, P 'Long-run Effects of Villagization in Tanzania' Research in Economic History, Harvard University. (A draft copy is available at [http://www.econ.yale.edu/conference/neudc11/papers/paper\\_336.pdf](http://www.econ.yale.edu/conference/neudc11/papers/paper_336.pdf) (as accessed on 18/12/2011)).

<sup>4</sup> See Bariyo, N., and Stewart, R. M. 'High Prices Draw More Gold Diggers', *Wall Street Journal*, 3<sup>rd</sup> December 2009.

thousands of artisanal miners were forced from areas their families had mined for generations. An estimated 40,000 people have been displaced since the arrival of international companies in 1998, the majority of the displacement occurring in the Lake Victoria region.<sup>5</sup>

Artisanal mining communities in the Lake Victoria region continue to feel unfairly compensated for losses and often complain that there is little or no transparency from the government or the mining companies with respect to the framework for mining contracts, revenue sharing, or community development mandates. The economic growth and development expected from the presence of large scale gold mining has yet to be realized in the artisanal mining communities. Failure on the parts of both the government and mining companies to communicate with and fairly compensate affected communities is likely to lead to greater social instability.

Michael M. Cernea developed the risk and reconstruction model, which has already been tested to be applicable to the development-induced displacement situation.<sup>6</sup> The model is built around a core concept: the risks of impoverishment. The eight-impoverishment risks are landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property and social disarticulation.<sup>7</sup> Overall, any involuntary displacement regardless of the cause is has devastating impacts decapitalizing, leaving people poor or poorer than they were, if not carefully executed, and it brings also other risks upon their culture, human rights and political power. But if these risks have been even generally known, several reasonable questions emerge: how are these risks treated in the design of the project? How are they conceptualized and predicted in each case? What is the relationship between social risks and the social impacts of the projects? To what extent is the knowledge of risks translated in systematic pre-emptive actions?<sup>8</sup>

The section below presents the socio-economic implications of the implementation of New Kigamboni City project. According to the Ministry of Land, Housing and Human Settlements Development, the project is part and parcel of the government strategies in stimulating the growing towns, major towns and major cities<sup>9</sup>. However, if not carefully

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<sup>5</sup> Bariyo and Stewart (note 4).

<sup>6</sup> Cernea, M. M 'Impoverishment Risks, Risk Management, and Reconstruction: A Model of Population Displacement and Resettlement' (available at [http://www.un.org/esa/sustdev/sdissues/energy/op/hydro\\_cernea\\_population\\_resettlement\\_backgroundpaper.pdf](http://www.un.org/esa/sustdev/sdissues/energy/op/hydro_cernea_population_resettlement_backgroundpaper.pdf) (accessed on 18/12/2011)).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> See Kigamboni New City Master Plan Main Report (2010)

effected, the implications of implementing the project will not differ from the ones discussed above, provided the action involves displacement of a large number of residents.

## **4.2 Socio Economic Implications of the Anticipated Project**

The implications of the project are in twofold, in the sense that there are general project implications associated with displacement and resettlement, which is the greatest fear of the residents, and effects of the delayed project. These implications will be discussed concurrently. The main source of information for this discussion was the consultations with stakeholders of Kigamboni residence.

### **(i) Stagnation of economic activities**

Kombe and Kreibich notes that 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 to cushion socio-economic hardships.<sup>10</sup> 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. Thus, since the time of stop order in 2008 various economic activities such as have been affected in a great extent.

### **(ii) Inability to Access Financial Institutions for loan with Kigamboni properties**

Banking system and the Financial Institutions play very significant role in the economy. First and foremost is in the form of catering to the need of credit for all the sections of society. The modern economies in the world have developed primarily by making best use of the credit availability in their systems. An efficient banking system must cater to the needs of high end investors by making available high amounts of capital for big projects in the industrial, infrastructure and service sectors. At the same time, the medium and small ventures must also have credit available to them for new investment and expansion of the existing units.<sup>11</sup>

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<sup>10</sup> Kombe, W.J. and Kreibich, V. 'Formal and Informal Land Management in Tanzania', *SPRING Publication Series No. 9*, Dortmund (2000).

<sup>11</sup>Role of Banks and Financial Institutions in Economy [www.competitionmaster.com/ArticleDetail.aspx](http://www.competitionmaster.com/ArticleDetail.aspx)

A study conducted in Kenya<sup>12</sup> notes that the provision of credit has increasingly been regarded as an important tool for raising the incomes of rural populations, mainly by mobilizing resources to more productive uses. As development takes place, one question that arises is the extent to which credit can be offered to the poor to facilitate their taking advantage of the developing entrepreneurial activities. The generation of self-employment in non-farm activities requires investment in working capital. However, at low levels of income, the accumulation of such capital may be difficult. Under such circumstances, loans, by increasing family income, can help the poor to accumulate their own capital and invest in employment-generating activities<sup>13</sup>

### **(iii)The Microfinance Institutions**

Today the world bank estimates that about 160 million people in the developing countries are served by microfinance<sup>14</sup> Evidence from various studies have shown that poor people, with access to savings, credit, insurance, and other financial services, are more resilient and better able to cope with the everyday crises they face. Even the most rigorous econometric studies have proven that microfinance can smooth consumption levels and significantly reduce the need to sell assets to meet basic needs. With access to micro insurance, poor people can cope with sudden increased expenses associated with death, serious illness, and loss of assets.

Access to credit allows poor people to take advantage of economic opportunities. While increased earnings are by no means automatic, clients have overwhelmingly demonstrated that reliable sources of credit provide a fundamental basis for planning and expanding business activities. Many studies show that clients who join and stay in programs have better economic conditions than non-clients, suggesting that programs contribute to these improvements. A few studies have also shown that over a long period of time many clients do actually graduate out of poverty.<sup>15</sup>

By reducing vulnerability and increasing earnings and savings, financial services allow poor households to make the transformation from "every-day survival" to "planning for

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<sup>12</sup> Atieno, R 'Formal and informal institutions' lending policies and access to credit by small-scale enterprises in Kenya: An Empirical Assessment', AERC Research Paper 111, University of Nairobi, African Economic Research Consortium (2001) (available at <http://www.aercafrica.org/DOCUMENTS/RP111.PDF> (accessed 17/12/2011)).

<sup>13</sup> Ibid.

<sup>14</sup> Role of Banks and Financial Institutions in Economy' (available at [www.competitionmaster.com/ArticleDetail.aspx](http://www.competitionmaster.com/ArticleDetail.aspx) (as accessed on 19/12/2011)).

<sup>15</sup> For more on this visit <http://cgap.org>. (As accessed on 20/12/2011)).

the future." Households are able to send more children to school for longer periods and to make greater investments in their children's education. Increased earnings from financial services lead to better nutrition and better living conditions, which translates into a lower incidence of illness. Increased earnings also mean that clients may seek out and pay for health care services when needed, rather than go without or wait until their health seriously deteriorates."

Empirical evidence shows that, among the poor, those who manage to participate in microfinance programs and had access to financial services were able to improve their well-being-both at the individual and household level-much more than those who did not have access to financial services.

In Bangladesh for instance, Bangladesh Rural Advancement Committee (BRAC) clients increased household expenditures by 28% and assets by 112%. The incomes of Grameen members were 43% higher than incomes in non-program villages. In El Salvador, the weekly income of FINCA clients increased on average by 145%.

In India, half of SHARE clients graduated out of poverty. In Ghana, 80% of clients of Freedom from Hunger had secondary income sources, compared to 50% for non-clients. In Lombok, Indonesia, the average income of Bank Rakyat Indonesia (BRI) borrowers increased by 112%, and 90% of households graduated out of poverty. In Vietnam, Save the Children clients reduced food deficits from three months to one month."<sup>16</sup>

The International Year of Microfinance 2005, an organization with a long history in managing micro credit, notes, however, that populations that are geographically dispersed or have a high incidence of disease may not be suitable microfinance clients. For micro credit to be appropriate, the clients must have the capacity to repay the loan under the terms by which it is provided.<sup>17</sup> Social stability is one of key elements for loan repayment.

Loan security is one of the important aspects of credit to business. While commercial banks and some non-bank financial institution provide credit to those who can secure it with tangible security, other schemes involve providing credit to small groups that guarantee the loans to their members. This approach emphasizes responsibility in the selection of clients, appraisal, approval and collection of loans. Members make weekly contributions to a joint account in the name of the group and the lending institution, which acts both as a savings account for each member and a loan guarantee fund. Members can only receive a second and bigger loan after the first loan is repaid. The responsibility for loan administration by the

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<sup>16</sup> Advancing financial access for the world poor, (<http://cgap.org>) (accessed on 20/12/2011)).

<sup>17</sup> Visit <http://yearofmicrocredit.org> (accessed on 20/12/2011)).

group provides peer pressure, which keeps up repayment. This implies that whether the loan is secured through tangible security or group guarantee, the credit providing institution would like to satisfy itself with the capacity of the borrower to repay the loan.

Given the situation of Kigamboni area, banks and financial institutions have been less willing to accept property as guarantee for securing loans. Due price stability and simplicity of disposition, most banks and other financial institutions accept mortgage as the best collateral. However, fluctuation in price value and lack of project certainties around Kigamboni has made banks and other micro-credit institutions to be reluctant to accept mortgage of Kigamboni area. On the other hand it said that some people had already acquired loan for building houses, and they have not been able to spend the money for the intended purpose which has also made it difficult for some to repay the loans timely. Consequently, although many poor households that occupy land especially in easily accessible peri-urban areas could have used it as a collateral and exchanged or sold part of it to meet social-cultural commitments, this has not been possible in Kigamboni.<sup>18</sup> This has resulted into impoverishment of property owners.

#### **(iv) Displacement and relocation viz-avis Equity**

Jeffrey Goldstein defines satellite cities as the arising of novel and coherent structures, patterns and properties during the process of self-organization in complex systems.’<sup>19</sup> He further notes that such cities are in a form of complex systems with a significant degree of self-organization in the way they are evolving.<sup>20</sup> Accordingly, satellite cities are a new development, particularly in their being promoted by business (mostly) as the future of well organized urban spaces.<sup>21</sup> Consequently, they are also broadly coherent in their structures (fairly self-contained), patterns (separate from the ‘mother city’) and properties (wealthy) across the region.<sup>22</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> See Jeffrey G ‘Emergence as a Construct: History and Issues’ (1999) 1(1) *Emergence: Complexity and Organization* 49–72 available on [http://www.anecdote.com.au/papers/EmergenceAsAConstructIssue1\\_1\\_3.pdf](http://www.anecdote.com.au/papers/EmergenceAsAConstructIssue1_1_3.pdf) (accessed on 20/12/2011). See also examples of satellite cities from the following sites: <http://www.tatucity.com/>; <http://www.itnewsafrika.com/2011/08/kenya-set-on-multi-billion-konza-city/>; [http://www.menafn.com/qn\\_news\\_story.asp?storyid=%7B32be1ffc-22ae-407b-8796-162af9a9487b%7D](http://www.menafn.com/qn_news_story.asp?storyid=%7B32be1ffc-22ae-407b-8796-162af9a9487b%7D); <http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=3033&alt=1>; and <http://timharford.com/2011/04/is-it-time-to-outsource-cities/>.

<sup>20</sup> See Jeffrey (note 19).

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



In an analysis of the proposed satellite cities in Kenya, Uganda, Tanzania and DR Congo and Rwanda GHEA raises concerns of the displacement of the poor and vulnerable to make a way for the new cities development.<sup>23</sup> The satellite cities solution to the urbanization challenge seems to pose a particular risk to any notion of equitable growth. It is almost inevitable that the poor will be displaced from their homes and livelihoods to make way for the new cities. It is instructive that while the Government of Tanzania promised that there would be limited displacement in the areas earmarked for Kigamboni Satellite City, A UN Habitat report expressed its doubts about this, noting that given the size of the development, a large proportion of existing landowners would have to be relocated.

Compensation could reduce some of the pain of displacement and relocation but only when it is deemed adequate in the eyes of the recipients – a rare event under prevailing conditions of determined governments and developers.<sup>24</sup> Tanzanian legislators raised serious questions on behalf of the incumbent residents, some of who have little or no legal basis (title deeds) for their claims to the land on which they live. On this basis they can face lawful dispossession and displacement. Overall, questions of fairness, justice and equity appear to have received little more than a passing mention.<sup>25</sup>

#### **(v) Unavailability of Tenants**

Since the effect of stop order, tenants have kept a very low profile in renting houses because they expect that at time the project will take over. For those who show up for renting, they do not accept long term contracts; they pay rent only for short periods of two to three months. They don't want to risk. One of the residents narrated the following story during the consultations.

‘I was expecting to extend my house out of the rent I was going to get from this few rooms but since the stop order the potential of tenants has been affected. It is difficult to find tenants and even those who come are unwilling to pay for some months in advance.’

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<sup>23</sup> See Society for International Development, ‘Are Satellite Cities the (official) future of GHEA’s urbanisation?’ *In Greater Horn of Eastern Africa Outlook No 18 - Satellite Cities*, (available at [http://www.sidint.net/docs/GHEA18\\_Satellite\\_Cities.pdf](http://www.sidint.net/docs/GHEA18_Satellite_Cities.pdf) (accessed 20/12/2011)) at p.4.

<sup>24</sup> Payment of adequate compensation has always been an issue in many countries. See , for instance, the experience in Uganda as explained in Heien H K *Local Livelihoods and the Bujagali Hydro-Power Dam, Uganda* A thesis submitted in partial fulfilment of the requirement for the degree of Master of Science in Development Management, Department of Development Studies, Agder University College in Collaboration with United Nations University (2007) at p.3. (This thesis is available at [http://brage.bibsys.no/hia/bitstream/URN:NBN:no-bibsys\\_brage\\_2572/1/master\\_devl\\_2007\\_heien.pdf](http://brage.bibsys.no/hia/bitstream/URN:NBN:no-bibsys_brage_2572/1/master_devl_2007_heien.pdf) (as accessed on 19/12/2011)).

<sup>25</sup> See Society for International Development (note 23).

**(vi) Declined Construction Activities**

Before issuing the stop order, Kigamboni was an area where new buildings were being constructed in a good number. This is because the area is close to the main city as compared to other places resided by low and middle income earners. Open plots were still available to allow new construction. Since 2008 construction activities have declined. Those who used to sell construction material are no longer making the sell, and when do is just in a small quantity. Many shops selling construction materials have closed up, and people who owned shops have lost their capital, leave alone those who had borrowed the money from financial institutions to start up business. They are still burdened by interests. The community wonders whether the compensation package will cater for all this incurred lose.

**(vii) Unemployment to Casual Labourers**

It was estimated that 70 to 80 percent of all youth were involved in construction activities for reasons discussed above. With the stop order in place, many youth have lost employment, without alternative source of income. Such population is likely to turn into illegal activities including robbery, drug addiction and alcoholism.

**(viii) Worry about inflated price during the time of construction**

The residents expressed their fear in the sense that, after displacement and resettlement, many people will be rebuilding their houses at the same time. This will raise the price for construction materials. Contractors will also raise their salary labour charges and associated costs.

**(ix) Social Services at the new cites**

The community has a strong attachment to the exiting social services; they have feelings of integration in their community. Therefore, any reallocation of the landholders to other areas must take account infrastructure utility and facility that have to be invested in these new areas to attract the affected people but also to be in harmony with common normal life as far as possible. Furthermore, development control and enforcement should be in place in areas of relocation to ensure that development standards are complied with to avoid informality and land subdivision for sustainable city growth. To indicate the extent of connection the people have to the area it was voiced out during the interviews that:

“If we move to a different place we are going to all we have done to and for our community. We are culturally identified by our community and community values, we do not know how the new community will look like.”

### **(x) Social Relations**

Displacement and resettlement disrupts social relations and network. To the extent possible, the affected people should therefore be relocated within their respective community. In addition, relocating people in the same locality has the following advantages:

- The displaced population can continue to utilise the existing social facilities such as schools, hospitals, mosques, churches and other religious and traditionally significant sites;
- It maintains social and cultural relations. This is likely to sustain people’s economic system, ways of production and other means of income generation and trading. Their productive skills remain applicable for no significance geographical and social change has occurred;
- Neighbourhood is being maintained. For any traditional and semi traditional society neighbourhood is a very important element of social life. People value and respect social integration within their communities, helping each other during funerals, wedding and other socio-cultural ceremonies. More significantly the neighbourhood includes kingship groups. It is upon these social facets, a simple society is maintained.

The lamentation statement below illustrates the feelings of the residents;

“Fishing is our main economic activity. Now if they take us to a place where we cannot do the fishing, will we be able to support our families”.

### **(xi) Low Money circulation**

With the collapsed socio-economic activities, money circulation has been reduced. Food vendors (Mama Lishe) who used to sell food to workers are no longer in their normal business because construction work has been put top a halt, and those who are still working their income have been negatively affected.

Overall, in comparison to what Mama Lishes’ and others used to gain from their small business before the project commenced and their economic status at present, one cannot explain their plight in better words other than borrowing words from the famous English novelist, Charles Dickens to the effect that, before the project the residents of

Kigamboni had ‘the best of times’<sup>26</sup> but afterwards they have ‘the worst of times’<sup>27</sup>; they ‘had everything before [them], but now they have ‘nothing before [them]...’<sup>28</sup>

### **(xii) Unfinished Structures**

It is also worth noting that there are structures which were under construction when the stop order was issued. Since then they have remained unfinished while some of them have started to deteriorate. From these people expected to generate income had they got finished as some were expecting to rent rooms for business and accommodation. Who shall compensate them for such a loss? This is what one of the respondent said during interviews:

“We wonder whether the government will compensate for such lose! How is the government going to quantify such damage? The stop order legally ended in 2010 but the government does not want to declare officially that v the order has come to an end. It does not neither want to commit itself by giving another order. It has left us in suspense, it silent about the current status of the project”.

### **(xiii) Reduced market price for land**

Residents complained that they have not been able to sell their plot except at lose. They had the following to say during an interview session:

“people are no longer interested in plots in our area. Even when we call for buyers, people do not show up to buy. And used to be our security especially in time of emergency – sending children to school, sickness or a case in court. Today pots are bought at a very low price and sometimes we sell them at loss because we do not have alternative. No income. It is confusion everywhere. You cannot even borrow money from your friend because she does not have money as well; we all belong to the same community.”

### **(xiv) Psychological effects**

There are also psychological effects to the members of the Kigamboni community. Generally, community members cannot predict the future. They have unfinished structures, without sufficient income, and with their means of reduction handicapped. The matter is worsened by lack of communication between the community and the implementing agent. They do not know exactly what the project is all about and what they should expect from it. Basing on the consultations with residents in the area, it was evident that, the residents do not oppose the project but rather call for a) transparency b) Participation and c) Compensation.

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<sup>26</sup> See Dickens, C., *A Tale of Two Cities* (With a New introduction by Fredrich Busch) (1997) 13.

<sup>27</sup> Ibid, at 13.

<sup>28</sup> Ibid.

### **(a) Transparency**

The government has not been transparent and the residents do not know what they are going to benefit out of this project. They are worried of becoming foreigners in their own land. They want to know what they are entitled to and would like to know for how long they should remain waiting. Therefore there should be limit with regard to the stop order. Also, the implementing body should, among other things provide right and timely information concerning the project. The government should commit itself to a specific date time limit, beyond which the residents should be allowed to develop their lands.

### **(b) Participation**

The people feel that if it is not the government which is going to invest in this project, then investors should have gone to them directly. On that basis they would have agreed terms with them. ‘Why should the government come in between?’ As can be noted these sentiments results from lack of adequate community involvement from the beginning

### **(c) Need for fair and timely compensation**

Kombe highlighting on experience on compensation in Dar es Salaam, noted that two out of three households are engaged in some form of urban agriculture or husbandry.<sup>29</sup> 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. As a result, the common misconception among most policy makers and bureaucrats regarding customary or neo-customary rights is that once urban boundaries are extended to encroach upon such land; customary rights cease to exist.<sup>30</sup>

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. They should be fully compensated before displacement and be provided with skills on how to spend the compensated money in order to able to restore the social economic standards.

Residents further lamented that:

“The, government is not trusted. We do not know what will happen to us. Apart from all effort we have done the government is continuing with its plans”

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<sup>29</sup> Kombe W., Land Conflicts in Dar es Salaam: Who gains? Who loses? p 3 (available from <http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries2/WP822.pdf> (accessed on 18.12.2011)).

<sup>30</sup> Ibid.

Frustrations of residents are further coupled up with unrealistic compensation rates. Many complaints were about the low rates of compensation, in the sense that what they will be given will not be at market price. One of residents commented on the price rate for crop trees provided by Ministry of Land, Human Settlements and Development.

“Look, the government offers Tsh 50, 0000 for a fully grown coconut tree. What is Tsh 50,000 compared to the real value of the tree. A healthy coconut tree gives 250-300 coconuts every year. Once the tree is taken, I need about ten years to have it back. That means I will lose 300 coconuts every year for ten years, times one thousand shillings (price of one coconut. It is a lot of money. But they give only Tsh 50,000. How can you explain this”!

Contributing to the President’s speech in the Parliament the Member of Parliament for Mbeya Vijijini Constituency Hon.Mwanjale noted with concern that there have been problems with rates of compensation leading to endless complaints from affected victims.

According to him:

‘...kila mahali tunasikia kuna malalamiko ya fidia kwa wananchi hasa wale ambao maeneo yao yamechukuliwa. Malalamiko hayo yamekuwa makubwa kwa sababu ni kama serikali haiangalii vizuri hasa katika kipindi kile cha kuweza jumlipa mwananchi na kufanya tathmini.... Serikali ijitahidi kufanya tathmini ya uhakika na kuweka mambo haya vizuri ili kila mwananchi anatakiwa alipwe asiwe na maswali. Lakini anakuja mtu wa ardhi anapima, anaondoka huyu mwananchi hajui ni kitu gani atalipwa...’<sup>31</sup>

What the honourable Member of Parliament was raising was a general problem that has affected victims of land acquisition resulting to apprehension of fear among members of the public. It would appear that the problem is more systemic than occasional leaving the residents with perpetual fear regarding the amount of compensation for their vested interests. There is nothing vivid to convince that the residents at this instance will receive adequate compensation for their properties.

The gravity of the problem was further underscored by the Government when the Minister for Land, Housing and Human Settlement Development Hon. Tibajjuka noted that there is a need to re-consider the amount compensation that is being paid to victims whose land has been acquired to avoid complaints and worsening their poverty. According to the Minister,

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<sup>31</sup> Hansard, Session 2 Seating no 4 11<sup>th</sup> Feb 2011

‘Ipo haja sasa ya kuangalia fidia ilipwe kwa kuzingatia bei ya soko lililopo hivi sasa badala ya kufanya tathmini kwa kuzingatia bei ya zamani ambayo inaangalia thamani ya wakati huo ya sarafu wakati mjenzi anajenga au mkulima analima...Malipo pungufu kwa nyumba au shamba lenye thamani kubwa ndiyo yamekuwa kiini cha malalamiko ya wananchi wanaokubali kupisha maendeleo na kulipwa fidia. Badala ya kunufaika na fidia wamekuwa wakiingizwa katika lindi la umaskini...’<sup>32</sup>

Other psychological effects can be unfolded through the following narrations by another resident who were interviewed.

“We cannot improve our living standards. By the time of putting the order we had one room but we had plans to build more rooms. Until today we have not been able to make more rooms. Our children are now grown up, girls and boys are sleeping the same room”

Another comment was made by an old man whose grandparents were born in the area. He said the following;

“My grandparents were born in this town. My own parents were born in this place as well. We have lived together as a family. This project is going to leave us displaced.”

Another resident had the following comments;

“This project is confusing us. Every time they are giving us a new date of implementing the project. In 2008 when the order was put on I had 410 bricks, and because of the order I sold them all. Until today the project has not been implemented. I wish did not sell my bricks. I would have made more of them and constructed at least a room for my family. Today I have neither bricks nor house”

“Within families we have children in schools. We are moved to another place what will happen to our children”?

“What if compensation does not provide for the loss we have incurred over the past three years because of their order? I am still in a rented house and I pay Tsh 700,000 every year. We are shouting but nobody is listening to us.”

### **4.3 Socioeconomic Implications on Women and other Vulnerable Groups**

**Women:** Before the commencement of the project, women in the project area were involved in gravel (*‘kokoto’*) making, people buying crushed stones for construction; many women were involved in that business. They were also involved in food vending for the construction workers. Women are service providers to family members including extended families. Their source of income are affected, the effect goes to the whole family.

**Elderly:** – invest their money. One case involved a retired man, had had acquired his terminal benefits at the time of stop order. He intended to construct a house. Since he could not go

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<sup>32</sup> Editor’s Comments, Habari Leo Newspaper (dated 27th Sept 2011)

against the so order, by the time of consultation he had used all the money in some unintended activities.

**Case of an effect of the stop order in one's education**

“My neighbour failed to send her two children to school. She lost her husband some years back and she takes care for children alone. After the death of her husband she came to live with parents. She was given plot which has become her inheritance. She wanted to sell part of her plot to get money for the school fees, but she could not find a buyer”



## CHAPTER FIVE: THE PECULIARITY OF THE PROJECT IN ALL ITS ASPECTS

### 5.0 Introduction

Many states have forced people to relocate from their places of habitation to other places for a number of reasons. Some have, for instance, done so to give room the development of specific type of projects with public interests, to such as infrastructure related projects like dams or freeways or construction of a high voltage electricity supply line.<sup>1</sup> Others have opted to relocate a section of population as part of a broader picture like the desire to speed up development<sup>2</sup> or as a means of facilitating socio-economic growth and protecting the environment,<sup>3</sup> or as a means of alleviating poverty.<sup>4</sup> There may, indeed, be a host of other reasons but, for whatever reason as there may be, each project that requires relocation of people has its own peculiarity.

The New Kigamboni City Project, which is the main concern of this report, when viewed from the perspective of urban development in Tanzania, is a peculiar project. This is partly due to the fact that the project, though conceived through the adoption of Master Plan approach that has been applied in Tanzania for almost fifty years now, is being undertaken with different viewpoints, i.e., taking into account the need to promote sustainable urban development and achieving an integrated urban planning.

As it is well known, cities in many developing countries have been facing ‘acute problems of poverty, exclusion, insecurity and environmental degradation.’<sup>5</sup> In order to address such issues in a satellite city as the proposed one, provision of sustainable urban services and infrastructure with a view to promote economic growth is one of important

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<sup>1</sup> See Scudder, T. and Colson, E. ‘From welfare to development: a conceptual framework for the analysis of dislocated people,’ in Oliver-Smith, A. (ed.) *Involuntary Migration and Resettlement. The Problems and Responses of Dislocated People*, Boulder, CO: Westview (1982) 267–87. See also Cernea, M. M. & Guggenheim, S. E. ‘Anthropological approaches to involuntary resettlement: policy, practice and theory, in S. E. Guggenheim (ed.) *Anthropological Approaches to Resettlement: Policy, Practice and Theory*, Boulder, CO: Westview Press (1993) 2–12.

<sup>2</sup> See (generally) Zou, Y. (2002) ‘The World Bank involuntary resettlement policy practices in China’. Paper presented at the International Symposium on Resettlement and Social Development, Nanjing, China, 12–14 May.

<sup>3</sup> See Mathur, H. M. The resettlement of people displaced by development projects: issues and approaches, in H. M. Mathur (ed.) *Development, Displacement and Resettlement: Focus on Asian Experiences*, New Delhi: Vikas Publishing House (1995) 15–38.

<sup>4</sup> See Merkle, R. Ningxia’s third road to rural development: resettlement schemes as a last means to poverty reduction, (2003) 30(3) *Journal of Peasant Studies*, 160–91.

<sup>5</sup> See UN HABITAT *Planning Sustainable Cities Un-Habitat Practices and Perspectives* United Nations Human Settlements Programme (UN-HABITAT) (2010) 6 (available from <http://www.unhabitat.org> (as accessed on 11/12/2011)).

aspect. The project thus aims at achieving such a goal. Its success in that regard, however, depends on a number of factors one of which include its participatory processes that guarantee meaningful engagement and involvement of the public in all phases of decision making, implementation and re-integration.

Participatory mode of urban planning has become ‘a tool for local democracy and inclusive governance and is enabled to respond creatively to the expressed needs of a city’s inhabitants rather than regulating them.’<sup>6</sup> The UN –Habitat notes, for instance that:

‘[p]articipatory planning empowers communities and results in better design outcomes that are more responsive to the diverse needs of the different urban groups. Participation also ensures the relevance of plans when faced with limited resources and can also increase effectiveness.’<sup>7</sup>

Despite such benefits, more often than not, communities are left behind without being fully involved in the planning and implementation of various development projects. The end results are that such projects do not fully achieve their goals.

## **5.1 The Project’s Peculiarity**

As noted above, this project is peculiar in many respects.

### **(a) In terms of its Size**

A project to accommodate a total population of 500,000 people in a developing country like Tanzania is not a small project but rather a gigantic one. Given the nature and the magnitude of its effects both socially and economically, a project of that nature will require mobilization of resources and capacities in the course of its planning and implementation.

### **(b) In terms of its Cost**

The Cost implication of a huge project like the one envisaged at Kigamboni is another peculiar aspect of the project. How to raise the money required for the financing of the project is an important issue in meeting the required costs in order to succeed in its completion within the required time frame. Moreover, as noted in the previous chapters, since the project will involve resettlement and compensation of affected people in the area, this has a cost implication too. Such additional cost factors will include the necessity to devise resettlement policy and plans, determining which households should be relocated, selecting the suitable place for the resettlement of affected communities, providing basic infrastructure (e.g., electricity, water, roads), motivating the affected people to move out,

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<sup>6</sup> Ibid, at 8.

<sup>7</sup> Ibid, at 19.

organising removals, and assisting them to become established and involved in their new communities. All such activities are essential and needs adequate funding.

In a poor and donor dependent country like Tanzania, the fear of many is that limited or non-availability of adequate financial resources will lead to either a complete non-payment of compensation or poor funding of other relocation-related projects, or where compensation payments are made to the affected segment of the Kigamboni population, such payments may turn out to be inadequate.

The Master Plan suggests diversity of ways to finance the project. The master developer, before developing a land and building housings, can be prepaid by selling them to prospective customers. This method helps the master developer to collect funds invested in the early stages of the project so that seed money can be used for other priority projects. A payment-in-kind system refers to cases where master developer supplies land to prospective constructors who construct land and infrastructure services according to the detailed designs of the Master Plan in place of contract price. However, prospective developers tend to go for projects which are profitable to them. It is also to permit private investment for infrastructure services. This is a method of financing whereby direct investment of domestic or foreign private firms is induced in infrastructure services. The investor collect investment cost through long term operation of the facilities. The form of the operations can be BOT (Build-Own-Operate-Transfer) or BTL (Build-Transfer-Lease). BOT means that the private developer builds the facility, and obtains the ownership of the facility and operates the facility for a certain terms, and then transfers to the government. BTL means that the private developer builds the facility and transfers the ownership to the government and the government leases the facility from the private developer. BTO means that the private developer builds the facility, and transfers the ownership to the government and operates the facility for a certain terms.<sup>8</sup>

### **(c) In terms of its Socio-economic Impacts**

It is true that many people have already been (and will in future continue to be) affected by the project envisaged at Kigamboni either positively or negatively. Undoubtedly, since it involves relocation of families and properties of the affected individuals, socio-economic impacts of such a project cannot be avoided. In view of this, and taking into

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<sup>8</sup> MLHSD, Master Plan p 264

account its peculiarity in terms of its involuntary nature, its scale and costs to be involved, adequate and careful planning that takes into account the full participation of the affected people in order to avoid its negative impacts is a matter of necessity. This is an important factor since, as once noted in existing literature, although involuntary resettlement may bring about development, in most cases it has brought ‘less development,’ and at its extreme, the impoverishment of the resettled populations.<sup>9</sup>

Indeed, Dickson and Webber argue that, ‘its effects on communities and people are commonly negative.’<sup>10</sup> In many countries in Africa, it has been noted that while several projects involving planned land settlements resulting into population relocation may have ended up with some tangible results, there are also drawbacks’ as such projects have fallen short of expectations and have been costly.<sup>11</sup>

Overall, considering the above views, in order to minimize the side effects of a big project like the one envisaged at Kigamboni, it is necessary to address matters related to the reconstruction of livelihoods. In such considerations, ensuring prompt payment of full and adequate compensation to the affected people is of paramount importance. Innovative mechanisms of ensuring that people are timely and adequately compensated are thus necessary, and should be devised in a participatory manner.

Although compensation for lost assets is an issue of priority in any resettlement planning other important factors such as the identification of the potential resettlement areas, assessing infrastructure and environmental situations, as well as agricultural and non-agricultural employment opportunities in such identified areas, are also important aspects that need to be taken into account. Generally, all these ought to be given serious attention when conducting environmental and social impact assessment of a gigantic project like the one in question or when preparing relocation program reports.

The peculiarity of a project like the one to be implemented at Kigamboni is also obvious in terms of its potential to disrupt or terminate peoples’ social production and

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<sup>9</sup> See Dickinson, D & Webber, M., ‘Environmental Resettlement and Development, on the Steppes of Inner Mongolia, PRC’ (2007) 43(3) *Journal of Development Studies* 537-561, 539.

<sup>10</sup> Ibid. The authors point out that resettlement has been, at some points, ‘conceived as entailing potential impoverishment’ noting further that ‘risk and reconstruction model recognises that all resettlement projects entail some impoverishment risks – of landlessness, joblessness, homelessness, marginalisation, increased morbidity, food insecurity, loss of access to common property resources, increased morbidity, and social disarticulation.’ (See page 539).

<sup>11</sup> See Cernea, M. M., ‘African Involuntary Population Resettlement in a Global Context’ Environment Department Papers Social Assessment Series, No 45, ESD, The World Bank, February (1997) 5-6.

cultural networks. In particular, since it is involuntary in nature, it ‘results in people being transferred from a social environment in which they were primary actors to one in which they are aliens.’<sup>12</sup> Their freedom of choice is constrained and thus their ability to make decisions that befit their lives including the levels and amount of compensation, including whether they should be compensated for the stressful situation they have gone through since 2008 when they were estopped from developing their plots or farmlands is minimal. Consequently, since such projects ‘result in a painful and traumatic experience of socio-cultural dismantling’<sup>13</sup>, they have the potential to influence and shape the ways in which migrants [to new areas] interact with their new environments, the types of social structures and relationships they build and participate in, and the values and norms they hold.’<sup>14</sup> In view of this, planning for their integration is an important issue.

Integration of relocated population, however, requires devising explicit policies to cater for specific issues such as school enrolment for the affected children, provision of health facilities to ensure access to medical services, and provision of grants to fund small scale agriculture or small scale enterprise-related activities is also an important issue that marks the peculiarity of a project like the one to be implemented at Kigamboni. In view of this, more emphasis is needed on the necessity of self-development of the displaced people. Such plans or policies must seek to ensure that all resettled individuals receive training so as to enable them to improve their income generating sources and employment channels, and helping them integrate into the host communities.

Support for such policy initiatives and ensuring that they are implemented is a matter of necessity and must be made part of the entire planning process. These will help to sustain the livelihood of the relocated population. Overall, the crux of the matter is that if a project like the New Kigamboni City is not appropriately planned it may result into further impoverishment of the relocated families. In view of this careful approaches that are fully participatory and transparent in nature are required in implementing such a huge project. A thorough social and economic impact analysis of such a project as well as its environmental impact assessment is also issues worth mentioning given the magnitude of the effects such a project may result into.

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<sup>12</sup> See, Tan Y & Guo, F., ‘Environmentally Induced Migration in West China,’ (available at <http://iussp2009.princeton.edu/download.aspx?submissionId=92044> (as accessed on 15/12/2011)) at 12.

<sup>13</sup> Ibid. See also Scudder & Colson (note 1).

<sup>14</sup> Tan & Guo (note 11).

## 5.2 Comparative View of Similar Projects in Other Developing Countries

Development projects that result in the resettlement of a section of people within a particular locality they have been living in are not a new phenomenon. They have existed from time in memorial. And, as the world population continues to increase, the demands for re-development projects to meet the social and economic needs of the expanding population is also growing. As Cernea correctly points out, [i]n Africa, as well as worldwide, population settlement and resettlement processes are linked to the core of today's development agenda.<sup>15</sup> Indeed, coupled with other factors such as environmental degradation<sup>16</sup>, climate change and adaptation requirements, as well as the growing desire to embark on economic expansion, especially in the developing countries, it is clear that resettlement projects are in future inevitable.

In many developing countries such as China, for instance, adoption of new urban programs and focus on rapid industrialisation and economic growth have resulted into a series of economic reforms involving the adoption of market-oriented policies. Also, as measure to prevent further environmental degradation and alleviate poverty in poverty stricken regions, China has embarked on a policy of environment-related migration, especially in the western part of the country.<sup>17</sup> Under such policy environment, the state has adopted a 'human displacement and resettlement approach,'<sup>18</sup> thus, [i]n nature, [making] environment-related migration in China [to be], more often than not, the purposeful, planned, organised, permanent, and orderly involuntary displacement and resettlement of a population, driven by the dual objectives of environmental migration: preventing further environmental deterioration, and battling poverty.'<sup>19</sup>

Because in most cases the initiatives to displace and resettle massive numbers of people are mainly involuntary, they are therefore 'planned and organised by the government at all levels (central, provincial, county, [and] township).'<sup>20</sup> However, while 'the central government provide financial subsidies (for basic infrastructure) to assist migrants' in re-

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<sup>15</sup> See Cernea, M. M., 'African Involuntary Population Resettlement in a Global Context' Environment Department Papers Social Assessment Series, No 45, ESD, The World Bank, February (1997) 1.

<sup>16</sup> Tan, notes, for instance, that '[m]oving some people out of the fragile environments is perceived by the Chinese government to be a necessary strategy for relieving the pressure on the environment, rehabilitating the degraded ecosystem, and eradicating poverty.' See, Tan & Guo (note 12) 4-5.

<sup>17</sup> Ibid, at 7, 10.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid, at 9.

<sup>20</sup> Ibid, at 8.

establishing their livelihoods and productive capacity post-displacement, financial support for people displaced for environment-related reasons is usually less than that made available for transportation, urban expansion, or hydro projects.<sup>21</sup>

As already noted in part 2 above, in cases involving involuntary resettlement in countries, the results have been a mixture of success and failures. In the first place, such exercise begins with dispossession of land, a source of livelihood to many people.<sup>22</sup> Whereas in some cases there have been successes in material well-being of the affected people, there are also cases where people were further impoverished after being resettled.<sup>23</sup> Authors have noted, for instance, that in cases where people were involuntarily relocated, provision of services such as health care, water, schools, and other cultural oriented services in their area of relocation has been a problems because such services are either not available at all or are available but at a far distance compared to what the situation was before their relocation.<sup>24</sup>

Increased cost of living even where access to essential services is availed is also another important factor to consider as it may make life to be difficult to low income earning class of people. Moreover, individual freedom to choose what to do with their land has been lost.

Similar sentiments have also been noted in Lesotho where resettlement to give room for the construction of dams to supply water to South Africa has been implemented. As a highland country Lesotho is completely surrounded by South Africa. It has little mineral resources and cultivatable land and the only precious resource is water from the mountainous sources. Because it is a watershed for South Africa, construction of dams, such as the Mohale dam, to supply water to the latter's industrial areas has resulted into massive resettlement projects and deprived the people within the areas earmarked for construction of such dams their land. According to testimonies recorded from the affected people, their life is the soil where for ages they have entrenched their livelihoods. But this precious resource that carries not only their livelihoods but also their culture and identity has been completely

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<sup>21</sup> Ibid.

<sup>22</sup> See Cernea (note 14) 3.

<sup>23</sup> Ibid. See also Dickinson & Webber (note 8) 537-561.

<sup>24</sup> See Dickinson & Webber (note 8) 551.

submerged under the waters of the Mohale Dam. They have thus lost their connections to their land.<sup>25</sup>

It has been further noted, with regard to the experiences in Lesotho that:

‘[n]ot surprisingly, however, the most common cause of anxiety in these accounts is loss of independence. Many express foreboding as to how losing their land will affect not just their livelihood but also their self-esteem. Many of the men who once worked in the South African mines are wary of depending on wage labour, and of the finite nature of money. Mountain life might be frugal but with land, people felt, they always had a productive resource—and a crucial degree of self-reliance.’<sup>26</sup>

Overall, it has been noted that ‘three of the largest countries in the world- China, India, and Brazil- which are currently engaged in massive industrialization and electrification programs, are precisely countries with the biggest ongoing involuntary resettlement operations.’<sup>27</sup> In their research on China, Dickinson & Webber notes the following concerning involuntary resettlement programs:

- First, although the visions embodied in most projects that embark on resettlement of people are development-oriented, the fact is that the central focus of such developmental agenda is material-well being (i.e., income and the provision of services). With such in mind, individual freedom to make choices is sacrificed at all costs;<sup>28</sup>
- Second, while to some extent job creation and hence income earning may result from the implementation of the intended projects, this does not necessarily mean that peoples increased involvement in the new established urban industries and labour markets give them opportunity to create own capital. In the true sense, whether they are farmers who are selling their produce to the urban markets or workers selling their labour force, all ‘are incipient members of a working class.’<sup>29</sup>
- Third, since most of projects are more often than not pushed by the desires to develop, (the more powerful state sponsored interests), ‘freedom has little purchase in the design and implementation of these schemes of resettlement.’<sup>30</sup>

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<sup>25</sup> See Davies W (ed) *Voices From The Mountain: Oral Testimonies From The Lesotho Highlands* The Panos Institute (2001) 1- 2.

<sup>26</sup> Ibid, at 2.

<sup>27</sup> See Cernea (note 14) 3.

<sup>28</sup> Ibid, at 557.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.



- Finally, in most cases, the state is unwilling to pay the full costs in order to construct the livelihoods of the resettled population. Thus, from a general viewpoint, the decision to resettle people involuntarily from an area, and without properly involving them, so as to make room for developments and the design of specific development schemes in such areas, ‘do suggest that governments have been focussed on the conditions that facilitate development (creation of labour force, urban markets and monetary economy) rather than on the Development gains themselves (such as improvements in people’s well being and freedom to make decisions)’.<sup>31</sup>

It is clear that the four conclusions as observed above squarely apply to our case in Kigamboni project area. As pointed out in chapter two, many people have been and are still complaining that they have not been properly consulted and that the envisaged developmental benefits are meant to cater for other interests rather than their own and immediate needs. Their freedom to make decisions and hence their rights to information and participation in matters affecting their lives have been constrained. Reconstruction of their livelihoods after the relocation exercise, and the fate regarding the issue of prompt and adequate compensation for the property loss and emotional stress they have to go through is still an unknown to them. Since they have been estopped from engaging in activities that may amount to ‘development’ in the project area, their lives are being impoverished since as their income generation endeavours that could continue to support their lives have been greatly affected.

#### **5.4 Conclusion**

It is an undeniable fact that every development project has its own peculiarities and effects. The size of such a project, the costs involved and the impacts it will cause in the lives of those affected in the course of its implementation are some of factors that create distinctive marks in a particular development project. The envisaged New Kigamboni City Project is no exception in that regard. Measuring it by such standards, the project is big and in need of big amount of finances to make it successful. Its costs implication which arises from its preliminary implementation stages and its effects, including the need for land acquisition and resettlement of the existing people are also factors that mark its peculiarity from a Tanzanian context. All these call for serious considerations including the need to take into account issues regarding the rights of the affected population in terms of their entitlement to prompt payment of full and adequate compensation. Devising policies meant to advance the

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<sup>31</sup> Ibid.

livelihoods of those expected to be resettled is also an issue of paramount importance. This, as noted in this chapter, is necessary because people need to be assisted in the reconstruction of their livelihoods after the relocation exercise.

## **CHAPTER SIX: EMERGING ISSUES AND WAYFORWARD**

### **6.0 Introduction**

This chapter focuses at general issues of concern that calling for advocacy with a view to make the project participatory and sustainable. Although the project should be perceived in the context of globalization and opening up of resource to willing and capable international investors certain fundamental must be observed. It has been noted throughout the course of the analysis that certain interests are particularly at risky and must be given due consideration. The Government while focusing at opening doors for local and foreign investors, it must ensure that interests of local communities are well secured. Any seeming investment framework should succinctly articulate how local actors will be facilitated or may benefit.

### **6.1 People's Response and Struggles in Understanding the New Projects**

The development projects have raised questions of equity, fairness, justice, and equality before the law, in the matter of distribution of benefits and burdens. People affected by the project are not on the mood to suffer displacement along with its concomitant attributes like occupational degeneration, social disorientation, pauperization, loss in dignity and often getting nominal compensation, which serve to make the experience a trauma. This has given rise to in trying to understand the project and its implications in their livelihoods. A point to start is the creation of awareness about the problem. The movements of the displaced are expected to play a major role in displacement planning. The press, the activist groups, the NGOs, and impacted people should together play a role in not only educating the public but also to build up public consciousness and awareness.

In spite of such protest movements, pressure from civil society, multilateral donor agencies like the World Bank, Asian Development, etc; it has been noted, however, that states have continued to displace people in the name of development without first articulating a national policy on Resettlement and Rehabilitation (R&R).<sup>238</sup> In many cases poor or lack of community involvement by the implementing agency has contributed to the problem. As a result of protest movements, implementation of many projects has been delayed, leading to

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<sup>238</sup> See, Kothari, S., 'Whose Nation? The Displaced as Victims of Development,' (1996)31 (24) *Economic and Political Weekly*, Mumbai, June 15. See also Sangeeta G., 'Economic Perspectives on Resettlement and Rehabilitation,' (1996) 31 (24) *Economic and Political Weekly*, Mumbai, June 15.

huge escalation of costs and raising the question of economic viability. Protest movements should work with the government to reconsider the problems of displacement and take necessary measures for resettlement and rehabilitation of the displaced people.

In some countries, for instance, in India, protest movements by the affected people in case of Rengali multipurpose dam project could compel the Government of Orissa to come up with R&R policy for the displaced people due to irrigation projects in the State in 1977.<sup>239</sup> It has also been noted that the Narmada experience of strong protest and resistance movement against the project induced displacement in India, and the demand for adequate measures for R&R has clearly shown that in the long run, the R&R policy prescription as well as the nature of development projects may well lead to changes.<sup>240</sup>

With regards to the project in question, the Kigamboni community and other stakeholders have organized themselves in number of ways in trying to realize and protect their human rights. Residents organized themselves to form an organizing committee. In several occasions the committee has provided a link between the residents and the implementing partner, the Ministry Lands, Human settlement and Land Developments for information inquiry and clarification of issues. However for the committee to be more effective, its formation, composition and functioning should be more participatory to include representation from a range of stakeholders in the entire area. Women should take an active role to participate in committee because they will be better positioned to address not only community issues but also specific women concerns.

## **6.2 Particular impacts to women and other vulnerable community groups**

Given the gender-blindness of the planning process development projects typically build on the imbalance in existing gender relations. For affected communities development projects have widened gender disparities either by basing on disproportionate share of social costs on women or through an inequitable allocation of the benefits generated.

In spite of the fact that many countries and funding agencies have adopted specific gender policies in recent years aimed at mainstreaming gender issues in their development

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<sup>239</sup> See Pandey, B., *Depriving the Underprivileged for Development*, Institute for Socio-Economic Development, Bhubaneswar (1998)

<sup>240</sup> See Parasuraman, S. 'The Anti-Narmada Project Movement in India: Can the Resettlement and Rehabilitation Policy Gains be Translated into a National Policy', Working Paper Series No. 161, Institute of Social Studies, The Hague, October (1993) (available at <http://repub.eur.nl/res/pub/18854/wp161.pdf> (accessed on 17/12/2011)). See also Baruah, B. 'The Narmada Valley Project: displacement of local population and impact on women,' (1999) 23 *Natural Resources Forum*, 81-84.

interventions, actual project planning and implementation continue to overlook gender aspects. An assessment by the Operations Evaluation Department of the World Bank of a number of projects funded by the Bank noted that gender aspect of resettlement were largely oblivious. Similarly, after the Asian Development Bank approved a gender policy in 1998, a review of its dam projects observed that the impacts on gender at the project preparation and implementation stages were often not considered.<sup>241</sup> Where planning is insensitive to gender, project impacts can at best be neutral, and at worst aggravate existing gender disparities to the extent of radically affecting the pre project gender balance.<sup>242</sup>

Growing evidence shows that, while development projects may create vulnerability through impoverishment, they disproportionately affect groups that are vulnerable to begin with, particularly indigenous groups and women. Human rights of vulnerable groups are protected generically in the International Bill of Human Rights. The ILO Convention 169 spells out protections for indigenous groups. For women, as Sarah Aird notes in a study of dam-related displacement but whose observations could apply more generally:

‘some governments still recognize only male heads of household as legitimate landowners, denying women compensation for submerged lands and exacerbating pre-existing gender inequalities. In tribal communities where women enjoy user rights over land but not ownership rights, governments do not provide these women with any compensation. In addition to suffering greater negative effects due to dams, women also generally do not enjoy the same benefits men do, such as enhanced employment opportunities.’<sup>243</sup>

The disadvantages of displaced women basically stem from the already existing gender inequalities within the traditional society and family. The laws, policies and government procedures also discriminate against women. It is a consequence of the unequal social and political set-up that men get preference over women in the matter of land, security, physical space, food intake, jobs, etc. within home, society and in the government. These inequalities accentuate in the event of a crisis situation like displacement resettlement.<sup>244</sup>

Examining the involuntary nature of displacement from the urban slums of Delhi, Amita Baviskar has found that displacement for women has brought emotional stress. Men migrate and women are left behind to look after the home and children. Control of women’s

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<sup>241</sup> See The World Bank Report on Resettlement Policies (1998).

<sup>242</sup> See Singh, M. Displacement by Sardar Sarovar and Tehri: A Comparative Study of Two Dams, Multiple Action Research Group (MARG), New Delhi (1992).

<sup>243</sup> See Aird, S. C. China’s Three Gorges: The Impact of Dam Construction on Emerging Human Rights, Human Rights Brief, (2001) 8 (2) *American University’s Washington College of Law*, 24-37.

<sup>244</sup> See Hemadri, R, Mander, H, and Nagaraj, V ‘Dams, Displacement, Policy and Law in India.’ A Contributing Paper for World Commission on Dams, Thematic Review 1.3 Displacement, Resettlement, Rehabilitation, Reparation and Development (1999).

sexuality becomes a serious issue. When women migrate, they work as domestic workers, daily wage earners, etc. Their additional income is extremely important for the family since it is often used to finance their children's education and health. They suffer great hardships in urban slums with regard to sanitation and privacy.<sup>245</sup>

As mentioned in the previous section, there is wide gender disparity in several respects in our society. Thus, displacement may affect women differently. In a broad sense, displacement brings loss of access to common property resources, loss of access to livelihood, loss of access to services, lack of sanitation, breakdown of family life during transition period, additional burden of workloads and responsibilities, deteriorating health status, breakdown of community networks, problem of marriage, rise in alcoholism and increase in domestic violence, deterioration of social status of women, sense of insecurity, breakdown of lifestyle etc. Here is an account of the major impacts of development-induced displacement, especially large scale displacement.

#### **(a) Loss of access to common property resources**

Access to land, sea, fisheries, cattle, grazing land and other common property resources support subsistence livelihoods and provide greater security against risk of poverty to women. As women have no rights on these resources, thus, their loss of access to these resources is seldom focused upon when displacement takes place. Whenever, these resources are often not replaced during resettlement with women often bearing a disproportionate share of the resulting costs.

In India, a study of the impact of displacement on the social and economic condition of women by six development projects such as Bolani Iron Ore mines, Durgapur Steel Plant, Jawaharlal Nehru Port, Maharashtra II Irrigation, Upper Krishna Irrigation and Sardar Sarovar dam found that any loss of access to traditional sources of livelihood, land, forest, sea, river, pasture, cattle, and salt pan land; marginalizes women in the labour force.<sup>246</sup> It is only when land and other sources are replaced that women at least partially regain their economic status. In addition, a study of impact of displacement on people by Balaji Pandey in seven projects in Orissa, (India) found that due to declining access to land and other

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<sup>245</sup> See Asif, M., Mehta, L. and Mander, H. 'Engendering Resettlement and Rehabilitation Policies and Programmes in India', a Report of the Workshop held at the India International Centre, New Delhi on September 12 and 13, 2002 by the Institute of Development Studies and ActionAid, India with support from DFID (2002).

<sup>246</sup> See Parasuraman (note 187).

common property resources, their productive activities that they usually carried out at home such as livestock rearing, kitchen gardening, fishery, poultry or petty business etc got disrupted which adversely affected their status in the family.<sup>247</sup> The study noted that, women, after their relocation, suffered as they lost out on customary land rights and the supplementary income from the common property resources. Their access to resources in the post-displacement scenario was mediated via their husbands and wider social networks.<sup>248</sup>

### **(b) Lack of sanitation facilities**

Sanitation has always been a major problem specific to displaced women. A study on the impact of displacement in Orissa (India) following the displacement of the Orissa population to give way to mining operations by National Aluminium Company Limited (NALCO), a company incorporated in 1987 with the objective of meeting the domestic demand for aluminium and for exporting Alumina in India, revealed that NALCO had provided housing without toilet facilities to the displaced persons. Thus, they were forced to use a plot that the neighbouring village had set aside for pasture. It was also noted that conflicts involving quarrels were frequent and they were mainly between women.<sup>249</sup> These revelations signify that there are important interests of specific groups that need to be taken into account where displacement of people, as the ones envisaged at Kigamboni, is to be implemented.

### **(c) Loss of livelihoods and marginalization of women**

It has been noted that marginalisation is a negative effect of displacement which occurs ‘when families lose economic power and spiral on a “downward mobility” path.’<sup>250</sup> In this regard, ‘[m]any individuals cannot use their earlier-acquired skills at the new location; human capital is lost or rendered inactive or obsolete.’<sup>251</sup> In addition, it is also argued that,

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<sup>247</sup>Pandey, B. *Displaced Development: Impact of Open Cast Mining on Women*. New Delhi: Friedrich Ebert Stiftung (1998). See also Fernandes, W., ‘Development-Induced Displacement: The Class and Gender Perspective,’ –A Paper presented at the International Conference on *The Emerging Woman in the Indian Economy*. Christ College, Bangalore, November 26-27, 2007.

<sup>248</sup> See Pandey (note 194).

<sup>249</sup> See Fernandes, W. and Raj, S. A., ‘Development, displacement and Rehabilitation in the Tribal Areas of Orissa’, Indian Social Institute, New Delhi (1992). See also Mishra S.K. ‘Development, Displacement and Rehabilitation of Tribal People: A Case Study of Orissa’ (2002) 6(3) *Journal of Social Sciences* 197-208.

<sup>250</sup> See ‘Development Induced Displacements’ Internal Displacement Monitoring Centre ( iDMC) Training on the IDPs (undated) (at p.2) (available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protecton%20from%20module%20handout%20development%20displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protecton%20from%20module%20handout%20development%20displacement.pdf) (accessed on 20/12/2011)).

<sup>251</sup> Ibid.

‘[e]conomic marginalisation is often accompanied by social and psychological marginalisation.’<sup>252</sup>

According to Fernandes, women become far more marginalized after displacement partly due to the fact that the land and other natural resources they lose are their only potential sources of their livelihood.<sup>253</sup> Deprivation of women due to displacement is further compounded with the absence of productive employment in the resettlement area. Women are, therefore, forced to remain at home and only look after the household, without any productive work outside. Indeed, experience in India suggests that most of the women affected by displacement programs were at no stage informed about the R&R benefits by the project authorities, nor were they consulted by their men folk about the decisions such as purchase of land and purchase or construction of houses. Due to declining access to land and other common property resources, their productive activities that they usually carried out at home such as livestock rearing, kitchen gardening, fishery, poultry or petty business etc got disrupted which adversely affected their status in the family.<sup>254</sup>

Resettlement or displacement giving way for new projects also results into joblessness. According to Fernandes, this takes two forms. ‘The first is lack of access to work and the second is downward occupational mobility.’<sup>255</sup> The author notes that, in the first place, ‘the project that alienates from them the land that gives them work and provides them security, resettles very few of them and gives fewer jobs.’<sup>256</sup> Thus, after land loss access to work declines this being a collateral effect.<sup>257</sup> In most cases also, jobs become scarce in a displacement situation because most projects have very limited number of jobs to offer to the affected people. Overall, a common trend is that whenever there is unemployment arising out of displacement, i.e. where jobs are scarce, women are the first sufferers. This is not only because they lack the skill, but more because they have to make way for the men.

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<sup>252</sup> Ibid.

<sup>253</sup> See Fernandes, W. (1996) Development-Induced Displacements and marginalization in Orissa, in A.B. Ota and Anita Agnihotri (Eds.) Involuntary Displacement in Dam Projects, Prachi Prakashan, New Delhi (as cited in Pandey, B and Rout B.K ‘Development Induced Displacement In India: Impact On Women’ National Commission For Women (2004) (at p.24) (available at <http://ncw.nic.in/pdfreports/Development%20Induced%20Displacement%20of%20Women.pdf> (As accessed on 18/12/2011)).

<sup>254</sup> See Fernandes (note 194).

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.



#### **(d) Decline in Social Status**

Decline in social status is another effect associated with population displacements. According to Ray ‘important fallout for women of the resettlement work in the Talcher Super Thermal Power Project ... hits all sections of women, irrespective of their socioeconomic status.’<sup>258</sup> The author noted that ‘[w]omen of both large and small agricultural farmer families [had] little to do at their domestic front after the land acquisition for the project.’<sup>259</sup> Moreover, ‘[t]hey did not have enough paddies to process and distribute’,<sup>260</sup> and, for that reason, ‘[t]hey could not celebrate most of their religious functions since the rituals were all related to agriculture.’<sup>261</sup> In view of this, ‘[t]hey could not keep the larger community ties through the horizontal exchange of foodstuff, most of which is rice based.’<sup>262</sup> The author noted that this trend ‘was true for all age groups.’<sup>263</sup> To this end, it was obvious that ‘their contribution to the family economy, whether they worked as agricultural labourers, or managers of paddy inside the house, was not replaced with anything else.’<sup>264</sup>

It is also a notable fact that ‘[d]uring the transition period between actual displacement and resettlement, women suffer more being homeless.’<sup>265</sup> Experience has shown that throughout this time ‘it is mostly the women, the aged and the children who are left behind adding to the responsibilities of women at both locations’.<sup>266</sup> In the absence of sensitive handling and a supportive atmosphere, the displaced people find it difficult to shift to the new site. Many, therefore, continued to maintain two homes one in the submerging village and the other in the resettlement, resulting in fracturing of families.<sup>267</sup>

#### **(e) Additional Workload and Responsibilities**

Due to reduced family income as a consequence of displacement, women are burdened on two counts such as search livelihood to add to the household income as well as

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<sup>258</sup> See Ray, R. Gender Aspects on Relocation, in P. Mohapatra, A. B. Ota and R. N. Mohanty (Eds.) *Development Induced Displacement and Rehabilitation*, Prachi Prakashan, Bhubaneswar (1998) ((as cited in Pandey, B and Rout B.K ‘Development Induced Displacement In India: Impact On Women’ National Commission For Women (2004) (at p.29) (available at <http://ncw.nic.in/pdfreports/Development%20Induced%20Displacement%20of%20Women.pdf> (As accessed on 18/12/2011)).

<sup>259</sup> Pandey and Rout (note 205) 29.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> Ibid, at 30.

<sup>266</sup> Ibid. See also TISS, 1993 quoted in Ekka, A and Asif , M., ‘Development-Induced Displacement and Rehabilitation in Jharkhand, 1951 to 1995: A Database on its Extent and Nature’, A Study Supported by Oxfam (India) Trust, Indian Social Institute, New Delhi (2000).

<sup>267</sup> Ibid.

the household responsibilities. Migration of the men in search of employment, undoubtedly, is another outcome of displacement, which increases the workload and responsibility of the displaced women. Additionally, they have the social pressure of living alone.

#### **(f) Deteriorating Health Status**

Given the high mortality rates among women, it is likely that they will be the worst affected by displacement-induced morbidity when they move to places with less health facilities. Similarly, the nutritional and health status of the women which is lower than that of the men even under normal circumstances is bound to be proportionately gone down in the event of an overall decrease in the health status caused by displacement. Pandey and Rout note that, according to a study at Subarnarekha Multipurpose Project in West Singhbhum district in Jharkhand, India, there has been an ‘increased morbidity and mortality of women in the settlement colonies.’<sup>268</sup> The study indicates ‘that a total of 158 women suffered from various ailments after displacement as against only 76 women who were affected by some sickness or the other before displacement.’<sup>269</sup> In addition, in some of the resettled villages of the project area ‘the per capita intake of calorie has shown a fairly significant drop.’<sup>270</sup> This is attributed to ‘the low yields and poor employment opportunities in the resettlement area.’<sup>271</sup>

Breakdown in social support network is yet another issue worth noting. According to Pandey and Rout, displaced women choose ‘to move as a part of a pre-existing community, neighbouring or kinship group for various reasons.’<sup>272</sup> Because they are ‘less mobile, the breakdown of community and social units ... affects them much more severely.’<sup>273</sup> In most cases, and especially in rural and suburbs areas, women benefit from kin relationships because such association ‘constitutes the prime avenues of access to scarce resources such as information, economic assistance, and other social support.’<sup>274</sup> Generally, ‘[m]uch of the support provisions flow from close networks, child care, assistance during sickness, access to information, economic assistance and a variety of other support.’<sup>275</sup>

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<sup>268</sup> Pandey and Rout (note 205) 30.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid, (citing TISS, 1993 as quoted in Thukral, E. G. ‘Development, Displacement and Rehabilitation: Locating Gender’, (1996) 31(24) *Economic and Political Weekly*, Mumbai, June 15).

<sup>272</sup> Pandey and Rout (note 205) 32.

<sup>273</sup> Ibid, citing Parasuraman (note 187).

<sup>274</sup> Pandey and Rout (note 205) 32.

<sup>275</sup> Ibid.

It is also argued that '[r]esettlement that takes women far away from their natal home might severely affect their welfare, as support in times of crises that might have come from parents and brothers may not be forthcoming due to loss of frequent contact.'<sup>276</sup> In view of this, the big concern is that 'if the resettlement of the displaced women is not carefully executed, it may lead to breakdown in community networks as well as seriously affect the welfare of the women.'<sup>277</sup> Indeed, as Thukral noted, because social dependence on them is greater, breakdown of social networks has the potential to create 'tremendous insecurity and trauma, which the women experience more than men.'<sup>278</sup> In view of this, it is clear that 'disruption of social, kinship networks due to displacement needs some attention. Easy access to their natal homes gave most a sense of security at their original villages. At resettlement sites that security has been shattered.'<sup>279</sup>

### **(g) Breakdown of Lifestyles**

Breakdown of lifestyles in general is part of incidences that illustrate the myriad ways in which displacement leads to problematic social dilemmas.<sup>280</sup> As it is well known in many societies including in Tanzania, 'childcare is one of the main responsibilities fulfilled by women.'<sup>281</sup> With this in mind, due to displacement or resettlement effects that emanates from the implementation of development programs like the Kigamboni area, '[w]omen, not only suffer in terms of health and nutrition,' but they also loose 'the capacity to provide a secure future for their children.'<sup>282</sup> It is contended that '[b]y resorting to seasonal migration they have unwittingly denied their children access to school, health care, child welfare and other welfare services.'<sup>283</sup>

### **(h) Procedural Conduct and Misconducts**

A project that leads to resettlement of people like the one to be implemented in Kigamboni area need to follow all required procedures in order to create harmony between the government and the affected individuals. Where procedures are flawed for whatever reasons,

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<sup>276</sup> Ibid, citing Parasuraman (note 187).

<sup>277</sup> Pandey and Rout (note 205) 32.

<sup>278</sup> See Ibid, citing, Thukral, E. G. Development, Displacement and Rehabilitation: Locating Gender, (1996) 31(24) *Economic and Political Weekly*, Mumbai, June 15.

<sup>279</sup> See Pandey and Rout (note 205) 32 (citing Patabardhan, A. 'Dams and Tribal People in India', - A Contributing Paper for World Commission on Dams, (1999). Thematic Review 1.2 Dams and Indigenous People and Vulnerable Ethnic Minorities.

<sup>280</sup> See Pandey and Rout (note 205) 35.

<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid, citing Patabardhan, (see note 225).

the end results, as already noted in the earlier discussion is that a situation of mistrust ensues between the government and the affected people. As regards the project in question, it is clear that there were procedural misconducts since most procedures which ought to have been followed were not. For, instance, while it was necessary that the affected people should have been given the opportunity to comment on the declaration of the planning area and later on the project's Master Plan, this was not the case. On the contrary, the responsible government officials are now planning series meetings with the *wananchi* which ought to have been conducted well in advance.

### **(i) The Level of Understanding of the Project by the Community in General**

The level of understanding of the project by the community in general, particularly the understanding of the Master Plan for the project implementation, is very poor. Most of the people in the project area do not understand what the Master Plan envisages. The documents embodying the Master Plan are further sold at an exorbitant price which no ordinary resident of Kigamboni will afford to buy. Even if it is obtainable in soft copies (electronic) not many, if not all, of Kigamboni residents have access to the internet, let alone access to computer, and electricity power. Moreover, even if they were to afford buying it, the documents embodying the Master Plan itself are technical and have not been in a friendly language (in this case Kiswahili), which every Kigamboni resident would be able to read and appreciate it.

Generally, the only seemingly affordable way of getting the documents is by paying a visit to the office of the Municipal Director or the Ministry of Lands. However, to an ordinary citizen this is also not convenient given the costs implications and the bureaucracy inherent in some of the offices. One would have expected that the documents embodying the Master Plan should have been deposited within the localities of the *wananchi*, especially their ward offices. It also worth mentioning that the government could have involved other stakeholders, such as the civil societies interested in understanding the implications of this project to interpret the documents in simplified versions and disseminate information to the affected *wananchi*. This, however, was not the case, and the project seems to go on covertly.

### **(j) The Role of the Government in Involving the Communities**

The role of the government in involving affected communities in any development project, in terms of information availability and decision making processes, is a fundamental requirement in any democratic society. As pointed out in chapter five of this report,

participatory mode of urban planning has become ‘a tool for local democracy and inclusive governance.’<sup>284</sup> It enables decision makers ‘to respond creatively to the expressed needs of a city’s inhabitants rather than regulating them.’<sup>285</sup> The UN –Habitat notes, for instance that:

‘[p]articipatory planning empowers communities and results in better design outcomes that are more responsive to the diverse needs of the different urban groups. Participation also ensures the relevance of plans when faced with limited resources and can also increase effectiveness.’<sup>286</sup>

In view of the above views, it is clear that the government ought to have taken all effective measures to ensure that the Kigamboni communities are effectively involved in the initial stages of the project, this being a demonstration of its commitments to uphold democratic governance.

### **6.3 Concluding Remarks**

Generally, the preparation of development plans requires compliance with legal procedures. Public participation is a critical tool in project development and should be given due consideration and interpretation as the process and the outcome should be seen to be meaningful and transparent. In case of planning schemes the law requires clear involvement of the people affected. The declaration of the Kigamboni planning area and the subsequent general and detailed plans contravened the principle of public participation. It more so lacked transparency and flow of information. As a result the Kigamboni citizens have been vocal regarding their fate and the fate of their properties.

Improving the urban governance, in particular, through increasing transparency and accountability of policy formulation and decision making processes, has been found to be a key to success in implementing any urban management policies and plans. Participation of all stakeholders who are benefiting from relevant decisions and actions should be ensured at all levels of planning activities, in combination with greater access to relevant information and enhancement of public awareness of urbanization issues. Efforts to improve urban governance essentially involve activities promoting participatory processes; developing effective partnerships with and among all actors of civil society, particularly the private and community sectors; securing greater effective empowerment of local government, including

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<sup>284</sup> See UN HABITAT *Planning Sustainable Cities Un-Habitat Practices and Perspectives* United Nations Human Settlements Programme (UN-HABITAT) (2010) 8 (available from <http://www.unhabitat.org> (as accessed on 11/12/2011)).

<sup>285</sup> Ibid.

<sup>286</sup> Ibid, at 19.

greater autonomy in finance and legislation; and reform of unresponsive organizations and bureaucratic structures.<sup>287</sup>

In the course of the interview the citizens seem to be in doldrums regarding the project. They lack clear information and do not know the aftermath of project to their livelihoods. Majority of the residents derived their livelihood from the ocean where most of them are fishermen or depends on related activities. The recent upsurge of construction activities in the area has made Kigamboni one of the hotspots for construction activities. However, the two year stop order paralyzed most of those activities. As a result, economic activities that once boomed have ebbed. Preparations for compensation and resettlement have also commenced by poor property inventory that has caused fear among citizens due to unreliability of the records.

Although people seem not to object the project they seem to be more concerned with contravention of the procedural requirements by the relevant institutions. They seem to be eager to know the possible tangible benefits that the project will bring forth and the manner they could tap such benefits. They also seem to be sceptical in the event of compensation of the amount of compensation and where they will be relocated to. It was further noted that the residents are worried about their new economic activities as they are used to fishing. Others were worried of the amount of compensation and the manner they will use the money if compensated given the commodity price fluctuations. As found in the research, development induced displacements have caused suffering to multitudes of people around the world. It is therefore the view of this research that any resettlement must take into account general and specific interests of the residents to avoid possible suffering to the people.

Given the nature of the project it is fair to state that the city is not particularly meant to cater for the needs of the residents of the current Kigamboni. It appears to serve middle-class people who can afford the kind of lifestyle that is being advocated. It will be more of a cosmopolitan city where the less than a dollar earner cannot make a living. But from the general trend satellite cities are a hybrid of urbanization. In almost a very case such expansions have led to direct or technical eviction through the change in style of life which is associated with new socio-economic services. The construction of cities and construction of

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<sup>287</sup> Masakazu Ichimura, *Urbanization, Urban Environment and Land Use: Challenges and Opportunities: An Issue Paper* 10<sup>th</sup> January 2003, Asia-Pacific Forum For Environment And Development Expert Meeting held on 23<sup>rd</sup> of January 2003 Guilin, People's Republic of China, p 10.

roads are among the economic decisions taken by governments in the name of a common good which, in practice, may translate into the forced removal of local residents from their localities. In the name of development, vast community lands have been lost and their owners relocated elsewhere. In some cases, reparation for lost lands and livelihoods has not been granted to the local people. In some cases for instance courts have ruled in favour of the displaced people. In particular, the Inter-American Court of Human Rights (IACtHR) has ruled on the side of indigenous peoples for the resettlement, payment and repair of the damage to indigenous lands and peoples.<sup>288</sup>

The growth of large cities, particularly in developing countries, has quite often been associated with increased urban poverty which tends to be concentrated in certain social groups and in particular locations. Pollution especially affects the poor live at the urban periphery, where manufacturing and processing plants are built and where environmental protection is frequently weak.<sup>289</sup> This may likely happen in New Kigamboni City unless due consideration is taken.

The envisaged development in Kigamboni should also be viewed in the context of globalization. The new city will be dominated by hi-tech industries and first class facilities. The UNEP notes among other things that, new technologies are reducing the relative importance of traditional manufacturing and industrial development based on raw materials. It cites Indian software and information-communication sector as the leading sector for economic growth. The sector is found to concentrate in large urban areas because of the superior infrastructure and educational levels of human resources offered by cities. However the urban poor, who are unable to compete for scarce resources or protect themselves from harmful environmental conditions, are most affected by the negative impacts of urbanization. The growth of the large cities, particularly in developing countries, have led to increased urban poverty which tends to be concentrated in certain social groups and in particular locations.<sup>290</sup>

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<sup>288</sup>Masakazu Ichimura, Urbanization, Urban Environment and Land Use: Challenges and Opportunities: An Issue Paper 10<sup>th</sup> January 2003, Asia-Pacific Forum For Environment And Development Expert Meeting held on 23<sup>rd</sup> of January 2003 Guilin, People's Republic of China, p 32.

<sup>289</sup> Ibid p 4.

<sup>290</sup> Cities in a Globalizing World: Global Report on Human Settlements 2001. London, Earthscan. Worldwide, there is a clear correlation between their poverty and lack of control over resources and lack of full citizenship. State of the World's Cities 2001. Nairobi, United Nations Centre for Human Settlements (Habitat).p 243, UNEP, State Of The Environment And Policy Retrospective: 1972–2002 p 242 accessed on 3<sup>rd</sup> of March 2012 at <http://www.unep.org/geo/geo3/english/pdfs>.

Thus although different languages have been used such as urbanization, satellite cities, city upgrading, or thousands plot projects the ultimate outcome has been displacement and further marginalization of the poor as the order of things force them to the fringes where better services are non-existent. In more concrete terms it is doubtful that services like casinos, tourism zone, international business zone and tourism resorts are the ideal services for the Kigamboni residents save for general public interest.

Also it is worthy-noting that while urbanization and development of modern cities like the envisaged new Kigamboni appear to cater for the needs of the contemporary life styles of the globalized world, the needed financial resources are mostly expected from multinational institutions and private developers. For that matter the project needs to have legitimacy from its beginning otherwise it may risk lacking the kind of jubilation and international acceptability it aspires.



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## Annex I: List of Laws, Cases and Policies

SN 01	<p><b>List of National Policies</b>  National Vision 2025  Mkakati wa Kukukuza Uchumi na Kupunguza Umasikini Tanzania (2002)  Mkakati wa Kukukuza Uchumi na Kupunguza Umasikini Tanzania Phase II (2010)  National Population Policy (2007)  National Environmental Policy (1997)  National Land Policy (1995)</p>
SN 02	<p><b>List of Legislation</b>  Constitution of the United Republic of Tanzania (1977) as amended  Land Act, Act No 4 of 1999, Cap 113.(R.E 2002)  Village Land Act, Act No 5 of 1999 Cap 114 (R.E 2002)  Land Acquisition Act, Act No, 47 of 1967, Cap 118 (R.E. 2002)  Urban Planning Act, Act No 11of 2007, Cap 355 (R.E.2002)  Local Government (Urban Authorities) Act, Act No 8 of 1982, Cap 288 (R.E 2002)  The Land (Compensation Claims) Regulations, 2001, GN No 79/2001</p>
SN 03	<p><b>International Instruments</b>  Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (The Aarhus Convention 1998)</p>
SN 04	<p><b>List of Cases</b>  <i>Saramaka v Suriname</i>, IACtHR, 28 Nov. 2007.  <i>Maya Indigenous Communities of the Toledo District v. Belize</i> Inter-American Commission on Human Rights, Report 40/04, Merits. Case 12.052.  <i>The Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v Kenya</i>, Communication 276/2003, African Commission on Human and Peoples' Rights, 2010.</p>