

REGULATORY FRAMEWORK FOR ACCESS TO LEGAL SHELTER: LIFE IN THE JANGWANI FLOOD-PRONE VALLEY

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INTRODUCTION

This paper examines the regulatory framework for access to legal shelter especially by low income households. The discussion is divided into the following parts. Immediately following this section we provide the context of the discussion whereby the important question of urbanization in Tanzania in general and Dar es-Salaam in particular is presented. The second part focuses on urban governance providing the conceptual framework in which the process of urbanization revolves around. The third part discusses the realities and agonies of the residents of the Jangwani valley. In the fourth part an attempt is made to suggest some way forward that may help the various stakeholders to manage urban development and governance in a friendly-legal and participatory manner. The last part provides a concluding summary.

URBANIZATION

Urbanization is a global trend which cannot be stopped or wished away. According to the UN (1996) by the year 2025, two thirds of the world population, that is over 5 billion people will live in the cities. The estimates are attributed to changing employment patterns as well as social and political changes. Studies have revealed that the main cause of urbanization is rural-urban migration which is intensifying in the 21st century (Gilbert and Bugler, 1992; Mascarenhas, 2000; UNCHS, 2001).

In Tanzania and Dar es Salaam in particular, urbanization is a major issue because the city has been growing at a rate of between 7 to 10% yearly between 1980 and 1997, making Dar es Salaam one of the fastest growing cities in Sub-Saharan Africa (URT 1998). It is said that 40% of the national population reside in the urban areas, the majority of them residing in the city of Dar-es-Salaam (Ngware and Kironde, 2000). There are various factors which tend to attract people to migrate to Dar es Salaam which include: job opportunities, education and high living standards. To-date, Dar es Salaam has 3.4 million people which is about 40% of the total urban population. Besides, every year between 100,000 to 300,000 people migrate to this city from various parts of the country. Below is a figure showing the population trend of Dar-es-Salaam city from 1887 to 2000.

Year	Population
1887	2,000
1894	10,000
1900	20,000
1903	22,000
1921	24,6000
1931	34,000
1948	69,277
1957	272,821
1978	843,090
1988	1,360,850
2000	3,400,000

Source: Sustainable Dar es Salaam Project (1997)

While in the past migration seemed to involve male members, that is both young and adults,

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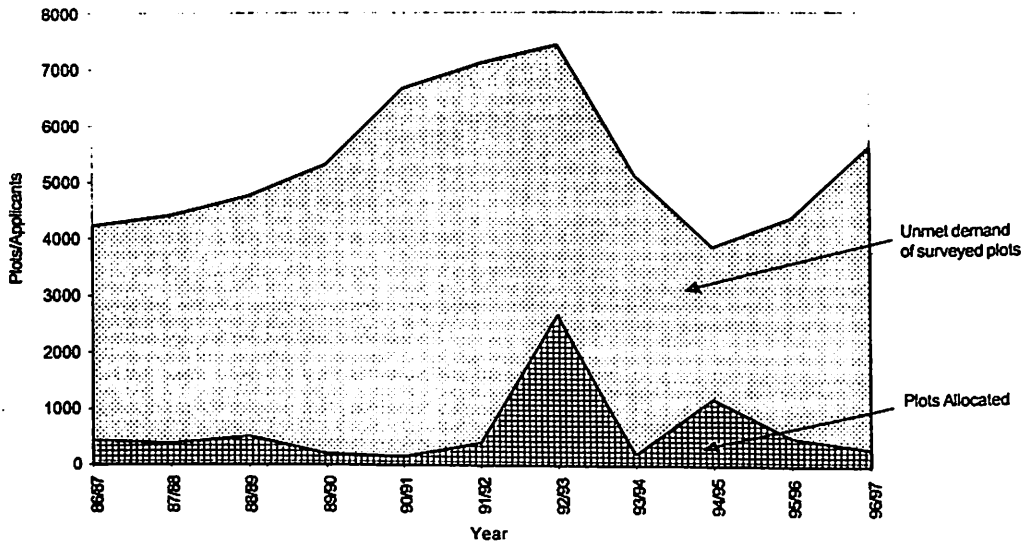


Figure 1: *Plot applicants and allocations in Dar es Salaam (1985 - 1997)*

Source: Dar es Salaam City Council office files; Kyessi (2000) citing Kombe (1997)

the current trend reveals that their counterparts also migrate to towns/cities as observed in South Africa by Kimane and Makara (1998). Like most new migrants to the city, women lack housing, resources to pay rent, lack employment opportunities and are separated from their children and relatives. This has resulted into what they term "extended households." It is our view that inequality in access to resources especially among women and youth contributes to migration. For some women, it could be an escape from social or problems. It has been noted that such a practice increases female heads of households which are poorer than male headed households. This is because women lack opportunities which could contribute to the improvement of their lives and those of their families. To avoid being a single mother, experience has shown that some may prefer to reside with other extended members of family. For instance, in Honduras 26% of female heads of the households in urban areas are migrant. When one considers all these

factors, it can be seen that urbanisation is a trend which has started and it is bound continue for a long time.

It is worth noting that urbanisation tends to create both opportunities and challenges related to resources as well as services. Unplanned settlements is one among many urban challenges. This is because the existing planning mechanism has failed to cope UNCHS, (2001), due to not only lack of human and financial resources but also the planning approach as well. Consequently, it is only a handful of people who acquire plots through normal government channels. Instead, majority of people, that is 60 to 70% of the settlements in the urban areas nation wide belong to unplanned settlements (Hayuma, 1998, Lerise (2000)). The figure indicates a discrepancy between the government policy and a reality in relation to surveying process. Below is the actual figure that shows applicants of plots from 1985 to 1997 in Dar es Salaam.

Experience has shown that, for one to acquire a plot through official means it may take an average of 10 years. As a result, the majority of people acquire plots through an informal market (Kombe, 1995). This issue calls for change not only for the current centralised

planning approach but also the planners' attitudes towards planning (Lerise, 2000, UNCHS, 2001). That is to say emphasis should move from top-down (i.e. centralised planning practices) to more participatory, democratic and accountable planning practices.

Depending on when and how people are involved in the planning process, the exercise seems to increase legitimacy than when people are excluded from the process (Taylor, 1996). Due to the fact that participation is about power and resource sharing, how much power do planners really release and at what time? Practice has shown that sometimes people are involved at a latter stage when decisions and planning had already taken place (Nelson and Wright, 1997). It must be emphasised that people have the right to be properly involved in matters pertaining to their lives for purposes of ownership and sustainability.

Availability of plots and how much they may fetch in the market, depends upon the location of the plot in the city whether (in the inner, outskirts or hazardous areas). Prices may range between millions of shillings to a few shillings. For example, the price of a plot at Kariakoo ranges between T. shs. five and fifteen million (Kironde, 2000). However failure to recognize and regularize the informal land market, it is evident that the government is losing a substantial amount of revenue which could have been used for development purposes (Kironde, 2000). When the above prices are compared to the Jangwani valley prices, which range between T. shs. 20,000 to 100,000 (Kombe, 1995) it can be argued that most poor or rather low income people tend to settle at Msimbazi River valley despite environmental, health and security problems surrounding the area. Most low income people rely on this system because the plots are cheaper and readily available; the process takes only a couple of visits to obtain it from local leaders. A number of women have acquired plots through similar arrangements.

A recent study at Mchikichini ward commonly known as Bagdad, revealed that of the 60 houses in the area 24 were owned by women. Dar es Salaam has been expanding so fast that the existing urban planning mechanisms and land allocation system have failed to cope (Hayuma, 1998; Kombe 1995 and Lerise, 2000).

The actual figures as shown by Hakuyu (1995), indicates that the unplanned settlement areas which are located in the flood plains and river valleys have increased in total size from 200 ha. in 1982 to 400 ha. in 1992. Following the 1968/1979 Master Plan, Msimbazi/Jangwani valley was zoned for conservation purposes. However, due to 1974 drought the ruling Party (CCM) distributed the area for agricultural purposes. Later these farm plots were further sub-divided into smaller portions for housing purposes. Evidence from the aerial photo of 1970 and 1982 reveals that housing developments in some parts of this area were virtually non-existent (Kombe, 1995). Although it was not possible to get the actual figure of the houses in the Jangwani valley, however, observation revealed that the place was fully occupied especially in the Jangwani area. The composition of houses in the Jangwani valley include: residential, commercial (garage, shops, food places), nursery center and religious organizations and some industries.

In the past, squatters were seen as lawless individuals or social misfits (Dawson, 1996) but as the number increased to over 70 percent, authorities concluded that squatting is a reflection of poor housing policies and the inaccessibility of the urban poor and low income groups to land market (Kironde, 2000; UNCHS, 2001).

More importantly, in the 1950s and 1960s there was a tendency to ignore those who settled in hazardous areas mainly because such areas were not considered valuable parts of the city. Housing in hazardous areas was seen as a temporary provision and as a problem which

would disappear with economic development. However, to-date many hazardous areas including Jangwani valley, provide homes to many residents mainly due to inadequate regulatory framework, weak enforcement (Bernstein, 1994) and failure to involve the various stakeholders in the planning, surveying and allocation of plots to those in need and who are able and willing to develop them.

According to studies of risk perception, experts and common people evaluate risks differently. Some use quantitative measures to estimate death tolls, illness and to foresee additional health problems which form the basis for regulatory action. One limitation related to the above approach is that it does not capture the full range of concerns that a common person has about managing a hazard environment (Taylor, 1996). In the end the law enforcement agencies think that the solution to the problem is evictions!

Eviction as a solution to such an issue tends to result into socio-economic a number of problems. Rugumamu (1997), believes that eviction tends to focus on the symptoms rather than the underlying issues as proved at Jangwani valley and similar locations. It is on this basis that the wrong approach to the matter, leads to incorrect response to the real needs, demands and expectations of the urban land developers. He also emphasizes that the current housing problem can be reduced regardless of limited resources. This problem calls for a new and positive mind set about the place in general and the people in particular. Despite the poor environmental quality of the area, due to pollution and other causes, Jangwani residents continue to build permanent structures with very strong foundations.

From the discussion it can be seen that urbanization creates challenges and opportunities for other players to take part in managing urban development as Halfani (1989:116) observed:

Despite persistent efforts by the bureaucratic structures of government to monopolise land use, population growth, service provision, economic production, capital investment and income generation in urban centres, it is now conceded that the formal system of urban management controls only a minimum sphere of development.

Given the influx of people to the city and inability of the planning mechanism to cope with rapid urbanisation, it is clear that land for residential development will remain scarce and unavailable for the majority of dwellers. Consequently, there is need to be flexible and realistic when managing and developing residential areas in planned and unplanned areas including hazardous land, as Bernstein (1994: 38) observed: "the management of hazard-prone areas should be part of a broader approach to urban and environmental management in a cities or larger metropolitan areas."

In addition, there is need to understand that the status of a hazardous area like Jangwani can change depending upon the needs and available technology. For instance, an area can be declared hazardous at a certain moment but after sometime it may be safe to use. Tabata dumping place is a case in point. Indeed an area may seem hazardous in Tanzania's context but may not be so elsewhere. Thus, it all depends on the economy of the country, technological capacity and government's ability and willingness to change land usage. Holland and Belgium serve as good examples where most of the land has been reclaimed. According to Rugumamu (1997), upgrading as a solution to the area should be a shared responsibility and obligation between developers and development partners.

It should be noted that the increase in the number of people in the city does not necessarily increase the resources to be consumed. Instead, if they remain the same, the resources and services get easily depleted, hence posing a serious social, political and management crisis which calls for good governance as briefly presented in our next subsection.

Good Governance for Sustainable Shelter

The World Bank (1992) defines governance as the manner in which power is exercised in the management of a country's economy and reference for development. Ngware (1999), attributes governance to how things get done with more emphasis on the following: effective problem solving, decision making, efficient management of public resources and the use of participatory approaches. Some of the attributes related to good governance include: First, practicing democratic values and material accountability, transparent decision making mechanisms, transparent and incorrupt administration, respect of rule of law and holders of public office being accessible and accountable to the people regardless of their gender, class, income status, education and position in the society. However good governance becomes meaningful if it helps the state, municipal and civil society to accept challenges, opportunities and responsibility for sustainable development. Good democratic governance demands political courage and commitment at all levels.

Various studies have confirmed that the role of the state is to provide conducive social, political and regulatory environment for all players to take part in the developmental process. What we are saying is that the central government should increasingly see itself as a facilitator and stimulator of growth rather than an implementer (Strein and Halfani, 1994). Consequently, basic services in this case should be provided by non state actors namely, civil society and private sector (Costow, 1998). After all, experience has shown that sometimes they can be more efficient and effective doers compared to the state agencies.

Legal Framework and Adequate Shelter for Low Income Groups

The issues of legality and illegality of shelter cannot be discussed in isolation from the whole

issue of land and rights to own land. In essence, this is the question of power and power relations. Thus, unless one is clear about such terms, shelter for whom, where and why, it will be difficult to examine the question of legality/illegality as regards shelter for low income groups. Experience indicates that the low income/poor people especially women, youth, the aged and handicapped have a lot of difficulties in getting access to adequate shelter for themselves and their families. Instead, it is mostly the economically well-to-do and well placed and connected people, who have better access to adequate shelter in urban areas because of among other factors, they have access to resources, influence, information and power. For example, Sinza and Kijitonyama are two residential areas which were set aside for low income groups. However, it is mostly the middle income people who are occupying the areas now!

It is in this context that we would like to emphasize that the question of adequate shelter for low income cannot be discussed without looking at the question of land and land ownership in general with specific and relevant examples from different settings. Throughout the world land issue is a complex and sensitive matter which demands proper policies and careful implementation. People have lost their lives when fighting for even a few metres of land. This is true today as was during the colonial times when land was given to the settlers in Zimbabwe, Tanzania, Kenya, South Africa, Namibia and Mozambique to mention just a few. In fact most of the land issues today have originated from land alienation as a result of colonialism and resultant post colonial land policies which have not been able to provide adequate and lasting solution to the endemic problem.

In most African countries land issues did not end with acquisition of independence. Instead, they are more intensified now than ever

because the demand has increased while the land has remained the same and even degraded in some areas. Because of the above factors it is clear that land conflicts are likely to occur at any time and anywhere in the country especially among the pastoralists and farmers (for example, Kilosa in Morogoro and Arusha among the Barbaig and Maasai and Babati where local people have recently clashed with Tanzanians of Asia origin).

The question of land in the urban areas paints a different picture from the one in the rural areas. While it is clear that the state owns land and has the right to change its use for public benefit, yet individuals do sell land in the name of a farm which is mainly done informally. In Tanzania the majority of people in the urban areas have acquired land through this means, 60-70% of land development belongs to the informal settlement arrangements, illegal as they are conceived by authorities!

Another issue related to the above is that the granted right of occupancy for general and reserved lands are for fixed periods whereas the customary rights of occupancy can be of indefinite duration. Apart from specific period assigned to a piece of land, the process of acquiring land in the urban areas becomes a nightmare for the majority of people. In addition it is mostly the well-to-do people who have access to land in the urban areas because they know how to go around the bureaucratic procedures to acquire land. Consequently, the system discriminates against the low income people especially women because of lack of power, education and resources. Moreover, it is very hard for them to understand the professional language written in these documents whether it is in English or Kiswahili. Hence, the majority of low-income people are discouraged from applying for a plot. Those with resources tend to pay someone who makes a follow up on the matter. It must be emphasized that these are low income people who have no extra resources to facilitate the land acquisition

process except to resort to marginalized areas like Jangwani valley. This is what one of them says:

... the first time I applied for a plot was in 1960. I followed all the necessary procedures needed but until 1970 I had not been given a plot. In 1971 I applied again, the story was the same. In 1980 I did the same thing and I did not succeed. In 1990 and in the 2000 I re-applied the plot. But until today I have not been allocated a plot....I am here at Jangwani! (*our own translation*).

Getting access to adequate shelter for low-income groups continues to be problematic due to double allocation of plots. It is very common for two to three people to be allocated the same plot, sometimes this is happening because people have invaded open spaces.

Lack of Follow-up and Poor Enforcement of Laws and Regulations

This study reveals that acquiring a plot/shamba at Msimbazi was as smooth process as building one's house. On the average, in the past and even today, one can build a house for one or two years without receiving any stop order. In a place like Jangwani, the main assumption is that any structure built is a temporary one, since the environment is not conducive for settlement. However, such an assumption ignores the fact that not every part of Jangwani experiences similar problems. Some areas are well secured in higher and safer places and probably better than most residential areas in the city. More importantly, it depends on who defines hazardous conditions and when. According to the available literature, the place was declared hazardous in the 1960s when the rate of migration to the city was not as high as what we are witnessing today.

We have to appreciate that land issues are complex and sensitive matters which deserve

proper treatment. Besides, the ministry concerned lacks resources and manpower to implement and monitor problems related to this issue. Failure to do that means that it will be very hard for low-income people to get adequate shelter. Therefore how do you legalize? For whose interest? This issue calls for good governance which advocates a different way of doing things for the benefit of the majority especially in this epoch of democratization and liberalization where the government provides a conducive environment for the civic groups, NGOs and CBOs to solve their own problems.

THE AGONIES AND DYNAMICS OF LIVING IN THE JANGWANI VALLEY

Power and Power Relations

For some time, the Jangwani settlement has been facing a tug of war between the government, politicians and the residents. The main issue was similar to the Ubungo case, where different officials were announcing contradictory statements from each other which culminated in a number of houses being demolished leaving behind displaced, agonizing and shattered families. As regards to the Msimbazi dwellers, the government's stand as often announced, was to relocate the residents and re-settle them at Tegeta, Buza and Kinyerezi for their own safety. This goal was partly realized in 1998 during the *El-Nino* rains. Official reports confirmed that a number of people were given plots and moved to those areas. However, when the floods were over, most of the people came back to their old settlements. Why?

According to the residents, the exercise failed because the plots belonged to specific people at Tegeta and none of their 'Mtaa' leaders had verified those plots. Besides, there were no basic services such as water, electricity and transportation as compared to their former settlements (Jangwani Valley). It was learned that

the residents returned because most of their houses were still intact despite some minor damages! After all, some residents were still living in this area with the alleged support of their member of parliament as discussed below.

For those who remained behind, their houses were marked to indicate eviction was coming consequently they called upon their member of parliament who allegedly consulted the Prime Minister over the issue. It was allegedly agreed that the residents should remain in the area until further notice. This study revealed that not every body was aware of the consensus reached between the Prime Minister's Office and the residents through their member of the parliament. At best one can only speculate on what really transpired.

Discussions with residents revealed that they were not against re-settlement, rather they were concerned about the manner in which the matter was being handled. Hence, they would only vacate after holding discussions with government representatives where such issues as plot allocation, time for building and a possibility for compensation would be deliberated and clarified. What people were questioning here was not eviction as such. They believed that the government has the right to take any action against them concerning their current illegal occupation. What they emphasized was proper involvement and participation on the resettlement procedure.

During the study the residents claimed that the main cause of eviction was that the area had been sold or is likely to be sold to some foreign investors. (This was later confirmed in the media when the demolition exercise was initiated). Therefore, the residents hardly believed that the cause of eviction was necessarily floods as the government would want people to believe.

...we really doubt whether their main concern is flooding. This is because Msimbazi valley is not

the only place which experiences floods in the city. What about Mikocheni, Mbagala, Sinza and Kijitonyama...? (*Our own translation*)

When one observes the Msimbazi, Ubungo and other similar locations, it can be seen that some of the government policies appear very good on papers but their implementation is problematic. This is in reference to the Ubungo-Morogoro Road case which had necessitated revisiting by the Government in order to possibly amend the law and save thousands of houses. It should be emphasized that some of our laws are out-dated and the relevant ones are not yet in place.

Environmental Related Problems

Flooding at Msimbazi was an issue and still is, but the residents claimed that they could predict both the timing and speed of flooding (ie from 20th to 29th May every year) which enabled them to act on time. This is what some respondents said:

...first of all we begin by observing the speed of the water as it moves to our area... Then we continue to prepare ourselves by moving the old, sick people and children to higher areas, followed by women who take a few things with them to the same place. Then men follow after that but they do not go very far because they have to keep an eye on houses due to thieves who take advantage of the situation... (*our own translation*).

Asked how long did they wait before they go back, they had this to say:

...Depending on the seriousness of the flooding, we may stay for a few hours, until when the water starts moving out... What we usually do is to put a mark on a wall to monitor water level... then we observe to see whether it is decreasing or not. Once we establish that everything is "safe", we go back to our homes to start clearing... (*Our own translation*).

Constant Fear of Eviction

One major reason for residing in the Jangwani Valley was lack of plots in planned areas. The residents knew that according to urban regulations flood-prone areas were prohibited areas. So most people lived under constant fear of eviction which resulted into psychological, social and economic problems. Usually evictions, were accompanied by harassments, demolition and destruction of their properties. Once the house is destroyed families must look for a shelter, and on many occasions it may lead to family separation hence they loose the social network already developed in the area.

Moreover, women were equally (if not more) affected by evictions. Often times when there is an economic upheaval in the house it is women who stay with the children while the husbands are forced to look for alternative work at a distance. This increased women's burden since they have to ensure the survival of the family.

In addition, school children are equally affected because their school calendar is disrupted, since they find themselves sheltered in an area far away from their school. Getting into a new school in Dar es Salaam takes a long time because of bureaucracy and procedures required by the school administrations. In spite of the agonies experienced by the Jangwani residents, yet more and more people find their way to Jangwani due to a number of reasons.

First, renting in the Jangwani Valley is not only cheaper but also the manner of payment was very flexible compared to Kariakoo and elsewhere. An average room costs between T.shs 3,000 to 7,000. The per month payment depended on the type and the location of the house. Another system of payment was T.shs. 1000 per person, per week for the seasonal/temporary tenants. Although the amount of rent may seem quite insignificant, some land lords made a reasonable amount of money per year because the occupancy rate in Dar es Salaam is

about 10 plus people per room for these particular tenants. Besides, some people had more than one house. Flexibility in rent payment, was attributed to the fact that most people could not afford to pay T.shs. 84,000 per year when they were not sure whether the house could be demolished or washed away by floods. In fact, most land lords do not tell the truth about the extent of flooding in the area for fear of losing customers.

As many residents confirmed; life at Jangwani Valley is very cheap due to its proximity to the city center and availability of all social infrastructure as one resident said:

... have a house at Mikocheni but currently some people are renting it because I have decided to settle here at Mchikichini. Life here is very cheap. When you go to Kariakoo in the evening, you may collect everything you want almost for free. In addition, when a member of the family falls sick one has a choice to go to Muhimbili or Amana hospital where we use short cuts. In fact when relatives are expecting, I usually encourage them to come to my place so that they can be nearer the hospitals" (*our own translation*).

The location of the area is ideal for petty trade especially food vending. For example, out of 32 women interviewed three quarters were engaged in food vending at Kariakoo market, catering to garage workers and those who pass by. After many years of living in the Jangwani valley, the residents have developed some environmental, political, social and economic coping strategies that sustain their livelihoods as demonstrated below.

The study conducted in part of the Jangwani valley, reveals that there are short and long term coping strategies used by the community at large and individuals. Some of the short-term solutions used by many residents over the years include storing clothing and mattresses, probably up in the ceiling or tied on a beam, while residents slept on hard wood. The most common strategy used by many is to move to

higher places which could be residential or an institutional premise. The most important thing is that those who receive them empathize with the situation, hence they accept them as seasonal guests without restrictions. Related to the above, most people relied on social networking for information and help. For instance, if there was any information about the area it is communicated so fast that within a short period most people would be informed about it and take the necessary measures.

Long-Term Coping Strategies

There are different long term coping strategies used by many residents especially those who had invested in the area. Unlike the usual slums most Jangwani valley houses were made of concrete blocks strong enough to resist flooding. Besides individual efforts, the area is well furnished with local bridges which allow people to move freely from one area to another. That was possible by the use of scraps from old vehicles available in nearby garages. As a result of local bridges, the residents could use any path to come in or go out of the area with less difficulties. Together with bridges, Bagdad residents had constructed an embankment in order to prevent floods from destroying their homes. Another coping strategy observed is availability of various services mentioned earlier such as shops, 'mama lishe,' church and nursery schools. It was later learned that more people needed nursery schools around because mobility was difficult for the pre-school children than adults especially during flooding. The process involved escorting a child to and from school to ensure ones' safety. Another strategy used by Jangwani residents is working closely with their member of parliament. For quite some time now, their survival depended on their member of parliament who allegedly negotiated for their continued stay. The issue here is not a political protection by the member of a

parliament, but rather to see whether there is a possibility of improving the area technically and reduce the constant fear people have learned to live with.

THE WAY FORWARD

Given the economic, social and political reality of the residents of Jangwani valley and similar areas in the country, the following observations can be made: First, there is need to identify and group these laws and regulations for convenience and effective implementation: One strategy could be to remove all out dated laws and regulations according to the material conditions. We could also improve upon some regulations to make them more user friendly for our situation. Where possible new regulations should be formulated to reflect the current and future urban developments. For example is there urban development policy for Tanzania? Second, there is need to make use of good practices from within and outside the country. For instance, one challenge would be to ensure that similar problems are not replicated in our small towns. The use of private land developers could be very instrumental in this issue to alleviate the lack of manpower. We could also use retired officials to do the work. Fourth, institutions like UCLAS could be used to reduce the pressure during holidays as part of practical training as commonly done in the Ministry of Education. It is our belief that this approach will strengthen urban governance (democratization, accountability, transparency and involvement of people for their own good and for the good of our own country.

CONCLUSION

This paper has examined the dynamics of living in the Jangwani valley with specific emphasis on legalisations issues. It argued that Jangwani and similar areas in the country are a manifestation of rapid urbanization coupled with

the failure to enforce regulations including plot acquisition, building and change of land use without authorization. It is further suggested that while residents appreciate lack of resources and manpower to implement the process, some areas in the city have been invaded, including Jangwani valley where people have occupied the areas in the last twenty years without being "disturbed". Some people attribute this to negligence and/or corruption, while others think is due to out-dated laws and regulations which hardly serve current peoples' interests. All said and done, these are human beings living at Jangwani, they are citizens who happen to be on the wrong side of our regulatory framework but deserve to be assisted and supported in a humane way. It is our view that "quick fixes" like evictions, would only help to post-pone the social and political explosion that is not good for anybody!

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