



THE UNITED REPUBLIC OF TANZANIA

NATIONAL AUDIT OFFICE



**PERFORMANCE AUDIT REPORT ON THE ENFORCEMENT OF
DEVELOPMENT CONTROL FOR THE PLANNED PUBLIC OPEN SPACES
IN TANZANIA**



**A REPORT OF THE CONTROLLER AND AUDITOR GENERAL OF THE UNITED
REPUBLIC OF TANZANIA**

MARCH 2017

THE UNITED REPUBLIC OF TANZANIA



NATIONAL AUDIT OFFICE

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PREFACE

The Public Audit Act No. 11 of 2008, Section 28 authorizes the Controller and Auditor General to carry out Performance Audit (Value-for-Money Audit) for the purposes of establishing the economy, efficiency and effectiveness of any expenditure or use of resources in the Ministries, Departments and Agencies (MDAs), Local Government Authorities (LGAs) and Public Authorities and other Bodies which involves enquiring, examining, investigating and reporting, as deemed necessary under the circumstances.

I have the honour to submit to His Excellency the President of the United Republic of Tanzania, Dr. John Pombe Joseph Magufuli and through him to Parliament the Performance Audit Report on The Enforcement of Development Control for the Planned public open spaces as conducted by the Ministry of President's Office - Regional Administration and Local Government (PO-RALG) through its planning authorities (Local Government Authorities).

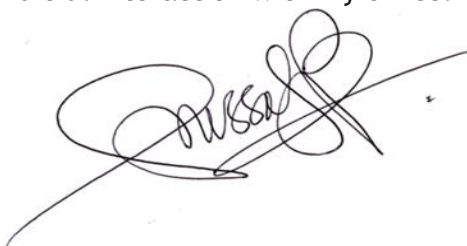
The report contains findings, conclusions and recommendations that have focused mainly on the enforcement of development control for the planned public open spaces in the country. PO-RALG has been given the opportunity to scrutinize the factual contents of the report and comment on it.

My office intends to carry out a follow-up audit at an appropriate time regarding actions taken by the audited entity in relation to the recommendations of this report.

In completion of the assignment, the office subjected the report to the critical reviews of Dr. Liberatus Kileki Mrema, Lecturer at Ardhi University and Dr. Furaha Ngeregere Lugoe, Rector and Managing Director at Dar es Salaam Institute for Land Administration and Policy Studies - Ardhi University, who came up with useful inputs on improving the output of this report.

This report has been prepared by Mr. Victor F. Mapigano - Team Leader, Mr. Jeje D. William and Miss Janeth M. Rutagengwa - Team Members under the supervision and guidance of Mr. George C. Haule - Assistant Auditor General and Ms. Wendy W. Masoy - Deputy Auditor General.

I would like to thank my staff for their assistance in the preparation of this report. My thanks should also be extended to the audited entities for their fruitful interaction with my office.

A handwritten signature in dark ink, featuring a large, stylized 'M' and 'J' that are interconnected. The signature is written in a cursive, fluid style.

Prof. Mussa Juma Assad
Controller and Auditor General
United Republic of Tanzania
March, 2017

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ABBREVIATIONS

CC	: City Council
CDA	: Capital Development Authority
LGAs	: Local Government Authorities
MC	: Municipal Council
PO-RALG	: President’s Office - Regional Administration and Local Government
WEOs	: Ward Executive Officers

EXECUTIVE SUMMARY

Introduction

Public open spaces play vital role in social life of the community and they can be regarded as a shared resource in which experiences and value are created. The availability of playgrounds, public parks and recreation facilities are of great importance to the daily life of the society.

Tanzania has been facing challenges in the management of the available Public Open Spaces. It has been observed that in a number of Planning Authorities the planned public open spaces are not used as intended and not developed.

The aim for this audit was to assess whether President's Office - Regional Administration and Local Government (PO-RALG) through the Planning Authorities effectively enforce Development Control for the planned Public Open Spaces.

The President's Office - Regional Administration and Local Government (PO-RALG) was the main auditee. The audit also includes the Ministry of Land, Housing and Human Settlement Development (MLHSD) as a key stakeholder involved in the management of Public Open Spaces.

The audit covered a period of five years (2011/12 to 2015/16). Data was collected from seven (7) Planning Authorities based on six (6) geographical zones (Coastal, Lake, Eastern, Southern Highlands, Southern and Northern zones)

Main Audit Findings

Registration and issuance of title deed for planned public open spaces

The audit noted that most of the Planning Authorities have not initiated process for registering planned public open spaces despite provision of Circulars and reminders requiring doing so. It was revealed that majority of the available public open spaces in visited Planning Authorities were not registered and had no title deeds.

Enforcement of development control plans for the planned Public Open Spaces

In all visited Planning Authorities, the audit noted that the planned public open spaces were used contrary to the intended or planned purpose.

For instance, in Dodoma Municipality under Capital Development Agency (CDA), it was observed that more than 90 percent of the planned public open spaces had been encroached /changed use. The audit team was not shown any contractual agreement between CDA and developers of such areas.

Conduction of inspections of the planned public open spaces

The audit noted that there are no inspections conducted by the Planning Authorities in order to ensure that the planned public open spaces are well maintained and protected according to the agreement for those being developed by private developers.

System used for recording and tracking information on encroachers

The system used on recording and tracking of information on encroachers was noted to be inadequate as there was no clear method used by the visited Planning Authorities.

Most of the Planning Authorities use Ward Executive Officers (WEOs) to report on encroachers by sharing with them the Town Planning drawings. Despite this practice the audit team questioned on whether the WEO's had the skills needed for those drawings. The planning authorities have no database concerning encroachers which is the base for taking decisions.

Main Audit Conclusions

The President's Office - Regional Administration and Local Government (PO-RALG) have no plans and strategies in place that ensure Planning Authorities initiate and process required title deeds and ensure proper enforcement of development control plans for the planned public open spaces.

There are no inspections conducted by Planning Authorities in order to ensure protection, maintenance and taking appropriate actions against encroachers for the planned public open spaces.

The procedures used for tracking and recording of information on encroachers are not adequate due to reliance on information from WEOs. Moreover, there is ineffective mechanism to communicate land information with officials at lower levels.

Main Audit Recommendations

Based on the audit findings and conclusion reached the following are recommendations to the President's Office - Regional Administration and Local Government (PO-RALG):

- a) Establishment of strategic plans by PO-RALG to ensure registrations and provisions of title deeds for all the planned public open spaces;
- b) PO-RALG to ensure that the planning authorities in the protections of public open spaces should be hinged on the result matrices where the variables of control of the planned public open spaces are measurable through OPRAS;
- c) PO-RALG to institute control and information system which links all the machineries involved in issuing business licenses, water supply

and electricity to dishonour applications for such services by the voracious defaulters of public open spaces;

- d) PO-RALG to issue a directive to LGA to introduce a department of landscape architecture and urban design which will deal with public open spaces, urban beatification, urbanism and landscape architecture in towns and cities. This will involve the public open spaces, urban green spaces, green belts, road corridors, rivers, sea shore, marshlands and site of specific importance (if any);
- e) PO-RALG should ensure that planning authorities conduct inspections of public open spaces and submit quarterly reports to PO-RALG;
- f) PO-RALG should make follow ups of the implementation of the measures taken against the defaulters at least quarterly and document a prepared report;
- g) PO-RALG should ensure that communities are sensitized to know the roles of public open spaces socially, economically and environmentally and thus compelled to respect, protect and use as intended and report any malpractices to WEOs;
- h) PO-RALG should sensitize Local Government Authorities to make sure that through collaboration with communities, public open spaces are planned, designed and evaluated;
- i) PO-RALG should shift from mere protection of public open spaces to deployment of public open spaces for improved urban economy, urban efficiency, urban effectiveness and enhanced environment conditions.
- j) PO-RALG should make sure that LGAs impart WEOs with skills in TP-Drawings reading and reporting to the Planning Authorities; and
- k) PO-RALG should make sure that there is established digital database of public open spaces in website owned by planning authorities which are publicly accessible for exchange of notes and experiences.

CHAPTER ONE

INTRODUCTION

1.1 Background

Public Open space is defined as public land that has a leisure function and or is zoned or reserved for public parks or conservation purposes (Insight Leisure Planning, 2013). Also, according to Mrema (2013), public open space is a space that is publicly accessible whether publicly owned and managed or privately managed.

The Town and Country Planning Regulations of 1960 as amended in 1993 classify public open spaces into two types: *Open spaces for active recreations*; such as athletic grounds, sports grounds, playing fields, race courses, golf courses, outdoor stadia, indoor stadia, traditional ngoma grounds and tot-lots; *Open spaces for passive recreations*; such as private and public parks, public gathering grounds, green belts, hiking trails, gardens, botanical gardens, urban squares, incidental open space and scenic sites.

The public open space that is well-managed contribute to promote income, investment and wealth creation, enhancing environmental sustainability, improved public health, enhancing urban safety and moreover they can be used in promoting equity and social inclusion¹.

Development control seek out to manage and regulate property development in order to ensure that all developments take place at an appropriate time and place and in such a manner that it conforms to a pre-determined set of policies or standards.

The main purpose for development control is to ensure orderly and rational development of land that will create sustainable human settlements that accommodate a variety of land uses to meet the needs of the people who live in these settlements².

Among the challenges on the management of the planned public open spaces is the enforcement of development control to avoid encroachment and frequent unauthorized change of use.

The Controller and Auditor General Report on urban planning, 2014 has revealed that, lack of adequate number of public open spaces in urban

¹ Global Public Space Toolkit (2016): From global principal to local policies and practice Revision:

² <http://www.oas.org/pgdm/document/BITC/papers/dthomas.htm> - Dr. Deborah Thomas

areas is a result of poor urban planning and change of land use of available few.

1.2 Motivation for the audit

A summary report on the status of public open spaces in Kinondoni municipality in 2016 revealed the existence of a total of 157 public open spaces and 90 percent of them were encroached. How are public open spaces respected, protected and developed through LGAs under the umbrella directives and policies from PO-RALG?

Public open spaces are set aside by the planning authorities for public use and recreation without entry levy. Going by the definition the current change of use of public open spaces into bars as observed in Dodoma is challenged.

Moreover, drastic change of land use of public open spaces cast doubt on the relevance or meaning of public open spaces to residents and local government officials. Are residents aware of the roles of public open spaces in the built environment? If not, are they sensitized to use and enjoy such spaces?

Planners, architects, engineers and political scientists working with local government authorities are aware of the international standards for public open spaces in terms of quality, quantity, use flexibility, variety, details and urban economy. Which factors hold back development of public open spaces in Tanzania? Are public open spaces drawn out of our context? Are public open spaces facilitated for use and enjoyment? The office of the controller and auditor general decided to conduct performance audit to answer all these important questions.

1.3 Audit design

1.3.1 Audit Objective

The main objective of the audit was to assess whether President's Office - Regional Administration and Local Government through its Planning Authorities is effectively enforcing Development Control for the planned Public Open Spaces.

Specific audit objectives were to:

- i. assess whether Planning Authorities established strategies and plans to ensure planned Public Open Spaces are protected/safeguarded;

- ii. assess whether the Planning Authorities effectively enforce development control plans on the management of Public Open Spaces; and
- iii. assess the adequacy of a system for reporting encroachers on Public Open Spaces and actions taken against them.

1.3.2 Audit Scope

The audit focused on the enforcement of development control for the planned Public Open Spaces in planning authorities. More specific, the audit focused on the established strategies and plans to ensure protections of the planned Public Open Spaces, enforcement of development control plans, and system used for reporting encroachers as well as actions taken against them.

This enabled the audit team to collect relevant information relating to enforcement of development control and can give opinion through constructive recommendations for the improvements on the management of public open spaces

The main audited entity was the President's Office - Regional Administration and Local Government (PO-RALG) who is the overseer of Planning Authorities (for Cities and Municipals selected based on pre-defined criteria as shown in Table 1.1), which have mandate of enforcing development control of planned public open spaces within their area of jurisdictions.

Capital Development Authority (CDA) in Dodoma was also selected for comparing its performance to other Planning Authorities. The Authority has a duty to prepare and implement plans for Dodoma as the Capital of Tanzania.

The audit covered five financial years from 2011/12 to 2015/16 due to the fact that during this period many cases of Public Open Spaces invasion were reported. Furthermore, the team was interested to establish a trend of the problem over five years in order to come up with appropriate conclusion.

1.3.4 Audit Criteria

In order to assess the performance of the President's Office - Regional Administration and Local Government on the enforcement of development control for the planned Public Open Spaces, the following assessment criteria drawn from various sources: including Legislations, Policies, Strategic Plans and Circulars were used:

Establishment of plans and strategies to ensure the planned Public Open Spaces have title deeds

UN-Habitat³ states that Local Government Authorities are responsible for identifying suitable public open spaces, clarifying ownership rights, considering on how to impact the planning authorities and agree taking part in the participatory approach to public space design.

Also in accordance with the National Land Policy (1997), the Local Government Authorities are responsible for making sure that public properties including national parks and any allocation made for public uses have a certificate of occupancy.

Establishment of strategies and plans on development control

According to Medium Term Strategic Planning and Budgeting Manual, 2005; Public Sector Institutions are required to establish strategies and plans for implementing their objectives. In this regard, PO-RALG is required to prepare strategies and plans to implement issuance of title deed as required.

Effectiveness on enforcement of development control plans on the management of Public Open Spaces

The Urban Planning Act No.8 of 2007 requires Planning Authorities to execute and enforce such schemes to control and regulate development within their planning areas and adapt to these requirements, intents and purpose of such schemes.

Also, PO-RALG's Strategic Plan for the year 2011/12 to 2015/16 has shown that it is the responsibility of PO-RALG to monitor and coordinate all such activities relating to urban development as planned in urban planning authorities.

Furthermore, according to Technical Circular No. 1 of 2006 Planning Authorities are required to conduct regular inspections and take appropriate actions whenever there is development without following procedures.

Moreover, the planning authorities were required to show status of planned public open spaces in their jurisdictions. This is according to the

³<http://unhabitat.org/urban-initiatives/initiatives-programmes/global-public-space-programme/>

directive issued by the President's Office - Regional Administrations and Local Government with reference No.GB.203/297/01 of December, 2015.

Adequacy of a system for reporting encroachers on Public Open Spaces and taking actions

With reference to PO-RALG's Strategic Plan for the year 2011/12 to 2015/16 under Objective F: it has shown that among activities that should be done by PO-RALG is to track and monitor land management mechanism as performed in urban planning authorities annually⁴.

Also, the Technical Circular No. 1 (2006) issued by Ministry of Land Housing and Human Settlement Development requires Planning Authorities to conduct regular inspections and take appropriate actions when development activities are taking place without following laid down procedures.

Furthermore, according to the Seventh Session of the World Forum Report (2015): Urban Equity in Development, Sustainable urban development requires multilevel and participatory governance systems, whereby national governments set policies and standards and empower local authorities to deliver.

According to Technical Circular Number 4 of March 2016, planning authorities are required to conduct awareness programme to the community on laws, policies and available guidelines on development control for planned public open spaces.

Moreover, according to National Land Policy 1997, in order to build up an accurate and complete land information system with up-to-date data, the Government should shift from manual files to the technology of storing information and data by computerizing the records

1.3.4 Methods used for Data Collection and analysis

To gather and analyse data for this audit the team used the following methodology:

Tanzania Mainland has 26 administrative regions in six (6) geographical zones. One case (Planning Authority) from each zone was picked for investigation based on the identified criteria.

The two criteria for high and low cases of encroachment chosen aimed to compare two development control practices as shown below.

⁴PO-RALG Revised Strategic Plan for the period from 2011/12 to 2015/16; Objective F, Page 22

- (i) With high and low numbers of cases of encroachments were selected for comparison of performance.
- (ii) With high population density were selected since there is high risk of encroachment due to expansion of economic activities

Table 1.1: List of selected Planning Authorities based on pre-defined criteria

Criteria used for selection	Selected Planning Authority
Region with high number of encroachment cases	Mwanza, Arusha City Councils and Kinondoni Municipal Council
Region with minimal number of encroachment cases	Capital Development Authority (CDA), Mtwara and Moshi Municipal Councils
Region with high population density	Mbeya, Mwanza, Arusha City Councils and Kinondoni Municipal Council

Method used for Data Collections

(i) Documentary Reviews

The audit team used documentary reviews to gather more information, get understanding and clarification on relevant issues concerning enforcement of development control plans as noted during interviews.

The team reviewed different documents from each of the visited Planning Authority. For detailed clarification on the number and type of documents reviewed see **Appendix II**.

(ii) Interviews

Interviews were conducted in order to know the performance of planning authorities in enforcing development control for the planned public open spaces. The audit team had interviews with officials from PO-RALG and Town Planning departments for each of the selected and visited Planning Authority.

Furthermore, officials from Ministry of land, Housing and Human Settlement Development, Ardhi University, Capital Development Authority (CDA) and Dar es Salaam Institute of Land Administration and Policy Studies were interviewed to get clarification on issues related to development control of the planned public open spaces. (**Appendix III**).

(iii) Observations

For each of the selected Planning Authority, the audit team conducted physical observation by visiting at least six (6) randomly selected Public Open Spaces. The purpose was to observe implementation of development control on the planned public open spaces. The audit team wanted to know the implementation of the planned open spaces. The visited public open spaces were noted and photo taken to show their status (**Appendix IV**).

Method used for data analysis

The audit team developed audit evidence by presenting the collected qualitative and quantitative data from different sources. The data were analysed, compiled and compared, using tables and figures. The information from different types of data sources were combined to get an understanding of the causes of the actual conditions on the ground.

1.4 Standards used for the Audit

The audit was done in accordance with International Standards for Supreme Audit Institutions (ISSAIs) issued by the International Organization of Supreme Audit Institutions (INTOSAI).

These standards guide the audit team to obtain sufficient and appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives.

1.5 Data Validation Process

President's Office - Regional Administration and Local Government, which is directly concerned with this report, was given the opportunity to go through the draft report and comment on the figures and information being presented. They confirmed on the accuracy of the figures used and information being presented in the audit report.

Furthermore, the information was cross-checked and discussed with subject matter Experts in the field of land management to ensure validity of the information obtained and presented.

1.6 Structure of the Audit Report

The structure of this report is as summarized in the diagram below

Chapter One

Covers background to the audit, audit motivation, audit design and assessment criteria used during the audit. it also provides details on standards used for audit and data validation process

Chapter two

Provide system used for enforcing development control. It includes laws governing public open spaces , process and key actors in enforcing development control for the identified public open spaces

Chapter three

Present finding based on the audit questions and summary of the major impacts associated with insufficient enforcement of identified public open spaces

Chapter four

Present audit conclusions based on the audit findings

Chapter five

Present audit recommendation based on audit finding and conclusions

CHAPTER TWO

SYSTEM FOR ENFORCING DEVELOPMENT CONTROL OF PUBLIC OPEN SPACES

2.1 Introduction

This chapter describes the system for enforcing development control for the planned Public Open spaces in Tanzania. The chapter covers statutory mandates and roles of key players, responsibilities and relationship among key stakeholders and process description for the enforcement of development control for the planned Public Open Spaces.

2.2 Statutory Mandates and role of key Players

2.2.1 President's Office - Regional Administration and Local Governments

(i) President's Office - Regional Administration and Local Governments

President's Office - Regional Administration and Local Government (PO-RALG) through Urban Development Department has the following mandate roles⁵

- a) To coordinate, advice, supervise, monitor and implement urban development policy through planning authorities;
- b) To provide technical support and advice on land use planning to Urban Councils and monitor their implementation;
- c) To put in place and operationalize a mechanism for protecting developed public infrastructure;
- d) To coordinate and facilitate capacity building on relevant skills and expertise in urban development; and
- e) To provide input for reviewing urban development policies.

(ii) Regional Administrative Secretary

The Regional Administrative Secretary (RAS) is the secretary of the Regional Consultative Committee which among its functions is to consider and give advice to planning authorities regarding development plans along with monitoring and ensuring coordination of the overall economic development in the region⁶.

⁵ Functions and Organization Structure of the Prime Minister's Office, Regional Administration and Local Government, 2011

⁶ Regional Administration Act Number 19 of 1997

Normally planning authorities submit their Planning Schemes to the MLHSD through RAS before their approval. Moreover, any directive from PO-RALG to planning authorities usually do not go directly to planning authorities, is passed through RAS.

(iii) Local Government Authority (Planning Authorities)

According to Urban Planning Act Number 8 of 2007 every city council, municipal council, town council and township is a planning authority in respect of its area of jurisdiction. City, Municipal and Township councils all report to President's Office - Regional Administration and Local Government.

The Planning Authorities are the owners of Public Open Spaces in their areas of jurisdiction. This has been explained by the National Land Policy (1997) which requires all public properties to clearly indicate who owns them.

In this regard the Planning Authorities are required to have certificates of occupancy for all of the planned Public Open Spaces registered to Zonal registrar.

Each planning authority through urban planning department is responsible for enforcing development control for the planned public open spaces within its jurisdictions. The LGAs start by preparing the plans to enhance development control and later implement.

(iv) Ward Executive Officers

Among the duties that are to be performed by Ward Executive Officers are to implement any other duty as assigned by the respective City and Municipal Councils.

2.2.2 Ministry of Land, Housing and Human Settlement Development (MLHSD)

(i) Rural and Urban Planning Department

According to the Ministry of Land, Housing and Human Settlement Development's Strategic Plan 2012/13-2016/17, the Ministry is responsible for enforcement of development control through physical development section. The Ministry through physical development control section under rural and urban department has the following functions:

- a) Prepare, monitor, evaluate and review implementation of policies, legislation, guidelines and standards on physical development control regulation
- b) Prepare and monitor enforcement of Town planning regulations development conditions, procedures, circulars and directives
- c) Monitor and supervise enforcement of development control
- d) Monitor and carry out evaluation of urban development.

(ii) *The National Land Use Planning Commission (NLUPC)*

The National Land Use Planning Commission (NLUPC) is responsible for facilitating the effectiveness on the management of land for the betterment of social and economic well-being of the society.

Among the major functions of the Commission is provision of technical assistance on preparation of land use plans to the Planning Authorities, monitor and evaluate their implementation and encourage public and private involvement in activities related to land use planning for rational and beneficial use of land⁷.

2.2.3 Prime Minister's Office

(i) *Prime Minister's Office*

The Prime Minister's Office is responsible for development, facilitation and implementation of plans for the development of Dodoma as the Capital of Tanzania⁸

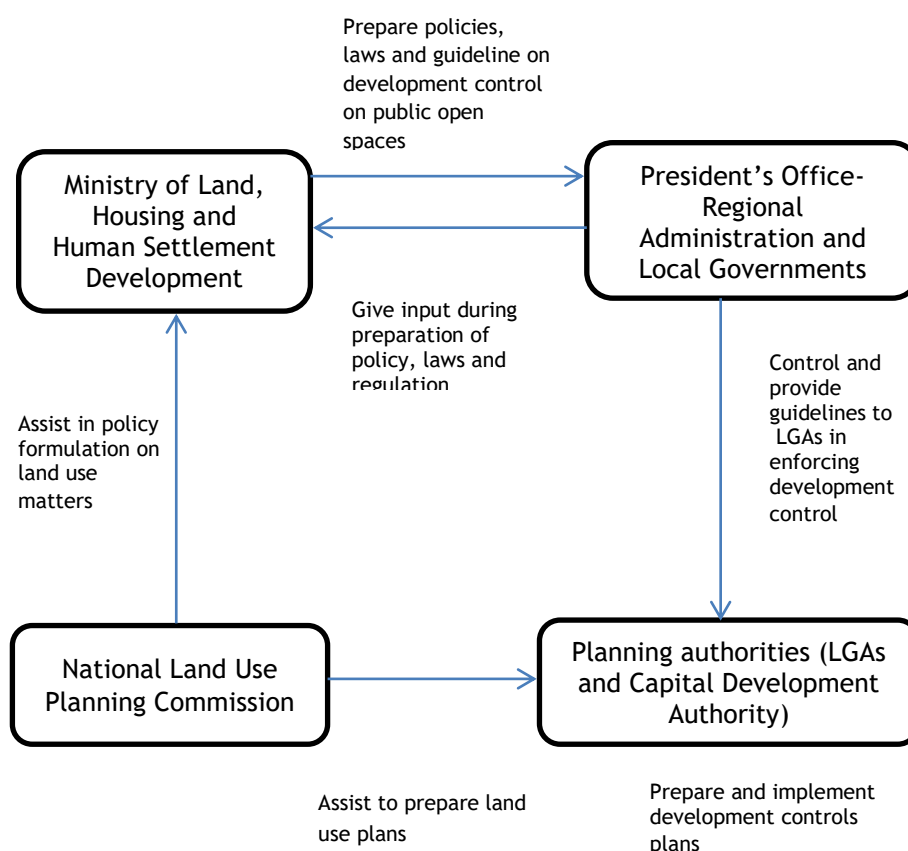
(ii) *Capital Development Authority (CDA)*

The Authority has a mandate role of preparing plans for the development of Dodoma as the capital of Tanzania, submitting the plans prepared to President for their approval and ensuring implementation of the approved plans. Capital Development Authority has been included since it performs activities of planning authority in Dodoma only.

⁷ <http://nlupc.go.tz/index.php/functions> Accessed on 7th of October 2016

⁸ Government Notice No. 20 of February 2008

Figure 2.1: Relationship among key stakeholders involved on enforcement of development control for the planned Public Open Spaces in Tanzania



2.3 Process description on Enforcement of Development Control

Conservation of Public Open Spaces

In accordance with The Urban Planning Act, No. 8 of 2007; the Planning Authorities have the power to reserve and maintain all land planned as open spaces and parks that is in agreement with the approved planning schemes.

In this audit report conservation of public open spaces entails protection and official supervision of public open spaces in order to ensure that they are enjoyably used by the community.

Public open spaces are places where people play, cycle, run, enjoy picnics and the view.

Local Government Authorities are obligated to ensure developers' compliance with use and development of public open spaces. Conservation or protection should be guided by a set of rules under Local Government by-laws which stipulate precisely the GOOD and BAD practices. Penalties to defaulters of use and development, encroachers and invaders of public open spaces should be transparent and published for the community to note.

Enforcement of development control for the planned Public Open Spaces can be explained through several stages as outlined below:

(i) Registration and issuance of title deed

During the course of designing and locating Public Open Spaces, the Planning Authorities should make sure that all public open spaces are registered and later on issued with title deeds for the purpose of having legal rights for their possession.

As regard to the directive issued by the Chief Secretary on September, 2014 with ref.CAB.39/156/01/52; all Ministries, Departments and Agencies (MDAs) are required to issue title deeds for land and public building under their management.

(ii) Awareness to the Community

Community awareness plays an important role in the course of ensuring enforcement of development control for the planned Public Open Spaces. In this regard, the Technical Circular No. 4 of March 2016 with ref. CB 437/502/01/25 issued by MLHSD requires that Planning Authorities create awareness to the community focusing on laws, policies and available guidelines regarding management of public open spaces.

(iii) Preparing Plans for Monitoring

Prior to conducting inspections for the planned Public Open Spaces, Planning Authorities need to have plans prepared that show how inspections will be conducted. It is through the prepared plans that the Planning Authorities can identify things to focus on during inspections.

(iv) Conduct of Monitoring for the planned Public Open Spaces

(a) Conducting inspections

According to the Technical Circular No. 1 of 2006 with Reference Number CA.91/329/01.C issued by MLHHS, planning authorities are required to conduct regular inspections and take appropriate actions whenever there is development which do not abide to procedures on areas planned as public open spaces.

Planning authorities have a duty to conduct inspection in the areas planned as public open spaces within their jurisdictions and to take necessary actions against any encroachers.

(b) Use of Ward Executive Officers (WEOs)

Ward Executive Officers are responsible for managing and protecting the planned public open spaces in their area of jurisdictions and report any development activities by encroachers to planning authorities.

(v) Reporting system for encroachers

The reporting of encroachers of the planned public open spaces is the responsibility of planning authorities within their jurisdictions. During the inspections the planning officials identify the encroachers.

The officials have to take actions against the identified encroachers. Planning authorities are required to put clear ways of reporting encroachers from lower levels officials (Ward Executive Officers) to the planning authorities.

(vi) Taking necessary actions against encroachers of public open spaces

During the inspections of the planned public open spaces planning authorities identified several encroachers. The planning authorities have a duty to take necessary actions against the encroachers.

(vii) Follow up of Activities on Public Open Spaces

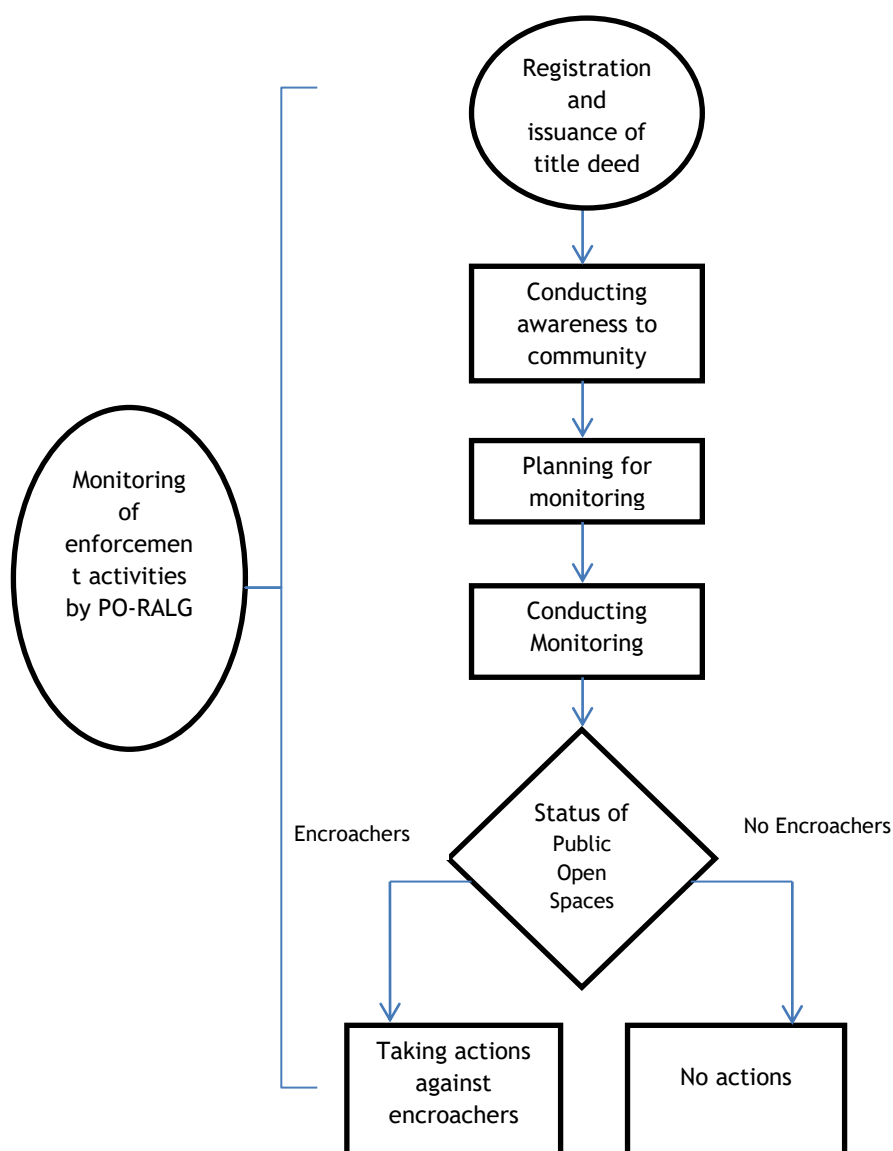
The President's Office - Regional Administration and Local Government (PO-RALG) has a role of monitoring by receiving feedback reports on implementation of issued directives and guidelines. Additionally, PO-RALG coordinate by communicating with key stakeholders of the prepared urban development plans that have to be implemented by the relevant Planning

Authority, which in turn has to follow up and check on adherence to the agreed directives set forth.

Basically, there is an M&E mechanism put by PO-RALG down to Mtaa and Kitongoji level:

- a) In the Ward Development Committee, there is legal Committee on environmental matters which is mandated to look after spatial development in the Ward. With a Building Inspector and a land ranger in place, they monitor and report among others on encroachment into POS. This is a routine work;
- b) In the Council, there are full-fledged departments on Town Planning and Land and Works as well as a Legal Committee on Town Planning and Environment. Monthly and quarterly reports are compiled and issues of POS are reported on;
- c) In the Regional Secretariat (RS), the Department of Infrastructure compiles reports from Planning Authorities and submits to PO-RALG; and
- d) In PO-RALG, Directorate of Urban Development further consolidates reports from RS and there is a report on public land including sizes and locations of POS which is a by - product of the whole chain of recording and monitoring mechanism. The report also shows the status on use, plot number, use, surveying and titling and level of development as well as encroachment of planned public open spaces.

Figure 2.2: Summarized process of enforcing development control on the planned public open spaces



Funding for management of public open spaces as performed by PO-RALG through Urban Development Department

The Urban Development Department is directly involved in activities relating to enforcement of development control for the planned Public Open Spaces; it acts as an overseer of activities being performed by the Planning Authorities. Normally funding for the Department is derived from

other charges and Development Partners. **Table 2.1** shows the budget for the Department of Urban Development of PO-RALG for five years.

Table 2.1: Allocated budget for Urban Development Department from PO-RALG

	2011/12	2012/13	2013/14	2014/15	2015/16
Planned Budget (Mill. TZS)	-	304	304	289	238
Actual Amount Received (Mill. TZS)	-	270	128	70	73
Received amount (%age)	-	89	42	24	30

Source: President-Office Regional Administration and Local Government

The amount received normally depends on the allocated budget for the Ministry and on priority set on activities planned for that financial year. The gap for the financial year 2011/12 is due to the fact that the department was established in the year 2012.

Table 2.2: shows the budget for planning authorities for five financial years. For the visited planning authorities the given budget was not specific for enforcing development control for the planned public open spaces, the budget is for implementing all activities of the Department.

Table 2.2: Allocated budget in Planning Authorities by the Urban Planning Department

Planning Authority	Amounts in million									
	2011/12		2012/13		2013/14		2014/15		2015/16	
	Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual	Planned	Actual
Kinondoni MC	2,410	1,376	1,905	1,241	4,634	3,277	2,011	581	561	196
CDA	164	22	80	57	96	58	72	44	110	50
Mwanza CC	728	239	1,698	265	440	424	380	347	392	314
Arusha CC	311	131	268	138	240	115	232	165	346	123
Moshi MC	162	13	197	27	248	36	667	38	448	112

Mbeya CC	196	185	5,991	1,864	350	167	540	40	1,025	141
Mtwara MC	24	14	57	32	133	84	68	26	52	34

Source: Respective Planning Authorities, 2017

Table 2.2 shows the budget for the visited planning authorities. The planning authorities depend on various revenue sources such as other charges, own sources and donor funds for financing urban planning activities. The given budget was not specific for enforcing development control for the planned public open spaces, but for implementing all the daily activities of the urban planning departments in Planning Authorities.

CHAPTER THREE

AUDIT FINDINGS

3.1 Introduction

This chapter presents findings of the audit which address objectives of the audit outlined in section 1.3.1 of this report. Specifically, the audits relate to enforcement of development control on the planned public open spaces. The audit findings cover the following main areas:

- Establishment of strategies and plans by planning authorities to ensure the planned public open spaces are protected/safeguarded;
- Effectiveness of the planning authorities to enforce development control plans on the management of public open spaces; and
- Adequacy of planning authorities to ensure good system of reporting encroachers and actions taken to encroachers.

3.2 Strategies and plans to ensure the planned public open spaces are protected.

In order for the planned public open spaces to have ownership there should be strategies and plans in place. The strategies and plans should ensure that public open spaces are registered and have ownership.

Requirements:

Protection of Public Open Spaces, the procedure is that: *in a planned area, Public Open Space is shown in the approved and registered Town Planning Drawings and Survey Plan and, then allocated to use/user. Thereafter, a Deed is prepared and registered.*

Public Open Spaces are recognized right from the approved and registered TP Drawings, Survey Plans, Plot Allocation Manuals, Land Registers and Deed Plans as well as Fixed Assets Registers of Planning Authorities. Furthermore, value of land and properties developed thereon are treated separately.

Source: PO-RALG (2017)

3.2.1 Registration of planned Public Open Spaces for ownership Registration

It was noted during interviews with Town Planning officials that six (6) out seven (7) visited planning authorities have not yet initiated the process for registering public open spaces in order to establish ownership.

It was revealed through visited Planning Authorities that implementation of the directive issued by the Chief Secretary to initiate registration of the public open spaces processes have not yet started despite the three reminders made by the PO-RALG through issuance of letters with reference numbers CAB.39/156/01/13 of 23rd October 2014 and CAB.39/156/01/27 of 20th January 2015.

The directive required PO-RALG to ensure that each Planning Authority has a certificate of occupancy for all public land under their supervision not later than 30th of January 2015.

Furthermore, it was revealed that PO-RALG has not put emphasis to speed up the process towards having title deeds for the planned public open spaces. Emphasizes was more on having title deeds for public buildings only. This was noted through review of the letter with ref. number CAB.39/156/01 dated 12th October 2015 issued by PO-RALG acknowledging receipt of reports on public buildings with title deeds from seven (7) regions.

Table 3.1: Current status of registered Public Open Spaces in the visited Planning Authorities

Planning Authority	Number of open spaces
Kinondoni MC	157
CDA	33
Mwanza CC	67
Arusha CC	50
Moshi MC	86
Mbeya CC	122
Mtwara MC	58
Total	573

Source: *Analysed Summary Status Reports on available Public Open Spaces (2015/16) prepared by respective Planning Authorities.*

Table 3.1 indicates the number of available Public Open Spaces from each of the visited Planning Authority with none of them having been registered.

Through interviews with seven (7) town planning officials, five (5) officials declared that non-registration of public open spaces is stepped up by the

fact that the surrounding plots are registered and thus taken for granted that the abutting public open spaces are safeguarded automatically.

This seems to be a major cause towards non-registration. Registration is the process towards issuing title deeds; the planning authorities are not issuing title deeds for planned public open spaces, leading to non-registration.

3.2.2 Issuance of title deeds for the planned Public Open Spaces

With reference to the directive issued by the Chief Secretary with reference number CAB.142/626/01/A/42 of 2014 Permanent Secretaries are required to ensure that all Ministries, Departments and Agencies issue title deeds for land and public buildings under their management not later than February 2015. In this regard PO-RALG was required to implement this directive through its planning authorities by issuing title deeds for the planned public open spaces.

The Planning Authorities did not issue title deeds for the planned public open spaces despite the directive given by PO-RALG; this was noted during an interview held with Officials from the Town Planning Department in all seven (7) Planning Authorities visited and through reviewed summary status reports of the available public open spaces prepared. The reasons for that were due to:

(i) False claim of ownership

It was noted from the interviews from six (6) out of seven (7) visited planning authorities that the government had the sense of ownership of all planned public open spaces despite not having title deeds. Nevertheless, whenever there is encroachment or change of use, the respective planning authority fails to prove ownership in court proceedings.

This is despite that, according to PO-RALG, in practice the ownership of public open spaces by a Planning Authority is legitimate through approved and registered Town Planning Drawings, Survey Plans, Plot Allocation Manuals, Land Registers and Deed Plans, Letter of Offer of the Right of Occupancy and finally a Title Deed. So, any of those documents prove ownership.

(ii) Cost implications

Issuance of deeds is subject to surveying costs. This was noted during interviews with Town Planning officials both from Kinondoni and Moshi Municipalities and Mwanza city Council that failure to issue deeds is essentially associated with the cost called premium which is 7.5 percent of the value of the land.

Despite of the given reasons the audit team found that the planning authorities do not plan for such cost in order to make sure they have title deeds for planned public open spaces.

When following this issue with PO-RALG, they commented that:

- a) PO-RALG has already given directives to Regional Secretariats (RSs) to ensure that LGAs in their Regions set aside funds in annual budgets to facilitate survey and issuance of title deeds for all identified public land including POS within their areas of jurisdiction; and
- b) On numbering of Public Open Spaces there is overlap in handling the process such that PO-RALG is left-out of the process.

(iii) Lacking plot numbers

It was revealed from four (4) out of seven (7) visited planning authorities that prior to issuance of title deeds, plot numbers are normally assigned. The plot number is important for identification of the plot which later is processed for issuance of title deed.

Planning authorities are responsible for initiating process for requesting a plot number on planned public open spaces which later on is assigned and approved by Ministry of Land, Housing and Human Settlement Development. Planning authorities do not plan and budget for assigning plot numbers. Out of seven (7) visited planning authorities only one (1) declared to have initiated request for approval of the assigned plot numbers to the planned public open spaces.

Table 3.2: Planned Public Open Spaces without title deeds from visited Planning Authorities

Planning Authority	Number of open spaces
Kinondoni MC	157
CDA	33
Mwanza CC	67
Arusha CC	50

Planning Authority	Number of open spaces
Moshi MC	86
Mbeya CC	122
Mtwara MC	58
Total	573

Source: Analysed Summary Status Reports on available Public Open Spaces (2015/16) prepared by respective Planning Authorities.

Table 3.2 above shows a total of 573 public open spaces from the seven (7) visited planning authorities. For the shown number none of them was provided with title deeds.

PO-RALG commented that Title Deeds are issued for land, whether developed or undeveloped and not buildings and so, the same applies to Public Open Space. The Chief Secretary directive to Permanent Secretaries was meant to identify all Public land within the jurisdiction of Planning Authorities and carrying - out survey and issuing Title Deeds.

Following are consequences associated with failure to issue title deeds for the planned public open spaces:

(i) Failure to prove ownership

Planning Authorities may face challenges relating to proving of legal ownership for the planned public open spaces against invaders. The interviewed officials from four (4) out of seven (7) visited planning authorities stated that when it comes to prove ownership in the court of law, the planning authorities fail due to lack of title deed.

(ii) Encroachment

During site visit to all visited planning authorities it was noted that public open spaces are encroached. More than 78 Percent of the planned public open spaces in visited planning authorities were encroached. Lack of clear demarcation facilitates encroachment of areas meant to be public open space. Moreover, lack of regular inspections to the planned public open spaces facilitate invasion since appropriate action against the people who tend to encroach cannot be taken before inspections are done.

Photo 1 below shows the encroached public open spaces at Mtwara municipal council



Photo 1: *Showing residential houses built in an area planned as Public Open Space at Ligula B-Mtwara (A Photo was taken by Auditors on 02nd March, 2017)*

(iii) Discourage of potential Developers

It was noted through interviews with two (2) out of seven (7) visited planning authorities that absence of title deeds for the planned public open spaces discourage potential developers. The investors are not assured of the legal ownership status of public open spaces hence sense insecurity.

3.2.3 Established Strategies and Plans for enforcing development controls

PO-RALG has no clear strategies and plans focusing on enforcement of development of planned public open spaces; this was noted through a review of PO-RALG Strategic Plan for the Financial Year 2011/12 to 2015/16.

However, the audit team noted that PO-RALG on enforcement of development of public open spaces relies on various tools to monitor compliance of Laws and Regulations. Those tools were found to be general and not specifically touching issues regarding enforcement of development of public open spaces. These tools include:

- a) Various legislations: Local Government Act 7 & 8, 1982 RE 2002; Urban Planning Act, No. 8, 2007, Land Use Planning Act, 2007, Environmental Management Act No. 20, 2004; Land Act No. 4 & 5, 1999 with their Regulations, 2001, Village Land Regulations, 2002; Land Disputes Act No. 2, 2002, Land Survey Ordinance Cap. 334, 1956 and Survey Regulations 1959; and
- b) Local Government (Urban Authorities) Development Control Regulations, 2008); *Mwongozo wa Vibali vya Ujenzi na Usimamizi wa Ukaguzi wa Majengo, Waraka wa Kitaalam Na 4 wa Mwaka 2016 - Usimamizi na Udhhibiti wa Uendelezaji Miji nchini; Tamko la Waziri wa Nchi - TAMISEMI kuhusu udhibiti wa uvamizi wa maeneo ya umma, Maelekezo ya Katibu Mkuu - Ofisi ya Rais - TAMISEMI kwenye kipindi Maalum cha TUNATEKELEZA Februari 2017, Maelekezo ya WN - OR-TAMISEMI kwa Makatibu Tawala wa Mikoa Februari 2017 pamoja na Maelekezo mengine ya Wizara kwa Mikoa.*

Likewise, (PO-RALG) has no strategies in place that would provide guidance and be a benchmark to Planning Authorities in developing the necessary interventions for enhanced enforcement of development control of planned public open space. This resulted into failure of planning authorities to implement issuance of title deeds since they lack guidance, strategies and plans from PO-RALG.

3.3 Enforcement of development control plans on planned public open space

It was noted during reviews of reports on the planned public open spaces and their status at Kinondoni and Moshi municipalities as well as CDA in Dodoma that three (3) out of seven (7) of the planned public open spaces in these Planning Authorities were not maintained as per planned use since there was notable change of their use. This is as depicted in Table 3.4.

Table 3.4: Planned Public Open Spaces and percentage of encroached/changed use

Planning authority	Planned open spaces	Encroached	Changed use	Percentage (%)
Kinondoni MC	157	151	0	96
CDA	33	0	33	100
Mwanza CC ⁹	67	-	-	-
Arusha CC	50	-	-	-

⁹ Mwanza and Arusha city councils provided lists of public open space without their status (whether encroached or changed land use).

Planning authority	Planned open spaces	Encroached	Changed use	Percentage (%age)
Moshi MC	86	78	2	90
Mbeya MC	122	43	20	52
Mtwara	58	30	-	52

Source: Summary reports on status of public open spaces from respective planning authority 2016

It was found in Moshi and Kinondoni Municipal Councils that most of the planned open spaces were encroached as depicted in **Table 3.4**. For the case of CDA the planned public open spaces fall under changed land use e.g. bars. Mwanza and Arusha provided lists of public open spaces without use status.

During site visit at CDA it was observed that 100 percent of the planned *public open spaces* had approval to *change of use* and all were converted into bars with permanent buildings. The audit team visited five (5) public open spaces which were all bars. **Photo 1** shows the visited public open space in Dodoma which is currently permanent building.



Photo 2: Showing the permanent building structure (bar) constructed in the area meant to be used as the public open space at area C in Dodoma (A photo was taken on 10th November, 2016)

At the beginning of 2016 the authority started to hand over the planned public open spaces to Dodoma Municipality for protection. However, the Municipal officials said that, contracts with the people who built bar and are currently doing businesses in such planned public open spaces were not handed over to them by CDA. The audit team were not given the contract for the established bars by CDA when requested. The term for

the contract are supposed to be not more than five years with temporary structure.

Moreover, other planning authorities, for instance Moshi, Kinondoni and Mwanza encountered encroachment of the planned public open spaces.

For the visited seven (7) Planning Authorities, there was a remarkable of report on status of indication of weak enforcement on development control as showcased by:

- (i) Encroachment of public open spaces and change of land use devoid of procedures.
- (ii) Lack of inspection reports which could indicate enforcement of development control plans.

Table 3.5 below shows frequency of change of land use for the planned public open spaces for Moshi Municipal Council and CDA.

Table 3.5: Frequency of changed use

Usage	FREQUENCY		
	MOSHI MC	CDA	MBEYA
Established bar		17	
Microwave tower (telephone)		10	
Residential houses	2		2
Other uses		6	18

Source: Auditors' analysis on the report on the status of public open spaces

The review of the summary report on the status of the planned public open spaces revealed that 51.2 percent of the change of land use in Dodoma changed to bars, 30 percent to communication towers and 18.2 percent to other uses.

3.3.1 Unsatisfactory monitoring of planned public open spaces

(a) Lack of inspections of the planned public open spaces

Through reviewed quarterly reports of the Urban Planning Department from Arusha and Mwanza City Councils the audit team noted that the authorities do not conduct inspections of planned public open spaces. The officials from those LGAs did not know the use status of the public open spaces in their areas as no inspections were conducted.

Furthermore, the officials of Planning Authorities admitted that they did not conduct regular inspections. As a result, a total of 573 (or 100 percent) public open spaces in seven (7) visited planning authorities were not inspected at all.

This is despite having an established M&E mechanism put by PO-RALG down to Mtaa and Kitongoji level to deal with matters regarding the infringement of public open spaces.

According to the five (5) out of seven (7) visited planning authorities, lack of inspections is caused by:

- (i) *Lack of transport facilities*: it was revealed during interview with the Kinondoni MC Officials that the department has only one car for all the activities of the department. Moreover, it was noted from the interview with Mbeya and Mwanza officials that transport is one of the challenge in implementing activities of the department.
- (ii) *Few numbers of personnel*: it was noted during the interview with five (5) out of seven (7) visited planning authorities that small number of personnel hinders effective implementation of control plans of town planning department. Moreover, through the analysis of the report from PO-RALG which shows needs analysis for officials of different cadres in the land sector, shows that five (5) out of seven (7) visited planning authorities are experiencing personnel deficit. For more details, see **Appendix V**.
- (iii) *Lack of clear plan of inspections*: the audit team noted from the seven visited planning authorities that they do not have plans for inspections. Moreover, the officials from four (4) out of the seven (7) visited planning authorities admitted that they do not conduct inspections of the planned public open spaces. This was also proven by the fact that the audit team were not provided with any inspection reports requested.

- (iv) *Financing of the activities of public open spaces basing on ad hoc bases:* For the seven-visited planning authorities it was noted that they do not have specific plans regarding public open spaces; as a result, the activities are financed on ad hoc basis. This may be caused by low prioritisation on activities regarding public open spaces by the planning authorities although they claim that decision makers do not priorities land sector activities. More information is on **Table 2.2** which shows the budgeted and actual fund released to planning authorities.

Lack of inspections has resulted in encroachment of the planned public open spaces as exemplified by Photo 3 below.



Photo 3: *Showing public open space with established residential house at Igoma-Mwanza (A photo taken on 16th November, 2016)*

Photo 3: A residential house in an encroached public open space in Mwanza City. The owner of the residence declared to be unaware of the specified land use of that particular land.

(b) Ineffective use of Ward Executive Officers (WEOs) in reporting development controls

Through the interview with five (5) out of seven (7) visited planning authorities it was noted that planning authorities rely on information from WEO's on development activities in their jurisdictions. Despite using WEO's the audit team noted that they do not have skills on interpretation

of town planning drawings. The letters of appointment of WEOs do not categorically include land development control.

3.3.2 Adherence on the directives given to Planning Authorities

Through review of the given summary report of the planned public open spaces from five (5) planning authorities, the audit team noted that two (2) out of seven (7) visited Planning Authorities (Mwanza CC and Arusha CC) were not implementing the issued directives from PO-RALG which required each planning authority to verify and come up with report of all the planned public open spaces with their respective use status. The audit team was given the list of the planned public open spaces without use status information.

Failure of PO-RALG to conduct follow-up visitation aimed at inspecting and sensitizing the LGAs to abide to government directives is contributing to non-adherence to the government directives by planning authorities.

3.3.3 Monitoring of implementation on the issued directives by PO-RALG

The PO-RALG through the Division of Sector Coordination (DSC) has to monitor and evaluate implementation of sector ministries programmes in the LGAs annually¹⁰.

It was noted through interview with three (3) Town Planning officials from the Urban Development Department (PO-RALG) that, the mechanisms used to monitor activities performed by the Planning Authorities, are not informative enough for PO-RALG to understand the extent of implementation of directives or guidelines.

It was further noted through the review of the summarised status reports¹¹ received from different regions in Tanzania Mainland that there was low response rate on the requested status reports. There were no strategies in place prepared by the department to ensure that PO-RALG is informed of the implementation status for the issued directives and guidelines.

In reviewing the monitoring of LGAs activities in five (5) year strategic plan; it showed that less priority was given to activities performed by the Urban Development Department. As a result, follow-up of activities performed by Planning Authorities remain un-guided and unregulated. This is exemplified by the fact that PO-RALG as an overseer of planning

¹⁰ PO-RALG's Strategic Plan 2011/12 - 2015/16

¹¹ Tange Majengo_Viwanja vya Serikali B

authorities in the country does not even know the exact number of planned public open spaces.

3.4 System for Reporting encroachers in Management of Public Open Spaces

A system for reporting encroachers includes recording and tracking of information on encroachment, effectiveness of taking necessary actions against encroachers, effectiveness of communicating land information and mechanisms for ensuring the community is aware and fully involved.

3.4.1 System for recording and tracking of information of encroachment

(i) Method for recording and tracking information on public open space

From all the seven (7) visited Planning Authorities the audit team found that the system used for tracking and recording information on encroachment is inadequate. This is due to the fact that primarily there are no initiatives set out by the Planning Authorities to track and record the defaulters' malpractices.

The audit team revealed that, Arusha City Council, Mwanza City Council and Kinondoni Municipal Council have tracked information on defaulters through collaboration with WEOs who were equipped with town planning drawings. Dodoma Capital Development Authority (CDA) use land rangers for tracking and record the encroachment misconduct. Moshi Municipal Council involves town planning officials in tracking and recording information, though they didn't provide the report as evidence.

(ii) Reporting encroachers

Through interviews in three (3) visited planning authorities, the audit team found that planning authorities depend on the information from Ward Executive Officers. The audit team asked for any correspondence letters between planning authorities and ward executive officers but none was provided.

CDA stated that they get information through the available land rangers although they failed to provide reports given when asked to do so. Despite the use of WEOs in reporting any authorised development activities; there is no available machinery that shows WEOs have enough skills in reading the available Town Planning Drawings.

Furthermore, it was not specified when the WEOs are supposed to submit reports on physical development and thus the WEOs reports at their own discretion.

(iii) Keeping of information

The encroachment record keeping system was not formal; this was noted from the review of the summary status report on the available public open spaces prepared by the respective Planning Authorities. For instance, it was observed at Mwanza and Arusha City Councils those records on the available number and current use status were extracted from TP-Drawings instead of relying on rigorous field inspections.

(iv) Updating the information

It was further noted that in some of the visited Planning Authorities there are discrepancies on records presented that do not explain the real situation on the ground; for instance, it was observed during site visit at Capital Development Authority that the area meant to be public open spaces was established permanent building (bar) while still being recognised as public open space.

Table 3.6 shows summary of the methods used by Planning Authorities in tracking and recording information on encroachers

Table 3.6: Summary of the methods used by Planning Authorities in tracking and recording information on encroachment

Planning Authority	System to record and track information	System of report encroachers	Responsible officers
Kinondoni MC	Site visit, Sharing of TP-Drawings with WEOs	Notification letters from WEOs	WEO's
CDA	Use of staff personnel from Development Control Unit	Land rangers	Land rangers
Mwanza CC	Sharing of TP-Drawings with WEOs	Notification letters from WEOs and direct phone-calls	WEOs
Arusha CC	Use of WEOs	Notification from WEOs	WEOs
Moshi MC	Planning officials	Planning officials and community	Town planning officers
Mbeya CC	Use of WEOs	Use of WEOs	WEOs
Mtwara MC	Use of WEOs	Phone call	WEOs

Source: Interviews with respective Planning Authority (2016)

Table 3.6 above indicates the planning authorities and means for recording and tracking information. Out of seven (7) visited planning authorities, five (5) declared that they depend on WEOs while the other two (2) depend on town planning officers and land rangers respectively. Nevertheless, there were no reports indicating implementation by the responsible officers.

3.4.2 Effectiveness of taking necessary actions against encroachers

(i) *Frequent offences*

Through review of the report on the status of the planned public open spaces the audit team noted that frequent offences in different planning authorities differ significant as shown in **Table 3.7**.

Table 3.7: Frequently happening offences

Kind of offences	Frequency				
	Moshi MC	Kinondoni	CDA	Mbeya CC	Mtwara MC
Established bar	2	08	17	2	1
Residential houses	10	103	0	34	12
Garage	5	6	0	2	2
Agriculture	35	0	0	0	1
Other uses	11	9	16	5	14

Source: Auditor's Analysis on Summary Report on Status of Public Open Space (2017)

In Moshi most of the unauthorised changes of land use of public open spaces fall under agriculture activities while in Kinondoni Municipality the drift is from public open spaces to residences. In Dodoma (CDA) the biggest portion of public open spaces is converted into bars. The audit team noted that, for all visited cities and municipalities, conversion of public open spaces into residences takes an upper hand.

(ii) *Types of action taken to encroachers*

During the interview with officials from the seven (7) visited planning authorities six (6) informed the audit team that stop orders are issued to identified encroachers of public open spaces.

Through site visit and review of status report it was noted in all the visited planning authorities, the areas meant to be public open spaces were encroached and land use changed. Despite the noted encroachment all the planning authorities did not take any actions to rectify the situations.

Failure to take actions is due to: delay of information from lower level to the planning authorities, absence of inspections of public open spaces and lack of strategic plans to identify and deal with encroachers.

The continuing failure to take punitive actions against the defaulters have encouraged more defaulters to encroach without fear hence the observed increase in the number of court cases involving encroachment of public open spaces. Moreover, the community is not fully informed on the nature and extent of penalties imposed upon the defaulters of public open spaces.

3.4.3 Effective communication of land information

During the interview with five (5) out of seven (7) visited planning authorities it was noted that the planning authorities use WEOs to attain information regarding development activities in their areas of jurisdictions. The audit team noted that there is information gap between WEOs and officials at the council level. The audit team was not shown any initiative in imparting knowledge to WEOs on how to use the given town planning drawings.

The existing approach of using Town Planning-drawings and issuance of notification letters by WEOs as noted from the interviews is not effective due to unnecessary delay in sending the letters. It was noted during interview with a senior town planning officer of Mwanza City Council that normally ward executive officers (WEOs) send notification letters which need to be directed to the City Council Director first before reaching the concerned department for further actions.

Lack of self-motivated and committed local government officials in the protection of public open spaces contributes to the observed abuse involving change of land use loopholes.

3.4.4 Mechanisms for ensuring the community are aware and fully involved

Through interviews with all seven (7) visited planning authorities it was noted that the planning authorities do not have mechanism of making community aware of the available laws, policies and guidelines related to protection of the planned public open spaces.

Moreover, during the site visit to all seven (7) visited planning authorities only one planning authorities has deployed posters to create community awareness. Despite the use of posters by Arusha City Council to make the community aware, out of six visited public open spaces only one had such poster. Other six (6) planning authorities have no initiatives to sensitize the community to respect and protect the planned public open spaces.



Photo 4: Shows permanent building constructed in an open space that accommodate business activities and a poster instructing non-conduct of any development activities (A Photo was taken on November 22, 2016)

In corroborating whether there was a contractual agreement between the City Council and developer, the audit team revealed non-existence of contracts.

Failure to conduct frequent field inspections, follow-ups on agreed development terms, issuance of penalties and outright demolition intensify the sustainable existence of public open spaces.

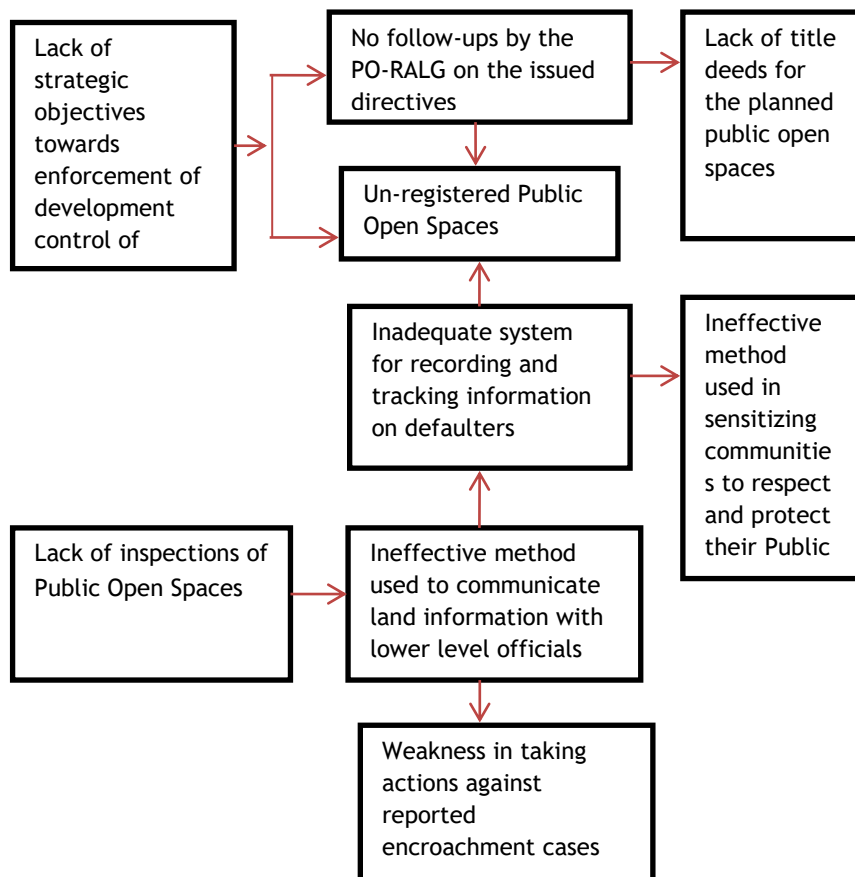
Lack of awareness and involvement to the community may results into use of public open spaces as dumping places, such areas may be dwelling of drug users and thieves. Generally, crime rate to the community may increase. Moreover, people are deprived of opportunity for cultural interactions like bringing people of different culture together.

This was caused by lack of well stipulated functional objectives of public open spaces guided by space standards, collaborative urban design and landscape design and environmental management ethics. The planned public open spaces reflect abandoned spaces amidst residential houses. They are viewed as neglected, no man's land, and a source of common problems like community waste dumping, hideouts for criminals and lingering spaces for wicked youngsters and other law offenders.

Public open spaces are not linked with the surrounding developments and thus the community does not feel obliged to respect, protect and own such spaces for community common good. The ambient community are indifferent to defaulters developing public open spaces because they are sure that appropriate actions will eventually be taken.

Planning authorities must establish cultural, social, economic and environmental dimensions which public can enjoy and take ownership. Public use and enjoyment must be central for planning and designing of public open spaces.

Figure 3.1: Diagrammatical summary of audit findings



CHAPTER FOUR

AUDIT CONCLUSIONS

This chapter gives out the conclusions of the audit based on the audit findings presented in the previous chapter.

4.1 General conclusion

The general conclusion of the audit work is that the President's Office - Regional Administration and Local Government through planning authorities do not effectively enforce development control of the planned public open spaces as expected.

Ineffective enforcement of development control led to 90 Percent of the planned public open spaces on the visited planning authorities to be invaded for different uses. Furthermore, the intended benefits of the planned public open spaces such as physical exercises and recreational facilities to the community are not attained.

4.2 Specific Conclusions

Strategies and plans to ensure protections of the planned public open spaces

There are no strategies and plans in place set by PO-RALG to ensure that planning authorities register and lawfully own the planned public open spaces. The order sent to planning authorities requiring them to have title deeds for public open spaces has never been operationalize and thus leaving the planned public open spaces in suspense and vulnerability to defaulters.

This was caused by lack of priorities on enforcement of development control on planned public open spaces. The preparation of strategic plans without considering strategies and plans to enforce development control on planned public open spaces reveal low priority to this activity.

Enforcement of development control plans on the planned public open spaces

The planning authorities do not effectively enforce development control plans on the planned public open spaces. Notably there are weaknesses in implementing the activities.

The current development control plans of public open spaces are not specific. There is a need to have a clear set of development type, control types and use types which are context based. Having those in place, it

will be apparent to inspectors on what are to be inspected and remarked upon. The current inspections of public open spaces should be complemented with community protection and sense of ownership of such public open spaces. Communities should be sensitized to use public open spaces because to use is to control.

The PO-RALG which is the overseer has failed to make follow ups of the issued directives and therefore not able to know the implementations status of the issued directives.

System used for reporting encroachers on planned public open spaces

The system used in reporting and taking necessary actions against encroachers is inadequate. The details and methods used to record information is not formal. Moreover, lower level officials are required to use TP-Drawings which are not skilled in.

Public open space is an orphan entity as observed whereby the gathered information on encroachment has no host unit in urban planning department in Planning Authorities who is specifically responsible for public spaces and the associated aspects is still fuzzy.

The collected data on encroachment do not categorically show the types of actions taken against the defaulters; this leaves room for negotiations towards malpractices. Additionally, the method applied by the Planning Authorities to create community awareness of the existence of public open spaces and their roles are not adequately effective. The use of posters in some public open spaces was neglected by the greedy developers as showcased by constructions of buildings just adjacent to the posters.

CHAPTER FIVE

AUDIT RECOMMENDATIONS

5.1 Introductions

The audit findings and conclusions point-out that there are areas which need further improvement in the enforcement of development control of the planned public open spaces in the country.

The areas for further improvements were noted in all three focused areas of the audit namely: establishment of strategies and plans to ensure ownership of the planned public open spaces; effectiveness of the planning authorities to enforce development control plans in the management of public open spaces; and extent of planning authorities to ensure they have good reporting system for encroachment of public open spaces.

Therefore, below are recommendations issued to the President's Office - Regional Administration and Local Government on what should be done to improve the current situation through enforcement of development control of the planned public open spaces.

The National Audit Office believes that based on principles of 3Es of *Economy, Efficiency and Effectiveness*, these recommendations need to be fully implemented so as to ensure enforcement of development control of the planned public open spaces is enhanced in the country.

5.2 Strategies to ensure planned public open spaces are protected

- (a) Establishment of strategic plans by PO-RALG to ensure registrations and provisions of title deeds for all the planned public open spaces;
- (b) PO-RALG to ensure that the planning authorities in the protections of public open spaces should be held accountable by incorporating control of the planned public open spaces as performance matrices measurable through OPRAS;
- (c) PO-RALG to institute control and information system which links all the machineries involved in issuing business licenses, water supply and electricity to dishonour applications for such services by the voracious defaulters of public open spaces; and
- (d) PO-RALG to issue a directive to LGA to introduce a Department of landscape architecture and urban design which will deal with

public open spaces, urban beautification, urbanism and landscape architecture in towns and cities. This will involve the public open spaces, urban green spaces, green belts, road corridors, rivers, sea shore, marshlands and any other site of specific importance (if any) to the community.

5.3 Enforcement of development control plans

- a) PO-RALG should ensure that planning authorities conduct inspections of public open spaces and submit quarterly reports to PO-RALG;
- b) PO-RALG should make follow ups of the implementation of the measures taken against the defaulters at least quarterly and document a prepared report;
- c) PO-RALG should ensure that communities are sensitized on their roles on the use, respect and protection of public open spaces socially, economically and environmentally so that open spaces are used as intended and report any malpractice to respective WEOs;
- d) PO-RALG should sensitize Local Government Authorities to make sure that through collaboration with communities, public open spaces are planned, designed and evaluated; and
- e) PO-RALG should shift its outlook role as a mere protector of public open spaces to deployment of public open spaces for improved urban economy, urban efficiency, urban effectiveness and enhanced environment conditions.

5.4 System for reporting on encroachers of public open spaces

- a) PO-RALG should that LGAs impart WEOs with skills in TP-Drawings reading and reporting to the Planning Authorities; and
- b) PO-RALG should make sure that there is established digital database of public open spaces in website owned by planning authorities which are publicly accessible for exchange of notes and experiences.

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APPENDICES

Appendix I: Audit Questions and Sub-Questions used during the audit

Qn 1	Do planning authorities establish strategies and plans for ensuring ownership of the planned public open spaces?
<i>Sub-Qn 1.1</i>	<i>Do planning authorities have title deeds for the planned public open spaces?</i>
<i>Sub-Qn 1.2</i>	<i>Do PO-RALG and planning authorities ensure that all the planned public open spaces are registered and processed for title deeds?</i>
<i>Sub-Qn 1.3</i>	<i>Do PO-RALG oversee implementation of strategic objectives on enforcement of development control for the planned public open spaces?</i>
Qn 2	Do planning authorities effectively enforce development control plans (DCP) on the management of public open spaces?
<i>Sub-Qn 2.1</i>	<i>Do PO-RALG and planning authorities ensure that development control plans (DCP) are in place and implemented?</i>
<i>Sub-Qn 2.2</i>	<i>Are the inspections of public open spaces adequately conducted by planning authorities?</i>
<i>Sub-Qn 2.3</i>	<i>Do PO-RALG make follow-ups of the agreed directives issued to planning authorities on the management of public open spaces?</i>
Qn 3	Do planning authorities have good system for reporting encroachment of public open spaces?
<i>Sub-Qn 3.1</i>	<i>Is the system used for recording and tracking information on encroachment of public open spaces is in place and working?</i>
<i>Sub-Qn 3.2</i>	<i>Do planning authorities effectively take necessary action against encroachers on public open spaces?</i>
<i>Sub-Qn 3.3</i>	<i>Is land information related to the planned public open spaces effectively communicated between municipal officials and lower level land officials? (Lower level: street, wards, villages).</i>
<i>Sub-Qn 3.4</i>	<i>Do the mechanisms used by the planning authorities ensure that the community is aware and fully involved in matters related to public open spaces?</i>

Appendix II: List of documents reviewed

The audit team reviewed various documents from PO-RALG, MLHSD and other key stakeholders. Below is the table which shows the list of documents reviewed and the purpose for the review:

S/No.	Category	Document	Reasons for reviewing it
1	Policies	<i>National Land Policy, 1997</i>	<i>To unveil different roles of Planning Authorities in management of land in general.</i>
2	Legislations	<i>Land Registration Act Cap 334</i>	<i>To reveal the processes involved for land registration.</i>
3		<i>The Urban Planning Act No. 8, 2007</i>	<i>To review the roles of Planning Authorities in the management of Public Open Spaces.</i>
4		<i>The Town and Country Planning Regulations of 1960 as amended in 1993</i>	<i>To see how the Public Open Spaces are classified on the basis of their usage.</i>
		<i>The Regional Administration Act No. 19 of 1997 (Cap 97)</i>	<i>To find out the roles of Regional Administrative Secretary</i>
5	Circulars	<i>Technical Circular No. 1, 2006</i>	<i>To read on the directives given to Planning Authorities regarding to management of Public Open Spaces.</i>
6		<i>Technical Circular No. 4, 2016</i>	<i>To read on the directives given to Planning Authorities as regard to management of Public Open Spaces.</i>
7	Planning documents	<i>PO-RALG's Strategic plan 2011/12 - 2016/17</i>	<i>To see if PO-RALG has plans that take into account issues on the management of Public Open Spaces.</i>
8		<i>Capital</i>	<i>To read on the</i>

S/No.	Category	Document	Reasons for reviewing it
		<i>Development Authority; Strategic plan 2013/ 14-2017/ 18</i>	mandated roles and functions of CDA
9	Performance Reports	<i>Performance Audit Report on the Management of Urban Planning in Tanzania, 2014</i>	To read on key findings of the report that relates to management of Public Open Spaces.

Appendix III: Detailed List of Individuals interviewed

The audit team interviewed various officials from PO-RALG, MLHHSD and other key stakeholders. Below is the table which shows the list of officials and stakeholders interviewed and the purpose for interview

Location	Official Interviewed	Reason (s) for interview
PO-RALG	Director - Department of Urban Development	To understand the available strategies, plans and management of information exchange between PO-RALG and LGAs
	Two (2) Town Planners	To understand the roles and activities related to enforcement of development control plans for the planned public open spaces in LGAs.
	One (1) Architect	To understand the contribution of architect to management of public open spaces by LGAs.
LGAs	Seven (7) Heads from the Town Planning Departments of respective LGAs	To find out the existing systems and process used by the Municipalities in ensuring proper management of enforcement of development control plans for the planned public open spaces.
	Eight (8) Town Planners	To understand the activities and procedures used in enforcing development control plans of the planned public open spaces within municipalities.
	Five (5) Land Officers	To gain insight on the available strategies and activities used by the Municipalities to register and process title deeds of the planned public open spaces.
MLHHSD	Head - Rural and	To understand the roles the

Location	Official Interviewed	Reason (s) for interview
	Urban Planning Department	Department and challenges faced on management of Public Open Spaces.
	Head - Physical Development Control	To understand the main issues addressed by the MLHSD relating to Physical Development Control Plans.
	Two (2) Town Planners	To get information on how Planning Authorities implement development control of the planned public open spaces.
Dar Es Salaam Institute of Land Administration and Policy Studies (DILAPS)	Registered Surveyor and consultant	To understand the extent and challenges concerning management of public open spaces through relevant government policies and laws.
Ardhi Universities	Senior lecturer (Architect)	To get preliminary information relating to land issues and the associated challenges in Tanzania.
Capital Development Agency (CDA)	Ag Director - Town Planning Department	To get understanding of methods used by the agency in managing the available public open spaces in Dodoma Municipality as compared to other Planning Authorities.

Appendix IV: List of visited public open spaces

The audit team visited 35 public open spaces from seven LGAs. Below is the table which shows the list of public open spaces visited during the audit and the weaknesses observed:

Name of Planning Authority	Total No. of POS visited	Name of Public open space	Weakness observed
Kinondoni MC	5	Mianzini Mwananyamala located around Plot No. 780,726,723	CCM building and business rooms
		Makumbusho located at Block No. 8	Residential house and bar
		Makumbusho minazini located around Plot No. 288 and 289	Business centres
		Mwananyamala located around Plot No. 563 and 564	Garage activities
		Makumbusho-berega located around Plot No. 213,214, 228 and 231	Islamic club with a permanent fence
CDA	5	Rose garden bar (Area c)	Structure (bar)
		Savana bar (kikuyu north)	Structure (bar)
		Susen open bar (CBP)	Structure (bar)
		Tukuyu open bar (mlimani)	Structure (bar)
		Sarafina open bar (Central park)	Structure (bar)
Mwanza CC	5	Bugarika Block 5 Plot No. 258	Agricultural activities
		Bugarika Block 5 Plot No. 93	Agricultural activities
		Igoma Block F located Lake Zone Nursery School	Structure (nursery)
		Igoma Block F near Igoma secondary school	residential house
		Igoma Block F near Igoma secondary	Residential houses

Name of Planning Authority	Total No. of POS visited	Name of Public open space	Weakness observed
Arusha CC	5	school	
		Njiro plot no. 626	No posters
		Njiro plot no. 649	No posters
		Njiro Plot surrounded by Plot No. 273,279,310 and 320	No posters
		Njiro Plot surrounded by Plot No.327,307and 308,	No posters
		Burka Plot No. 325	No posters
		Burka Plot No. 496	No posters
Moshi MC	5	Uhuru park (near MC office)	Established hotel, stationary, supermarket
		Uhuru park	None
		Area between plot no. 28,33,3/F,181/182	Agricultural activities
		Area at Makonde Street Plot No. 2 block C	No weakness
		Area opposite Msasani Secondary School	Built structure (Ward office, dispensary)
Mbeya CC	5	Uwanja ngoma	Built temporary buiding
		Coffee Garden-Sokoine	Built business buildings
		Forest No. 2304	No weakness
		Ivumwe Plot No. A plot No. 367	Built residential houses
		Block M, Plot No. 1318	Built hotel and classrooms
Mtwara MC	5	Mlimani Likombe Street	Residential houses
		Ufukoni B	Residential houses
		Block B ligula	Residential houses
		Kitalu B magomeni	Residential houses
		Coco beach (ligula)	No weakness

Appendix V: Different cadres in Land sector in Planning Authorities

The table below provides an analysis of different cadres of land sector in planning authorities:

Planning Authorities	Cadre	Available	Required	Gap
Kinondoni MC	Land Officer	18	18	0
	Ass land officer	5	5	0
	Town planner	6	6	0
	Valuer	6	6	0
	Technician valuer	5	5	0
	Land surveyor	5	5	0
	Technician land surveyor	5	5	0
	Cartographer	7	7	0
Total		57	57	0
Arusha CC	Land Officer	2	5	3
	Ass land Officer	3	3	0
	Town planner	3	6	3
	Valuer	4	6	2
	Technician valuer	3	3	0
	Land surveyor	2	5	3
	Technician land surveyor	3	3	0
	Cartographer	2	5	3
Total		22	36	14
Moshi MC	Land Officer	2	3	1
	Ass land Officer	1	1	0
	Town planner	4	4	0
	Valuer	1	3	2
	Technician valuer	1	1	0
	Land surveyor	2	3	1
	Technician land surveyor	1	1	0
	Cartographer	1	2	1
Total		13	18	5
Mwanza	Land Officer	9	9	0
	Town planner	6	6	0
	Valuer	7	7	0
	Land surveyor	6	6	0
	Cartographer	1	1	0
Total		29	0	0
Mbeya CC	Land Officer	1	2	1
	Ass land Officer	0	0	0

	Town planner	2	0	0
	Valuer	2	0	0
	Technician valuer	0	0	0
	Land surveyor	1	2	1
	Technician land surveyor	0	0	0
	Cartographer	0	1	0
Total		6	5	2
Mtwara MC	Land Officer	3	0	0
	Ass land Officer	2	0	0
	Town planner	3	0	0
	Valuer	1	1	1
	Technician valuer	2	0	0
	Land surveyor	2	0	0
	Technician land surveyor	2	0	0
	Cartographer	0	1	1
Total		15	2	2