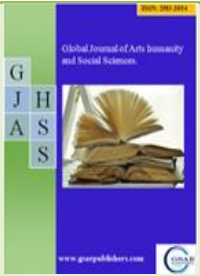
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EXAMINING THE EFFECTIVENESS AND CHALLENGES OF COMPULSORY LAND ACQUISITION PROCESS IN RELATION TO THE LEGAL REQUIREMENT OF FAIR, FULL AND PROMPT COMPENSATION: THE TANZANIAN PERSPECTIVE

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Abstract

This study is centered to assess the effectiveness and challenges of compulsory land acquisition process to meet legal requirement of fair, full and prompt compensation so as to ensure live hood of future expropriation projects. Despite of the presence of legal and institutional framework governing land acquisition in Tanzanian but still procedures of compulsory land acquisition are filled with everlasting problems between superior land lading and occupants of land as there a lot of complaints concerning with nonpayment, inappropriate ways of assessing amount of compensation or delays in compensation. The whole land in Tanzania is vested under the president as a trustee thus arousal of any public interest the government has power extinguish all proprietary titles, interests and other rights vested in the owners of the land and rather access it to develop infrastructures, hospitals, schools and other related community projects. Laws regulating compulsory acquisition in Tanzania set requirement that any expropriation shall be in accordance with the law and a person whose property have being expropriated is subject to prompt, fair and adequate compensation.

This paper is an attempt to evaluate at what extent land laws and respective institutions are fairly enough to ensure compensation required by law, also highlighting practical challenges hindering the process for instance, complicated and inappropriate assessment of valuation when interventions is done by government and donors such as the World Bank or Africa Development Bank and a number of bilateral organizations, lack of adequate and clear information about the project, little participation, inadequate compensation and non-adherence to procedures, non-adherence of governance principles by authorities expropriating, holders of land lack adequate knowledge about compulsory acquisition, unfamiliarity about legal right for them to have compensation payments, requirement for them to submit claims for compensation payments and procedure involved thereto. The Article recommends that holders of land affected by acquisition of land must be educated on the relevance of submission of claims for compensation as well as on the need to engage valuers to represent them in the compensation assessments.

Key words: Compulsory Land Acquisition, Fair, Full, Prompt Compensation, Land ownership, Expropriation

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INTRODUCTION

Compulsory acquisition is the power of the government to acquire private rights in a land for public purpose without the willing consent of its owner or occupantⁱ. States have different terms or words which refers to compulsory acquisition of land for instance, *eminent domain, expropriation, takings, compulsory purchase* and many other vocabularies. Compulsory acquisition of land is one of the vital devices used by government to ensure establishment of various development projects in suitable intended location, usually

the government may self-expropriate one's land to establish projects or expropriation by reason of donor's projects for instance World Bank, Africa Development Bank and number of bilateral organizations. Land acquisition is also used as a policy instrument to correct market failures in urban development as well as implementing of land use plans for sustainable developmentⁱⁱ. The governmental power of obtaining occupant's land is exercised by relevant land authorities through operationalization of the mother law of the country 'constitution', principal legislations and international guidelines pertaining land acquisition and



compensation with exchange of offering compensation to landholders and property ownersⁱⁱⁱ.

Definition or the scope of compulsory acquisition differs depending on the statutory requirement of each jurisdiction, for instance in Tanzania under section 4 of Land Acquisition Act^{iv} highlights land shall be acquired for public purpose only if; *first*, government use for development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing *second*, for or in connection with sanitary improvement for instance reclamations *third*, project of laying out of any new city or expansion of any city, township, municipality or minor settlement *fourth*, development of any airfield, port or harbour *fifth* for mining for minerals or oil and *last* for use by any person or group of persons who in the opinion of the president should be granted such land for agricultural development. Expropriation or compulsory acquisition of land is one of the lamented area this is because steps to complete just expropriation in most cases are not adhered, henceforth it is important to examine universal accepted key steps for compulsory acquisition in a nutshell manner namely firstly, planning and decision to acquire land, secondly, legal preliminaries including getting statutory authority and serving notices, Thirdly, field investigations including valuation and lastly payment of compensation to the would be dispossessed^v.

Despite of compulsory acquisition being recognized by law as a governmental power which is done for public purpose and not otherwise still attracts numerous controversies both theoretically and practically this is because compulsory acquisition requires finding the balance between the public need for land and the provision of land tenure security by protecting one's private rights attached in that particular land. Statistical data obtained after completion of various investigations reveals that government or relevant authorities responsible with expropriation, in most cases do not adhere to the valid procedures of taking one's land as the law henceforth their procedures are full of controversies because are accompanied by inadequate compensation payments, lack of community involvement, ineffective laws and unfair procedures during land acquisition process^{vi}. For this area to be properly administered compulsory acquisition should go simultaneously with fair, full and prompt compensation to mean that land laws must be competent enough to cover the area of compensation, ability of enforcing substantive rights in case of expropriation, procedures and implementation in compulsory purchase and compensation and adherence of principles of good governance.

NATURE OF LAND OWNERSHIP IN TANZANIA AND IT'S DEVELOPMENT

Nature of land ownership

Before exploiting the concept of compulsory land acquisition and compensation it is vital to first understand nature of land ownership in Tanzania because has great implication when it comes to readiness of land occupants and promptness of compensation. Nature of land ownership in Tanzania is unique as an individual or land holders possess usufruct rights, this is to mean that they only

enjoy right of using land which includes making of improvement on it. In simple words one can say Tanzania land occupants have granted rights of occupancy (G.R.O), the customary rights of occupancy (C.R.O), Deemed Right of occupancy (D.R.O) and other informal rights^{vii}. Various principal legislations relating with land matters in Tanzania provide that the President is the custodian of whole land in the country, whereas all land in Tanzania is public land, for instance, The Land Act under section 4^{viii} Provides that “*All land in Tanzania shall continue to be public land and remain vested in the president as trustee for and on behalf of all citizens of Tanzania*”, like wisely the Land Acquisition Act recognize that land in Tanzania is merely public land thus no one has absolute title rather may enjoy right to use land within specified tenure and incase the president needs land for public purpose may acquire it basing on power conferred under section 3 of the Act^{ix} which states that “*The president may subject to the provisions of this Act, acquire any land for any estate or term where such land is required for any public purpose*”, Also the Urban Planning Act^x give the President overwhelming powers to compulsorily acquire land for public use or interest whereas fair and prompt compensation is to be paid to displaced population^{xi}.

Development of the system of land ownership in Tanzania

To understand the effect of the nature of land ownership in Tanzania to administer fair, full and prompt compensation it is important first to dig up the historical development of system of land ownership in Tanzania. System of land in Tanzania can be traced in pre-1890 even before colonialism where there was traditional occupation of land as the Chiefs, Kings, Queens, Clan heads and Family heads were the land allocation authority who had absolute title and the power to distribute either inferior or intermediate title to other village members, generally land in Tanganyika at the time being was occupied locally. These traditional powers of owning land continued through the colonial era though they were limited by the newly introduction of German Imperial Decree in 1895, whereby all land in Tanganyika territory was declared crown land. However settlers and missionaries were given freehold titles by the governor but natives had no any land interest to enjoy. For the British, in the year 1920 they passed Tanganyika Order in Council whereas at the time being it was like the constitution of Tanganyika under Article 17(1)^{xii} establishes court of records which shall be the ‘High court of Tanganyika’ which shall have full jurisdiction, civil and criminal over all matters and people in the territory, furthermore Article 24^{xiii} substantiate that in all cases concerning natives either civil or criminal every Court including the High Court of Tanganyika shall be guided by native laws so far as it is applicable and not repugnant to justice, morality and inconsistency with order in Council or Ordinances.

Later the British in the year 1923 enacted the Land Ordinance which came to highlight the structure of land tenure in Tanganyika, whereby under Section 2 of the Ordinance^{xiv} provided that all land in Tanganyika territory whether occupied or unoccupied is declared to be public land, moreover the Ordinance under Section 3^{xv} vested all land in Tanganyika to be public land to the Governor

of Tanganyika, thus the he has power to control and dispose land for the use and common benefit of the indigenous and no title to the occupation and use of any such lands shall be valid without the consent of the Governor therefore he had an absolute title. More importantly in the Ordinance is the system of ownership in Tanganyika it started the right of occupancy as a tenure whereas under section 5 of the Ordinance provides that “*title to the use and occupation of land shall be termed a right of occupancy, and the grantee thereof shall be termed the occupier*”.

Later in the year 1928, the Land Ordinance No 7^{xvi} amended the meaning of right of occupancy to include Deemed Right of Occupancy, as it recognized customary law. The right of occupancy was redefined to include, “the title of a native or a native community lawfully using or occupying land in accordance with the native law and custom” (deemed right of occupancy), henceforth the Ordinance comprised of Granted Right of Occupancy and Deemed Right of Occupancy. From the year 1928 until independence in 1961 there were three forms of tenure or land ownership of land in Tanganyika to include Freehold title, Right of Occupancy (to mean Granted Right of Occupancy and Deemed Right of Occupancy) and Leasehold.

After independence there were introduction of initiatives to ensure Tanganyika has a self-mechanism to ensure production, The Economic Development of Tanganyika (1961) that was more triggered by modernization ideology in order to modernize the local peasant and pastoralist to reach world capitalist market and production for more export. The approach recommended by the World Bank involved settling selected farmers in villages supervised by a government agency, the Rural Settlement commission. The Commission would be granted a right of occupancy by the Minister under the Land Ordinance while the members of the settlement would hold land under specified derivative rights as provided by the Rural Settlement Commission Act^{xvii}. On other side the Land Tenure (Village Settlement) Act^{xviii} provided that the Rural Commission had significant supervisory and managerial control over the settlers enforced through a series of by-laws backed by criminal sanctions.

In the year 1963 the form of ownership which existed was converted, whereas freehold title which was maintained from German decree was altered to government leasehold by the law called Freehold Titles (Conversion) and Government Leases Act^{xix}, thereby changing the position by transforming land ownership that was previously granted to the individual for indefinite period and other right of occupancy that could last for a specific period not exceeding 99 years. Following the year 1965, the Nyarubanja Tenure (Enfranchisement) Act^{xx} was enacted to enable the acquisition of lands against citizens for the launch of Ujamaa villages in which the villagers will live communally. In the year 1969 another law the Government leases (Conversion) and Right of Occupancy Act^{xxi} was enacted to change the government leasehold into right of occupancy, thus the meaning of right of occupancy in 1970 was amended to include “a title of Tanzania citizen of African descent or community of Tanzania citizen of African descent lawfully using or occupying land in accordance

with customary law” henceforth from this meaning one can deduce two types of tenure which are ‘right of occupancy’ (Granted Right of Occupancy and Deemed Right of Occupancy) and Leasehold.

Finally in the year 1999 The Land Act^{xxii} and The Village Land Act^{xxiii} were enacted to introduce new things, the principal legislations are still applicable even at present although there are some amendments which have occurred, both legislations have introduced the following in the system of land in Tanzania as explained hereunder;

i. Public Land

The general meaning of public land is the land that is owned and taken care of by the government^{xxiv}. In Tanzania the president has a radical title to all land in the territory thus why is termed as a superior land lading, citizen do not have exclusive private rights on the land compared to other private properties they own. The Land Act under section 4 provides that “*All land in Tanzania shall continue to be public land and remain vested in the president as trustee for and on behalf of all citizens of Tanzania*”^{xxv} furthermore the same Act under section 2 defines public land to mean *all the land of Tanzania*^{xxvi}, the essence of these two provisions is to signify that Tanzanians only enjoy the right to use the land (usufruct right) and not otherwise but the legal title is always vested to the trustee which means the president has a radical and absolute title.

ii. Land tenure Systems in Tanzania

The principal legislations in Tanzania pertaining land matters have provided two systems of land tenure to include Right of Occupancy (Granted Right of Occupancy, Customary Right of Occupancy, and Deemed Right of Occupancy) and Leasehold. Whereby the Land Act regulate granted right of occupancy (G.R.O) as one of the forms of right of occupancy and also leasehold of G.R.O, whereby under section 29 of the Act^{xxvii} that after a person has applied for the right of occupancy as stated under section 24A shall be entitled to right of occupancy and issued with a signed and sealed certificate of occupancy by commissioner. For the case of leasehold system, the law acknowledges that a person can lease his granted right of occupancy to another person under section 78^{xxviii} of the Act which states that “*...the holder of a granted right of occupancy may lease that right of occupancy or part of it to any person for a definite period or for the life of the lessor or lesser or for a period which though indefinite may be terminated by lessor...*”

The Village land Act regulate the customary right of occupancy (C.R.O) and deemed right of occupancy (D.R.O) as the forms of right of occupancy and on other side the leasehold of C.R.O. First of all, it is important to understand the meaning of Customary Right of Occupancy as elaborated in section 2 of the Act that is the right of occupancy created by means of the issuing of a certificate of customary right of occupancy and include deemed right of occupancy, WHILE deemed right of occupancy means the title of a Tanzanian citizen of African descent or a community of Tanzanian citizen of African descent using or occupying land under and in accordance with customary law. Section 25 of the Act acknowledges that a village council within ninety days shall grant

customary right of occupancy to the person or applicant by issuing certificate of customary right of occupancy to signify his or her ownership. Finally on the aspect of leasehold the Village Land Act acknowledges it by means of 'derivative rights' which means to occupy and use land created by customary right of occupancy and includes a lease, sub lease, a license and many others, sections 32 of the Act^{xxxix} provides for that the holder of C.R.O may dispose his interest to another person and the village council shall approve.

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING COMPULSORY ACQUISITION OF LAND IN TANZANIA

LEGAL FRAMEWORK

Constitution of United Republic of Tanzania of 1977

This is a set of fundamental rules and regulations that determine how Tanzania as a state is governed. The constitution is the superior law amongst all laws of the country and in case any law which contradicts with the provisions of the constitution shall be declared null and void, this is to mean that the constitution's provisions pertaining land ownership, compulsory land acquisition and compensation is superior and all land laws should comply thereto. The mother law of the country provides for the person's fundamental rights to be protected and in case of violation any of right, the claimant has a room to enforce and seek justice as provided under Article 30(3) and 9(b)^{xxx}.

The constitution under Article 24(1)^{xxxi} provides that every person is entitled to own property and have a right to the protection of his property held in accordance with the law. The provision entails protection of every person to include natural person (to mean actual human being) and artificial person (to mean an organization recognized by law as a fictitious person), and for the right to own property can be interpreted as 'land' is one the forms of the property required to be protected by the law henceforth all land occupants either companies or individuals enjoying usufruct right inform of granted right of occupancy, customary right of occupancy or deemed right of occupancy are required to be protected accordingly with the law. On other side Article 24(2) of the Constitution^{xxxii} protects the occupant of land not to be deprived for purpose of nationalization or any other reason contrary to the requirement of the law, and if the deprivation of land is according with the law fair and adequate compensation must be implemented.

Besides that, there are more provisions of the Constitution of United Republic of Tanzania which instigate for effective protection of person's property and preventing exploitation of one person by another, for instance under Article 9(c) of the Constitution^{xxxiii} requires the government must conduct its activities so as to ensure that the national wealth and heritage are harnessed and preserved, furthermore Article 27(1)^{xxxiv} requires that every person has obligations to protect all natural resources, property of the state authority, all property collectively owned by the people and respect another person's property, therefore all

rights embedded in the properties including 'land' must be protected accordingly.

The Land Act, 1999 [Cap 113 RE 2019]

This is the main principal legislation governing all matters pertaining land in Tanzania, including ownership of land, requirement regarding compulsory acquisition and compensation connected thereto. The Land Act apply to all land in Mainland Tanzania and any provisions of any other written law applicable to land which conflict or are inconsistent with any of the provisions of the Land Act shall cease to exist^{xxxv}. Since the Act is superior to all land laws in Tanzania this entails that it is the first legislation to be consulted in matters concerning compulsory land acquisition and compensation, whereby under section 4 of the Act^{xxxvi} declares all land in Tanzania to be public land and vested to the president as a trustee on behalf of all Tanzanian citizens, this is to certify that no any national has absolute title in the land but rather enjoys usufructuary right. On top of that on the interpretation part under section 2 of the Act^{xxxvii} defines public land to include all land in Tanzania, this is to signify there is no any form of private interest attached on the land as a property to be enjoyed by citizens. Since a superior land lading is vested by the land laws to act a trustee for and on behalf of Tanzanian citizens empowers the government to compulsory acquire any part of land in Tanzania territory but basing on the fundamental principles of national land policy, for instance section 3(g) of the Act^{xxxviii} affords that any person whose right of occupancy or customary right of occupancy is revoked by the State for the betterment of whole public that person shall be entitled to full, fair and prompt compensation whereby its assessment will base on market value of land, disturbance allowance, transport allowance, loss of profits or accommodations, cost of acquiring, interest at market rate and lastly any other cost loss or capital expenditure incurred to the development of subject land.

The Land Acquisition Act [Cap 118 RE 2019]

This is another important principal legislation which specifically is centered on all matters relating with compulsory land acquisition and their appropriate compensation, as the president may acquire any land for any estate or term where such land is require for any public purpose. The Act under section 4^{xxxix} defines what is public purpose as it lists some of factors which in their generality form eminent domain to include;

- i) government use for development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing,
- ii) for or in connection with sanitary improvement for instance reclamations,
- iii) project of laying out of any new city or expansion of any city, township, municipality or minor settlement,
- iv) development of any airfield, port or harbour,
- v) for mining for minerals or oil and last for use by any person or group of persons who in the opinion of the president should be granted such land for agricultural development.

Before land is compulsory acquired for public purpose the minister shall give notice of intention to acquire the land to the holder of such land, whereas service and publication of the notice is stated under section 8 of the Act^{xl}. Furthermore section 11 of the Act^{xli} set the requirement that if land is acquired by the minister on behalf of the government for public purpose is obliged to compensate the occupant of land the amount not exceeding the value of an acquired real property, but only if it is proved that the acquired land was not a vacant ground.

The grounds for the assessment of compensation to be made after compulsory acquisition of land are provided under section 14 of the Land Acquisition Act^{xlii} which correlates with grounds of assessment provided in the Land Act; *first* take into account the value of such land but without regard to any improvement or work made, *second* take into account any probable enhancement of the value of the residue of the land by reason of the proximity of any improvements or works made, *third* take into account damage for instance, any damage sustained by the person having an estate or interest in the land by reason of the severance of such land from any other land, *fourth* not take into account any probable enhancement in the value of the land in future.

INSTITUTIONAL FRAMEWORKS

It is vital to explore a setup of institutional framework governing compulsory land acquisition for public purpose and the requirement of full, fair and prompt compensation in Tanzania. National recognition of institutional setup regulating expropriation matters in the country is the prerogatives of the Ministry of Lands and Human Settlement Development whereby, in exercise the District Lands Office is accountable for the management of the whole procedures and relevant activities on behalf of the Minister of land. Activities performed by the Ministry entails those of the State, for instance under section 156(3) of the Land Act^{xliii} which sets an obligation to the Government Department or the Ministry, local or public authority or corporate body to promptly pay compensation of any compulsory acquired land, additionally the law in fundamental principles of National policy under section 3(g) of the Act^{xliiv} which requires the State (including relevant Ministry) to pay full, fair and prompt compensation to any person whose land is expropriated.

One of the vital grounds used by the government to assess the amount of compensation to be paid after compulsory acquisition of land is market value. The law explores how the criterion of 'market value' is established '*...the market value of any land and unexhausted improvement shall be arrived at by use of comparative method evidenced by actual recent, sales of similar properties or by use of income approach or replacement cost method where the property is of special nature and not saleable.*' Additionally, during the process of compulsory acquisition of land, assets found in the land are valued distinctly, for a deep understanding imagine an illustration that "x is the land holder with a building, crop/tress, fencing, and many other assets attached on the land" in a situation like this a qualified valuer emanating from the government shall assess a market value of a plot of land which

must include a separate value to the land, the building, any crop/trees found within the plot, fencing and any such other structures.

Currently Tanzania experiences a lot of controversy incidents concerning non-payment, inadequate, unfair and delay payment of compensation after expropriation process is done, due to this we should examine what are the procedures to followed by land occupants in order to enforce their substantive rights of being compensated. People who are not pleased with the sum of compensation evaluated, or delay payment which caused further loss may appeal against the government (qualified valuer) by forwarding their grievances to the Office of Chief Government Valuer through the respective District Land Officer. The Land Act^{xliv} and the National Land Policy of 1995^{xlvi} empowers the government or relevant authorities in land matters to attain land compulsory on the requirement that such acquisition is in accordance with the land laws, policies and guidelines pertaining land matters, also the purpose for which the acquisition is required is clear and within the context of public interest and lastly the acquisition should be procedural subject to full, fair and prompt compensation.

UNCLEAR GUIDING PRINCIPLES CONCERNING FAIR, FULL AND PROMPT COMPENSATION IN TANZANIA

As stated earlier it is a statutory requirement for an occupant of land to be compensated by the government after a successful compulsory acquisition, although writers and scholars have ascertained the existence of problems in regard to procedures concerned with compensation that there is absence of clear guiding principles. There are two main school of thoughts relating with compensation problem in Tanzania which are, the 'principle of equivalence'(POE) and 'sustainable livelihood approach'(SLA) that emanates from the pro-poor policy interventions discourses and the World Bank Safeguard Requirements^{xlvii}.

The principle of equivalence (POE) advocates that "...affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition..." the standard is holders of land should be compensated to loss incurred only (injury connected with value of land, development of land, disturbance cost, transport cost, and other costs relating with land ownership), in other words this is to mean that the victim should not be over or under compensated but rather should be indemnified. Additionally, the reader must bear in mind that the harm incurred by the previous land holders are not limited to the loss of assets but there are significant human losses as well like transport, accommodations, loss of profits as provided under section 3(g) of the Land Act^{xlviii}.

On other side the governmental and donor financed Projects are governed by the principle of 'Sustainable Livelihood Approach' (SLA) that are well summarized in World Bank Operational Policy. The principle of SLA advocates that "the purpose of any land acquisition is to support development and therefore there will always be a need to improve the position of those that have to give

up their lands wherever possible”, this is to mean that expropriation process is not there is to favor the government by empowering them to acquire any part of land they wish but rather to make sure that citizens are not financially affected with the process and the projects established are for sustainable development.

Due to the global rapid development of science and technology have triggered the growth of large-scale farming and huge projects funded by donors, thus creates the need of attain big portions of land so as to ensure the station of the said projects. One among of the first big projects financed by World Bank in Tanzania is the Participatory Agricultural Development and Empowerment Project (Tanzania, 2003) which is regarded as the pioneer for the introduction of ‘Resettlement Policy Framework’ (RFP) in 2003 which in large extent is regarded that it deviated from the two principles (Principle of Equivalence and Sustainable Livelihood Approach), also the Water Sector Development Program (WSDP) adopted its own form of Resettlement Policy Framework as a constituent of its program implementation manual thus resulted to a lot of controversies relating with improper, delayed and inadequate payment of compensation.

Relevant institution dealing with valuation for compensation is the Ministry of land as a result there are a lot of misunderstanding in terms of the terminology connected with what is comprised of compensation and scholars are at uncertain position in regard to legitimacy of the current laws governing compensation in Tanzania for instance the local valuation professionals (qualified valuers) have been side-lined in donor-funded projects whose focus was seen to be more towards ensuing land acquisition is complete. Due to this fact there a lot of complains against improper compensation, citizens and stakeholders recommends that the scheme for compensation procedures should be carefully restructured, and amendment of the land laws to afford for commercial value as opposed to market value which they are argue would take care of the ‘opportunity costs and lastly, they argued that compensation complaints to the use of ‘government regulated rates’ in lieu of market value that is provided in the laws^{xlix}.

CHALLENGES FACING COMPULSORY LAND ACQUISITION PROCESS TO FULFILL THE LEGAL REQUIREMENT OF FAIR, FULL AND PROMPT COMPENSATION IN TANZANIA.

Misinterpretation of Facts

This is one amongst of the challenges which in most cases arises when ‘private consulting firms’ initiate and perform expropriation process. In Tanzania the procedures for compulsory acquisition of land enables or gives options to relevant acquiring authorities to either use municipal/district land departments or the private consulting firms (whereas these private companies do not adhere to the valid procedures of acquisition either intentionally or by reason of misconstruction). Investigation conducted by researchers and scholars reveals that, at least municipal and district land

departments follow the required procedures for expropriation process and they seem to be consistent in releasing information on the procedures to be followed and the items to be compensated for.

Misinterpretation of facts has exaggerated mostly in private consulting firms, as there is great failure in obedience with the provisions both of the local laws and of the World Bank which results to the downplay the role of the local land office and even generating impression amongst the landowners that these offices were a problem in land compensation and in some instances even to the extent that the government land offices would not be involved in the entire exercise. The major problem with these nonpublic companies or firms is that they lack land-related disciplines and sociological skills to handle land occupants so as to protect their statutory rights after expropriation process is complete. To substantiate the procedural problems brought by private companies which infringe statutory requirement of fair, full and prompt compensation, we have to explore some governmental projects or donor financed projects which expropriated holder’s land without prompt and adequate compensation as explained hereunder,

Obvious example of misapprehending of facts, is a prospective agriculture investor in Kisarawe and Sunbio fuel Company who was involved in a quarrel with the District Council on the entitlement of compensation for plain land that comprised about 60 percent of land deal that it required for its Jatropa plantations in 2008. For the plain land for which there were no land occupant complained, the investor ought to have paid the balance of TZS 577,708,870 to the 11 village councils under whose jurisdictions these lands situated. Contrary to the provisions of Land and Village Acts, the Kisarawe District Council with support from the Ministry responsible for Lands refused. As a result, the land deal was frustrated with the investor unable to fulfil his promises for job creation and social amenities provisions, further agitating the Kisarawe villagers¹

Absence of Coordination and Readiness of the land acquiring authorities

This is another challenge which hinders the administration of full, prompt and fair compensation to the holders of land after an expropriation deed. As in most cases the acquiring authorities facilitates infrastructure projects with slight or no consultation at all with the departments in charge for land supervision in the area thus resulting into failure in following up of procedures relating with compulsory acquisition process. Officials manipulating expropriation affairs should make sure effective synchronization with the municipal/district land departments and land holders, also must ensure appropriate preparation with all affairs concerning the process.

This is to mean that before commencement of any expropriation process, the acquiring authorities must be prepared to pay subsequent compensation either monetary or in any other form, secondly early preparation of a manner in which a property shall be expropriated so as to reduce the possibility of violation of other beneath properties, selection of well assessed personnels who shall

ensure full and prompt compensation, informing the occupants of lands first before the process and their rights after the acquisition and other related procedures. Additionally, the general remark concerning municipal and district councils in Tanzania are being sidelined in huge expropriation projects in their specific regions or locations particularly those being carried out by private consultants or firms.

Furthermore, investigation shows that municipal/district land departments are not effectively involved at early stages of the land acquisition procedures, but rather they are involved well after the compensation payment procedures especially when there are disputes about the compensation sums received. Also, in practical aspect indicates that local government officials in the land departments are more possibly to be instructed by Central Government Departments implementing a particular project on how to process the acquisition procedures. Generally, it was concluded that land acquiring authorities had no prior information on the procedures to follow, who were the key actors in the process and the probable financial commitments in compensation payments henceforth lack of preparedness has led to delayed compensation, unnecessary and protracted negotiation on lands to acquire and initial disputes.

Unfulfilled High Expectation of Landowners

This is one of the practical challenges which was evidently observed by investigators and scholars that certainly persons losing land in an expropriation deed are more likely to have been informed of the anticipated social and economic benefits of the proposed projects in their area, in furtherance most of acquiring authorities tend to give false hopes to the occupants of land so as ensure smooth eviction in the targeted land. Authorities usually promise land holders to offer huge compensation even sometimes more than statutory requirement in order to induce them for instance, an occasion which happened in Buyuni at Dar es Salaam whereby land owners complained about them quantity of disturbance allowance paid contending that, it must have been figured at least 21 percent of the total value of land and other attached properties. The claimant had been paid 100,000 Tanzanian Shillings as disturbance allowance though he was expecting 3,990,000 Tanzanian Shillings, which was very divergent to the provisions of Land Act^{li} and Land Acquisition Act^{lii} which insists that disturbance allowance must only paid against value of land and at ongoing bank deposit rate.

Inconsistent and unclear tactics employed in acquisition process

This is one of the important challenges to explore, this is because procedures pertaining compulsory land acquisition in Tanzania seem to be uncertain and subject to a lot of biasness amongst officials in land departments. Assessment of the genuine value of land to be expropriated, its analysis is conducted basing on the approved valuation reports from relevant authorities which shall suggests the market value of a property by calculating the sum of its depreciated replacement cost, crops and land value whereby land and crops are valued on basis of rates established by the Office of Chief Government Valuer and Replacement Cost is

arrived at through a cost estimate of what it might take to build the subject property by the qualified valuer^{liii}.

The Land Act^{liv} and the National land policy advocates for the appropriate method to be used when valuating land, this because before the year 1999 land forum was uncertain if method of valuation 'replacement cost' its final figure would not include value of the land upon which the property rested, but the provisions of the Land Act made it certain by elucidating that land has exchange value (which shall be estimated basing on the market value) thus the qualified valuers from the government shall make assessment by taking into consideration separate value estimate for land in the valuation worksheet to those approving valuation reports that the basis of valuation was market value.

Despite on the fact that Tanzania land laws provide for clear methods to be apprehended in the whole context of valuation procedures, but still practice in Tanzania is still inconsistent and imperfect. Land holders always lament for unfaithfully compliance with what the land laws direct, as the government valuers after the acquiring of land tend to use manual valuation by simply counting the number of trees or crops, on other side what constitutes market value in most of cases it is based on the valuer discretion as the entire procedures emanates from the context of local valuation practice. The area where at least there is no or little allegations about compensation complications is exercise of valuing building structures on the land this is because the qualified valuers always use the 'Replacement Cost Method' but also ensures that the final assessment does not make the landowner to over benefit or under benefit for the projects funded by the government, but for donor-funded projects the valuers shall conduct assessment basing on the IFC Safeguards (SLA).

Generally, the National Land Policy and land laws have addressed all what compensation must be paid (including its ingredients for instance transport, disturbance allowance) to the occupants of land and what manner shall be employed to ensure fair, full, and prompt compensation after a expropriation deed. Unfortunately, investigation conducted by various researchers and scholars reveals that respective local market 'was unaware' of the project and in many instances, away from the hectic of urban economy in the peripheries of the cities or rural areas, lack of awareness of their compensation rights, lack of representatives to ensure enforcement of their substantive rights after expropriation since some project have political influence. Generally, lack of good governance principles among officials in land departments has led to the drawback to attain effective fast and adequate compensation.

Lack of good governance amongst land department officials

It is clear that governance principles have a sacred relationship with the effective implementation of fiduciary duties amongst government officials, correspondingly, the principles of good governance have great impact on the procedures to ensure effective, fair and prompt compensation after the compulsory acquisition of land. According to the research conducted it is clear that governance as a relationship between local communities and the states, in decisions is poorly implemented. Challenges of

governance systems in Tanzania include absence of transparency, weak structures for checking land taking and marginalization of the disadvantaged^{lv}.

The acquiring authorities and the District/Municipal land departments the calculation show that in most cases governance principles such as public participation are not effectively followed, this is conveyed by other difficulties related to deceitfulness and disrespect of land laws^{lvi}. Though Tanzania may have laws and national land policy to govern compensation programs but without incorporation and implementation of fundamental principles of good governance, attaining adequate compensation and a reasonable relocation plan to cover associated losses is a challenge. All these observations facilitate the need to examine how good governance is practiced when undertaking land acquisition programs in Tanzania since little is known in this aspect, for instance one national project which was subjected with a lot of allegations of unclear compliance of good governance principles is Luguruni Satellite Town Development Project which fit as a public purpose project.

RECOMMENDATIONS

The paper not only highlights the challenges facing expropriation process to fulfill the legal requirement of fair, full and prompt compensation in Tanzania but also sets appropriate suggestions to trigger positive impacts on the due process of land acquisition. The study proposes the following recommendations: -

Reform of the laws concerning with compulsory land acquisition

The laws governing land acquisitions in Tanzania need an over whole improvement of provisions in various aspects relating with the process,

- i. To amend and restructure the provisions which shall limit how much and what kind of land can acquired by the government, this is to mean the amount of land acquired to what is necessary to achieve for public purpose. The government must be sensitive to areas of cultural significance and land held by poor and vulnerable groups like indigenous and local communities not to infringe their property rights if there is existence of other resort.
- ii. To amend the current law and improve the provision creating the requirement to the government to survey, inform and consult resident before taking land, the provision must highlight that if the government do not comply with the guidelines shall attract appropriate fines. The World Bank Research showed that the decision about expropriation were usually made in secret, leading to mistrust of the government and public perception that expropriations were pushing out poor and indigenous landowners to allow the rich or the state to reap major benefits.

- iii. To amend and include the provision which shall enable effective compensation to those who hold land under customary tenure, the research conducted by various writers and scholars reveals that most of Africans countries including Tanzania do not ensure effective compensation to holders of customary tenure rights including indigenous and local communities this is because they often lack formally recognized rights. Therefore the government use this loophole to infringe their property rights. The establishment of the provision shall be crucial to protect property rights of citizens who have long inhabited and ensure adequate protection of communities from expropriation similar to citizens possessing granted right of occupancy.
- iv. Inserting a provision in expropriation laws to recognize and ensure gender-sensitive sufficient compensation is paid, it is important to address gender issues in compensation procedures because most of African societies to include Tanzania, women are considered dependents of their husbands and have no direct rights to land, compensation is usually paid to the male head of household which could be detrimental to the family's health and welfare. Therefore, it is important for our laws to ensure special legal protection ensuring women landholders are compensated the same as men, because they are at risk of being disproportionately burdened by expropriations.
- v. Set provision which shall prohibit or reduce forced conviction and further provide for relocation allowance,
- vi. Empower local authorities to represent the best interest of their constituents

Provide education to the public

Most of Tanzanians are not aware that they possess right to have a fair, full and prompt compensation after compulsory land acquisition is completed. Especially citizens who possess land under customary tenure lack even the basic knowledge as what should be done if their customary use of land is revoked or if is compulsory acquired by the government for public purposes. The state under the local government authority must establish a program which shall include the conducting of seminars to all ordinary citizens (those who hold granted right of occupancy and customary right of occupancy) pertaining expropriation process and their subsequent rights, presenting advertisement in radios and televisions about citizen's obligation to cooperate with state in issues of expropriation for public purpose and how citizens can enforce their property rights if not well addressed.

Promote alternatives to expropriation

The government must opt for other means other than compulsory land acquisition for the establishment of various state projects in order to meet public interest as per requirement of law. It is vital to

employ expropriation as a last resort for the attainment of eminent domain because it has likelihood of affecting more the land holders. The following are some of alternative methods to expropriation which can be employed by the government: -

- i. Land consolidation, it is also known as land readjustment this method combines nearby plots of land to restructure an area into a more efficient and effective holding. It is a suitable alternative to compulsory land acquisition as it requires fewer funds than land acquisition and does not involve expropriating landowners.
- ii. Private negotiation, is a righteous way whereby the government use its eminent domain power to the land owners if have consented and are willingly to transfer land. If most of land holders at that target area are unwillingly to transfer the land the government may opt for another alternative means.
- iii. Lease agreements, this happens when the state acquires land permanently first, but provides a lease to the project company for a certain duration only, this helps to protect rights of the land holders affected by the project.
- iv. Effective resettlement action plans, these plans can address the physical and economic displacement of people affected by the project, they can include compensation and livelihood restoration options.

The State should offer a due process in expropriation matters

The paper recommends the government to propose a fair judicial process for land acquisition problems in Tanzania in order to dispense justice among land holder and held compensation in a righteous way. For instance, the “ejectment procedure” the laws allows if someone is obstructing the President’s authorized entry onto the land, the Minister can apply to the District Land and Housing Tribunal for an order of ejectment. In most events land holders are not informed on time, but the government acts ultra vires and subsequent expels out a person from the land illegally by employing improper procedures. Most of acts done by the government which triggers land acquisition problems are insufficient compensation, failure to provide alternative land and competing interests.

On other side if victim or a previous land holder decides to seek for justice, is required to meet the judicial review proceedings which are based on grounds of illegality, irrationality and procedural impropriety, whereby he is obliged to apply for a leave to the court to institute a case, substantive application and hearing of the case. In practice it is very difficult for land holders to succeed their actions against the government because in expropriation matters especially for indigenous land the courts lack its independence as government officials tend to intervene the roles of the judiciary henceforth limits the attainment of justice.

CONCLUSION

Generally, land is a public property which is vested in the president as trustee for and on behalf of all the citizens in Tanzania. If there

is a public interest the government has obligations in terms of governance and supervision to establish a project or anything else for the benefit of all citizens. The government has fiduciary duty to act for the best interest of citizens, but practically there a lot of challenges in the whole process of expropriation and the subsequent procedures for grant of compensation. This is because many government officials have failed to observe good governance principles which have triggered to a lot of chaos and conflicts, decrease likelihood of people voluntary relocating henceforth leads to dissatisfaction among affected people.

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