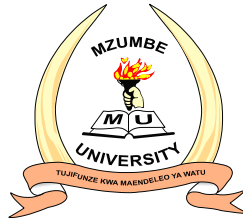


MZUMBE UNIVERSITY



FACULTY OF LAW

**INVESTMENT AND LAND DISPUTES IN TANZANIA: A VEHICLE
FOR INVESTMENT LEGAL REFORM.**

By

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REG: 005/T.11

A Dissertation Submitted in Partial fulfillment of the Requirement for award of Degree Master of Laws in Commercial law of Mzumbe University 2013.

CERTIFICATION

We, the undersigned, certify that we have read and here by recommend for acceptance by the Mzumbe University a dissertation entitled **Investment and Land Disputes in Tanzania: A vehicle for investment legal reform** in partial fulfillment of the requirements for award of the degree of Master of Laws in Commercial Laws of Mzumbe University.

Supervisor

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LIST OF ABBREVIATIONS AND ACRONYMS

HAKIARDHI	-	Land Rights Research and Resources Institute
VLA	-	Village Land Act.
LA	-	Land Act.
TIC	-	Tanzania Investment Act.
NIPPA	-	National Investment Promotion and Protection Act
NLC	-	National Land Council.
NLP	-	National Land Policy.
WCA	-	Wildlife Conservation Act
LGA	-	Local Government Authority

ABSTRACT

Land is the natural vital asset owned by person or persons. Although land plays a major role in social and economic development, its management remains doubtful in Tanzania. Land has become strength of the Tanzania Investment Center in advertising and promoting investment in the country. For this reason the land laws of 1999 (Land Act No. 4 and the Village Land Act No. 5) reflect the disposition of land for investment purposes especially acquisition of land by foreign investors. Laws governing access to land remains subject to criticism as land disputes between investors who allocated land and the surrounding local communities keeps on increasing across the country.

This dissertation comprises five chapters whereby Chapter one provides for the background to the problem, statement of the research problem, objective of the study, literature review and research methodology. Chapter two covers the historical background of land tenure system in Tanzania. Chapter three provides for acquisition of land for investment purposes in Tanzania; legal framework. Chapter four provides for the extent to which land laws regulate acquisition of land for investment purposes in Tanzania. The fifth chapter provides for the General conclusions and recommendations. The researcher used qualitative method in conducting the study. The sample technique employed in carrying out the study was purposive and the researcher administered questionnaires and interview to sample individuals.

The study aimed to critically study and evaluate the whole process involving the acquisition of land for investment purposes and to investigate the factors contributing to land disputes between investors and surrounding local communities. This is the study carried out for academic purposes as a mandatory requirement for the award of Master's degree of laws (LL.M Commercial law) at Mzumbe University. The study used qualitative approach which involves literature review, interview and questionnaire

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CHAPTER ONE

1.1 Background to the Problem

Tanzania like many other African countries was colonized by the Europeans whereby Tanzania experienced domination of two colonial masters; the Germans era, and the British colonial master. However, the aim of the researcher is not to provide the history of colonization of Africa or perhaps colonial history of Tanzania specifically but for the sake of the study this brief introduction of colonial history is inevitable because the land tenure system of Tanzania has a lot to do with these two colonial masters.

The land tenure that is existing in the country to a large extent emanated from the colonial land management and legal system. The colonial land regimes established by the Germans (1885-1916) and British (1918-1961) and they were assuming that indigenous occupants had no ownership rights over land. This notion created a gap which is still making the laws governing land to allow the abuse of the right to own land. The existing land tenure structure and legal regime governing land in Mainland Tanzania find their genesis in the colonial political economy.¹ Land is the most vital asset of all assets that a human being can have, thus it should be administered with due process a failure of which it will result in social as well as economic turpitude.

Land is the reflection of the status of a given community, it is a reflection in the sense that, economics of a community is defined by the nature of land it has. Tanzania for example, majority of the population depends on agriculture and the rest pastoralism or small artisan mining activities which all depend on land. The value of land in terms of economic growth and development of any given country is enormous.² Land is a backbone of economy and that is a way that Tanzania is calling upon foreign investors because it has land. As civilization grew up and the mental set up of the man has turned up from common interest to individual interest, and acquisition of property has become a symbol of economic status in many countries,

¹ Shivji, Issa G, (2009), Where is Uhuru? Reflections of the Struggle for Democracy in Africa. Pg 106

² Swamy, Dr. Maheshwara (2005) Land Laws under the constitution, Asian Law House. Pg 1

land occupied a predominant place in all walks of human life, thereby multiplying the value of holding land in social life.³ Land therefore can be owned by individuals or by a community or an institution for various economic purposes.

In Tanzania land is divided into three categories; General land, Village land and Reserved land, categories which were inherited from the colonial administration. The categories of land in Tanzania as established by statutes contains discrepancies which contribute to land disputes. Within these categories there are conflicting interests, these interests are made by laws governing the tenure of each category and this also contributed much to land disputes. No substantive measures that are taken by the government to arrest the situation, the land policy of the country does not show to solve these problems especially the categorization of land. The holders of granted rights largely foreign immigrants and companies had well defined and legally entrenched security of tenure.⁴

Since independence the major reform to provide solutions to the problems facing land was once conducted in 1995 and this was under the programme popularly known as The National Land Policy Reform of 1995. This was a detailed reform conducted by the government with the aim to end the land problems in the country, and with the hope that land will be beneficial to all and avoid land disputes. The overall aim of the National Land Policy is to promote and ensure a secure land tenure system, to encourage the optimal use of land resources and to facilitate broad based social and economic development without upsetting or endangering the ecological balance of the environment.⁵ This National Land Reform Commission Report resulted in the need of the government through the legislature to enact two important statutes that are; the Land Act No 4 of 1999 and the Village Land Act No 5 of 1999 respectively.

However, irrespective of the presence of the above two legal statutes governing land, the demand of the Tanzanians over land disposition is not yet addressed. The Land

³ *Ibid* pg 3

⁴ Shivji, Issa G, (2009), Where is Uhuru? Reflections of the Struggle for Democracy in Africa. Pg 113

⁵ Gondwe, Zebron Steven, Manual for Transfer of Rights of Occupancy. Rev Ed 2010. Mkuki na Nyota. Pg 26

Policy is yet to settle down the gaps or perhaps disparities that are in the statutes; there is a need to make legal reforms to rescue the situation. The global economy which is existing allow movement of capital and the investors are moving all over the world hence Tanzania is facing the nature of the current global economy and land is among the areas that investors are targeting. The trend of global economy require a well-organized system otherwise dispute will occur and that is what is currently happening in Tanzania. Land conflicts wouldn't be as intense as they have become today, if it wasn't for the entry of multinational and foreign governments into a business of land acquisition in Sub-Saharan states.⁶ With this kind of economic integration land access should be well regulated to face the challenge since land is no longer a domestic issue but it involves multinationals companies looking for large scale of land for investment purposes.

It is important to note that access to land is no longer a concern of locals as globalization is making access to land necessary with the concept of Foreign Direct Investment. Nevertheless land dispute happens mainly on land granted to foreigners because most of the time it covers large area and with a lot of doubts which makes the indigenous feel like their land is grabbed. This concern is growing very fast, and it is not a good practice to be left happening for the health of the economics of the country especially investment, this will result in the loss of properties, life and much worrying is when foreign investors lose confidence of investing in the country.

Thus Tanzania has been experiencing land disputes emanating from land allocated and accessed by investors. The conflict normally when the locals feels aggrieved for their land allocated to investors, land laws and land management institutions are therefore open to criticism as equal justice does not seems to prevail. The discrepancies that are available in land laws (Land Act and Village Land Act) make it a big challenge in the management of land in Tanzania. Tanzania Investment Centre provides assistance to foreign investors and non-foreign investors to access land, land has become a kind of incentive to investors, This process of assisting investors to access land often causes land disputes as the law does not provide equal

⁶ Tanzania: Are Land rights upheld? The Citizen on Saturday 16 June 2012, Published and printed by Mwananchi communication. Pg 4

justice. It is for this reason the researcher is calling for quick legal reforms on investment in Tanzania to assure equal rights and good management of this vital asset for all and also to build investment which will last longer with confidence to investors of better title.

1.2. Statement of the Research Problem

Land disputes between investors and the surrounding local communities over the land allocated and occupied for investment purposes in Tanzania are keeping growing. Land disputes in Tanzania is largely experienced from land acquired for investment purposes, especially on large scale land transfer which affect life of local community as they are forced to vacate the land. Balancing the national interests in promoting investment, as well as private interests of government policy-makers who may themselves be involved in such businesses, and the land access interests of small holder farmers and pastoralists has been one of the most contentious aspects of land tenure debates in Tanzania for the past 20 years.⁷

The Constitution of the United Republic Tanzania, 1977 in Article 24(1) provides as follows; *“Subject to the provisions of the relevant laws of the land, every person is entitled to own property, and has the right to the protection of his property held in accordance with the law”*. The words of the Constitution suggest that much as there is a growing need to encourage investment to boost the economy of the country caution must be taken to make sure that no one is deprived of his constitutional right of owning property. The property in issue here is land which is the vital asset which is the determinant of social and economic development of any community.

The country is making effort to make investment easy and these efforts are seen to bear fruits and this is due to the fact that the number of investors both local and foreign is keeping on growing. In 2008, TIC reported that it registered 270 applications for land by investors annually and had a backlog of 4,200 applications.⁸ The country in promoting investments provides land as incentives; even foreign

⁷ Sulle, Emmanuel and Nelson, Fred, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 36

⁸ Makarimba Melissa and Ngowi, Dr Prosper. Making Land Work for Tanzania: Scoping Assessment for Multi- stake holder Dialogue initiative. Final Report, March, 2012. Pg 10

investors can acquire land through Tanzania Investment Centre as a way to encourage Foreign Direct Investment. The National Investment Promotion Policy for example provides that potential investors passing through the Centre will be assured priority access to land set aside by the government for allocation for investors.⁹ These incentives that are given to investors must be given with great care otherwise the abuse of opportunities might occur.

To show commitments several statutes have been enacted to regulate and promote investment in Tanzania. Tanzania Investment Act 1997 which establishes Tanzania Investment Centre was a milestone to make sure investment development in Tanzania is achieved. Other statutes that in one way or another promote investment in the country are Land Act, Tax statute and Companies Act. Nevertheless, despite the presence of legal instruments land dispute is growing rapidly to show that something is supposed to be done to arrest the situation. Moreover, change of climate which makes the change of natural vegetation a factor which is drastically causing change on the level of rainfall which also leaves rivers getting dry or causing the level of water getting down. The scramble for land is high since local communities are facing shortage of land because of change of climate which forcing them to move such like the pastoralists and the minority hunters. With the increase of population and the change of climate, land which is favourable to support livelihood is becoming scarcer, arable land which support agriculture is getting scarce a fact which must be considered before allocating land to investors.

It is equally important to note that, much as Tanzania is considered to have large scale of land and as a factor for investment promotion, other factors must also be considered before the allocation of land to investors or land reserve “land bank”. Tanzania has extensive areas of land with low levels of rainfall and/or poor soil fertility, which consequently support relatively low human population densities and low-intensity land uses such as transhumant pastoralism and shifting cultivation.¹⁰

⁹ Elifuraha Laltaika, A Review of the Tanzania Investment Act in the Light of Pastoralist livelihood System. Report Prepared for the Tanzania Pastoralist and Hunter Gatherer Organization (TAPHGO) December 2009. Pg 11

¹⁰ Emmanuel Sulle and Fred Nelson, 2009, (Report) Biofuels, land access and rural livelihoods in Tanzania. Pg 15

However, it is unfortunate that these opportunities to invest in the country at one hand turned to be misfortune to some citizens of the, country the surrounding local communities. Clashes between investors and citizen of a given community are always witnessed where investment that involves land is located. It is a fact that land is a backbone of economy to the most of people who are living in rural areas, this means before any decision to allocate land to potential investors the status and the prospective future of the affected community because of the allocation of land must be given priority. Most of rural land is governed by Village Land Act No. 5 of 1999 and this is the land where most of the time investors are given leases so that they can establish investment as they applied for it. This logically stems from the fact that “Tanzania is still a largely rural and agricultural country” hence “the majority of Tanzanian people own land through customary law, despite modernization efforts”.¹¹ To this end the researcher decided to carry on this study so as to investigate factors that are accelerating for the growing of land disputes between investors and surrounding local communities over the land allocated to investors.

¹¹ Accumulation by land dispossession and labor devaluation in Tanzania: The case of Biofuel and forest investment in Kilwa and Kilolo. Land Rights Research and Resources Institute. Feb 2011. Pg 14

1.3 Objectives of the Study

1.3.1 General objective of the study

The general objective of the study was to evaluate the strength of the legal framework governing the allocation and acquisition of land for investment purposes in Tanzania.

1.3.2 Specific objectives

The study had two specific objectives:

1. To examine the strength of land laws in Tanzania with the existing pressure on land demand for investment purposes.
2. To examine the strength of Tanzania Investment Centre legal framework in administering acquisition of land for investment purposes.

1.4 Hypothesis

The study revolved around the following two hypotheses;

1. Weak land laws are sources of land disputes between local communities and investors over the land allocated to investors for investment purposes.
2. Tanzania Investment Centre weak legal framework on land matters contributes to land disputes between investors and local communities in Tanzania.

1.5 Significance of the Study

The significance of this study is to critically examine the strength of laws that governs the management of land in Tanzania so as to act as a catalyst to call upon the responsible authorities to make any necessary intervention to improve the statutes which regulates land allocation in Tanzania.

1.6 Literature Review

This chapter examines various selected literatures to support the study of the researcher. This chapter is equally very important since it assists the researcher while conducting the study to show matters discussed on the subject matter by various writers and provides a room to fill gaps which leads the researcher to achieve the

significance of the study. There are various literatures that discussed land disputes but they left some of the points which the researcher aimed to fill in the study.

H Mason, Maliyamkono TL¹², the author explained the background of investment, especially foreign investment in Tanzania. He raised the notion that the Tanzanians have towards investors; that they were not happy with investors who are investing in the country. Unfortunately, this notion still exists if one is to observe on the field; it is not yet solved irrespective various measures tried to be taken by the government. The author tried to show that the government tackled the problem by making procedures of accessing land easier. Land titles were problematic, cumbersome, often a source of conflicts, while the land bank for investors, enabled in 1997 by NIPPA, never got off the ground.¹³ Access to land to date by investors is still a problem and this is because the laws that regulate land access by investors made it easy to access but with poor legal protection to former owners indigenous. So, much as the work of the author is showing steps taken by the government to make access to land easier, which will suggest that this was purposely for the investors, a lot is left to be desired on the side of legal protection to indigenous. He didn't show any need to make legal reform as the laws are not sufficient to make balance between the investors and the indigenous who own land in whatever tenure.

Harold Sungusia¹⁴ in the research conducted for globalization and workers' rights in Tanzania proposed that to access land is the pre-requisite and a product of globalization. Nevertheless the research didn't tell further on how investment which is also affected by globalization causes land disputes and in no way the research stressed the need for legal reform to rescue investors and indigenous from disputes. The research is silent on the fact that it is easy to access land through TIC by both foreign investors and local investors. The legal framework of land and investment is providing for various abuse of the process to access land by investors. Statutes are not properly enacted to provide equal protection for both investors and indigenous, if this pattern reflects other legislations that have been passed through a multiparty

¹² H Mason, Maliyamkono TL. *The Promise* (2006) Dar es salaam University Press Ltd.

¹³ *ibid* pg 136

¹⁴ Legal and Human Rights Centre, (2005). *Globalization and Workers' Rights in Tanzania*. Pg 65

democratic parliamentary system over the past 10 years, it is rather disturbing that the majority of the stakeholders do not know about a law that affects the most common and essential capital assets.¹⁵ The research is arguing on the awareness of the law which is true of the great importance but it failed to show that the law is weak and propose for legal change as a solution to conflicts due to land. With the current global economy land is needed more than any time else but if the legal machinery is weak then after a while investment cannot be done because it will be chaos between the government and citizens, and, citizens and investors.

Abdulrahman O. J. Kaniki¹⁶ the review explained on the efficacy of land disputes settlement mechanism in Tanzania, but it has left discussion on how investment accelerating land disputes in Tanzania. The land disputes that is currently on statutes suggest that disputes by investors is not well covered; it is if that is the case suitable for local disputes, small land holders in the community. The law does not accord for the clear legal mechanism on how to settle down conflicts between investors and the locals especially foreigners whereby sometimes there are International Bilateral Agreements to that effect. Notwithstanding, the foregoing exposition, there several challengers which constrain the realization of the main objective of the new land law regime, which is to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay.¹⁷ The law shall be enacted broadly to afford the community an opportunity to settle down disputes timely without chaos or destruction of assets or the loss of life. The law must provide the element of transparency and full public participation regarding the access to land by investors contrary to the current situation whereby no legal procedures for an investor to access land. So, therefore the entire discussion of the author on the subject matter left areas that prompted the researcher to conduct the study untouched, he just explained disputes between small land holders and mostly dispute which does not involve access to land by investors. Investors are posing a big

¹⁵ Legal and Human Rights Centre, (2005). Globalization and Workers' Rights in Tanzania. Pg 58

¹⁶ The Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola. Volumes I-VI, Numbers 1-6(2006-2008) (January 2008)National Organization for Legal Assistance(nola)

¹⁷ *Ibid* pg 43.

challenge on legal machinery concerning land management, and dispute settlement mechanism.

Moreover, **Ghormande, Vijay**¹⁸ he discussed in his book the hatred toward the immigrant (foreigners) who are coming to the country for business purposes. The discussion revolved around petty traders and employment cases but not conflicts caused by foreign investors. Signs of dislike of foreigners are already vivid in Tanzania and the Director of Tanzania Investment Centre, in cooperation with the office of Dar es Salaam Regional Commissioner are keen to clear all Chinese who contravened their permits and engaged in small business.¹⁹ The author failed to discuss on foreigners who are accessing land through the centre: TIC, and after the acquisition of land dispute arose between investors and the indigenous. It is therefore a growing concern that through TIC, entities can acquire land even if not for the investment purposes and there is growing belief of the abuse of the process through the doors of TIC. The nature of land tenure in Tanzania and the use of land in Tanzania suggest that if law does not clearly define the process of access to land by investors there is a likelihood of depriving one of his constitutional rights to own property.

Not only that, but also **Shivji, Issa G**²⁰ argued on the land rights and land tenure in Tanzania. He gave out explanation of land system in the country and the history of the same. He provided various reforms that took place in the country. The argument generally raised a concern on land, the discussion covered land and land disputes in the country. However, his discussion not seems to hinge on the impact of investment as a major growing concern on land and investment in general. He showed a concern on the National Land Policy as yet to satisfy the land problems, he wrote on the worry that the demand of the policy that will settle down land conflict is needed. To generate a public debate is one of the ways to place land on the national agenda and thereby also initiate a process of genuine participatory policy making rather than manipulative consultations and orchestrated deliberations which reply the old

¹⁸ Ghormande, Vijay (2011) Transition of Law and Justice in Tanzania. Review of Contemporary Changes in Tanzania Law and Justice System.

¹⁹ *Ibid* pg 130

²⁰ Shivji, Issa G, (2009), Where is Uhuru? Reflections of the Struggle for Democracy in Africa.

stratagems in new forms.²¹ The study then will show how the land disputes in Tanzania are currently attributed by investors because of weak legal framework.

Peter, Chris Maina,²² the author in his book discussed widely about investment regime in Tanzania. In his discussion he pointed out areas where investments caused problems or they are not of any benefit to the country. The discussion categorically pointed out areas such as joint venture, duties to investors, double taxation avoidance, dispute settlement and lastly the provisions of investment regime (The Investment Act 1997) and the Financial Act (now the Banking and Financial Act 2006)²³ so therefore the author made efforts to show weaknesses available whole investment regime in Tanzania especially under the Tanzania investment Act 1997. Notwithstanding enthusiasm with which it was received as a saviour of the Tanzania economy, the Tanzania Investment Act, 1997 cannot be said to have achieved what was anticipated of it.²⁴ However, the author throughout his discussion failed specifically to raise the land disputes problem which is a problem. Hence, therefore the researcher ventured to fill the gap that the author left out without any explanations. The land disputes between investors and locals or individuals are highly increasing and this needs a legal solution.

Thus, the researcher undertook this study to fill gaps left out untouched in the previous works of the above discussed authors though their contribution is highly appreciated.

1.7 Research Methodology

The study used qualitative method to conduct the study. It is organized under the following sections: Research design, population, Sample technique, research instruments, Data collection procedure and Data analysis. The instruments of the study are questionnaires and interviews. Questionnaires employed to those who are knowledgeable to legal framework to land acquisition for investment purposes. Interview carried for both investments experts and citizens who have experience to

²¹ *Ibid* pg 136

²² Peter, Chris Maina.(2004) Foreign Investment in Tanzania.

²³ *Ibid*

²⁴ *Ibid* pg 27

the land problems caused by land acquired for investment purposes. These instruments are purposely employed by the researcher with the aim of gaining complete and detailed information to support the study. However, Mzumbe University Library was of great support from the beginning of the study to the submission of the report.

1.7.1 Research Design

In carrying out the research design, the descriptive qualitative method is chosen to collect information by interviewing and administering questionnaire to sample individuals. This design is purposely chosen by the researcher to assist the analysis of the situation.

1.7.2 Population

The study population mainly involved respondents from TIC, expert from HAKIARDHI and local citizens including leaders of the village council from the two villages; one from Chem chem Village and the other from Kilindoni village in Mafia Island. The study also decided to select one elder citizen at Kilindoni village. The maximum number of respondents therefore was six. The two villages were chosen by the researcher by considering the extent of the study problem. Two officials from Tanzania Investment Center and one from HAKIARDHI were also interviewed to gather the required information.

1.7.3 Sampling Technique

The sampling technique employed in carrying out this study was purposive. It was purposive in the sense that the selected respondents were persons with legal knowledge or persons who were conversant with the problem. They were respondents generally chosen by the researcher to shed light to the study.

1.7.4 Research Instruments

The instruments of the study were questionnaires and interviews. Questionnaires were employed to those who were knowledgeable about legal framework of land acquisition for investment purposes. Interview carried out for both investments based

on land experts and those citizens who had experienced land problems caused by land acquired for investment purposes. These instruments were purposely employed by the researcher with the aim of gaining complete and detailed information to support the study.

1.7.5 Data Collection Method

The ways of collecting data included administering standardized questionnaire, interviews and recording of available data. The interview took place within the respondents' working offices, questionnaires were distributed and the respondents were given three weeks period to fill them and then the researcher collected them to analyze and use them.

1.7.6 Data analysis

The study examined the data collected whereby it scrutinized the required information by drawing inferences. In analyzing data, the exploratory method was used to discover what the data seemed to communicate.

CHAPTER TWO

2.0 HISTORICAL BACKGROUND OF LAND TENURE SYSTEM IN TANZANIA

2.1 Introduction

This chapter specifically provides for an overview of land tenure system in Tanzania and its legal frame work development. It will focus on the background of land system in Tanzania before colonial invasion, colonial era and post-colonial administration. The history of land tenure system in Tanzania is of a great vital since land tenure system that is existing currently has been modified and passed through different three periods as pre-colonial administration, colonial reign and post-independence administration, all these have on land and access to land for investment purposes because legal framework of land in Tanzania is a reflection of both administrations. The chapter, inter alia, will comprise categories of land in Tanzania and its legal implication the relationship created by categorization of land and access to land for investment purposes.

2.2 AN OVERVIEW OF LAND TENURE SYSTEM AND INVESTMENT DEVELOPMENT IN TANZANIA

Land tenure system in Tanzania as it has been briefly explained above has its background before and after colonial administration. Land tenure is an important part of social, political and economic structure.²⁵ Before colonial regime land tenure system was under customary administration and access to land was through clan which based on socio-economic use of the land. Customary land tenure is characterised by its largely unwritten nature, is based on local practices and norms, and is flexible, negotiable and location specific.²⁶ Land tenure system in Tanzania before colonization varies from one tribe and another and administration of land differs from one tribe and the other mainly because of customs of a particular tribe

²⁵ www.fao.org/DC. visited on 16th Jan 2013.

²⁶ Cotula, Lorenzo, Toulmin, Camila, Hesse, Ced. Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues. Pg 2

and land use of a given community. Laws were not codified at that time; there were no statutory land administration. Land was just used to support livelihood of communities and not for economic purposes compared to the current economic liberalization. It was accessed for peasant agriculture which was aimed at ensuring food security or for livestock husbandry for pastoralist communities and also land for hunters. However, changes are inevitable and now Tanzania has been forced to codify laws that regulate land, there are internal factors and external factors. Internal factors mainly contributed by the intrusion of colonial masters; in case of Tanzania the Germans colonial masters and the British masters who highly contributed to the need of land reforms. External factors that contributed to land reform in Tanzania which led to the enactment of two legal statutes are: globalization is the key factor as it forced economic liberalization and Tanzania has nothing to do but to adopt the system. The need for new area of investment and the flow of capital from outside the country by investors necessitated the enactment of land laws and other financial statutes to meet the demand of economic liberalization. There is plenty of indication to suggest that the primary objective of new land policy and legislation at this point is not to secure the land rights or interests of the majority poor but to make more land available for commercial and often foreign-backed investment,.....²⁷. The emphasis here is to show how external forces led to the enactment of land laws in the country.

The land administration in Tanzania started to change the wave after the intrusion of colonial masters as law took charge in land administration. Land before colonialism was not used for economic or monetary purposes, right to own land was given by the responsible leader of such particular clan or village. Concentration on land was on areas only that are fertile as the population was small compared to available land. Because of the nature of community at the time before enactment of land laws shifting cultivation was also a way of utilizing land whereby farmers used to shift whenever they saw the fertility of land had exhausted or because of bad weather and search for favourable land.

²⁷ Olengurumwa, P.O. Onesmo (Legal Officer LHRC), 1990's Tanzania Land Laws Reform and its impact on the pastoral land tenure. A Paper to be presented during pastoral week at Arusha 14-16 Feb 2010. Pg 2

So, at the time before the Land Ordinance 1922 pressure over land was not an issue due to the fact that there were no land speculations and any disputes that arose were settled down immediately by clan leaders. The value of land at those times under customary laws was not as how it was valued after the colonial regime as land introduced taxes liability; it started to be termed as a capital for investments. The colonial state was not only a political sovereign, whereby sovereignty was installed by conquest, but also interested in exploiting the resource of the colonial people.²⁸ This intention of exploitation changed the land administration in Tanzania as they were scrambling for fertile soil and introduced new titling system.

2.3 CUSTOMARY LAND TENURE SYSTEM

Customary land tenure system is the system whereby land administration and its occupation are regulated by using customs and practices of a given community. These customs were enforced by elders, clan leaders (and in some areas kings) who performed both civic and spiritual duties. Customary systems are usually managed by a land or village chief, traditional ruler or council of elders.²⁹ During the time before the Land Ordinance there were no categorization of land i.e. general land, village land and reserved land. Land was distributed to the member of the community according to the land use and availability of the same and not otherwise. Land in Tanzania during the pre-colonial days was a communal property belonging to the whole community, clan or tribe whereby all members of the community had equal access and right of use.³⁰ After colonial intrusion land management started to change, new ways of accessing land emerged as there were introduction of freehold land. Land was mainly used for domestic purposes and few areas were reserved for traditional activities, and, this differ from one community to another, it was accessed for cultivation, pastoralist or hunting activities and also for traditional sacred practices. Land at that time before colonial intrusion was not considered as a source of capital measurable or evaluated in terms of money.

²⁸ Shivji, G Issa Where is Uhuru ? Reflections on the struggle for Democracy in Africa. 2009. Pg 132

²⁹ Opcit . pg 49

³⁰ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 50

The advantage that is existing under customary tenure system is that, there is no room for bureaucracy as the land is owned at the level of clan then village. This was advantage as there were no formal procedures as it is now, a person can easily access his inherited land from his family and use it for his activities.

The colonial masters were not happy with this system because first it does not allow foreigners to access land but also because it has got no any legal backup. Land under customary has also another advantage as there are no legal charges or rent compared to granted right of occupancy which is associated with several charges which are mandatory. Access to land under customary right for investment purposes is not cumbersome for the members of the village as they easily inherit the land; therefore there were also no conflict or there were just minor conflict. The existing land tenure system that exists now is that general land and village land has its history from colonial masters as they tried to interrupt the system they found so that they can have access to land as well as legal protection. The existing land tenure structure and legal regime governing land in mainland Tanzania found their genesis in the colonial political economy.³¹

The colonial masters had the idea in their mind that African indigenous have no legal system that govern land, hence they introduced a legal framework which favoured their interest, they introduced freehold land. Under customary land tenure system the need for title over the land and registration was not considered a requirement due to the way they administer land. Titling of land and registration also was not an issue since it was not considered a capital as it is now; it was not used for example for mortgage purposes in order to secure loan from banks or exchange of land in monetary. Commercialization of land was not an idea to access before the colonial, the community were able to suppress the land disputes that arose over the land since the pressure to land was no so high and they were using their native ways of solving problems they were facing in terms of access and utilization of land.

³¹ Opcit Shivji, G Issa Where is Uhuru? Reflections on the struggle for Democracy in Africa.

The economic liberalization thwarted customary land administration because land started to face pressure and weakened with pluralism of laws, legal pluralism is a major factor that affected customary land tenure because land has been categorized by laws with different interest. Also, the pluralism of land legal framework makes customary land vulnerable due to the fact that laws enacted to govern land made it easy to access customary land for various reasons that are backed by the state and also made it weak by providing various legal sanctions that differentiate the value of customary land and statutory land. In Tanzania as it has been highlighted in this chapter that the land legal framework has its genesis from colonial governments, a fact now makes it legal; pluralism which among other things, provides that land is the public property and vested under the trust of the president. All land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.³² The legal regime over land developed by the British administration was in essence based on giving the state a free hand to control and alienate indigenous lands unencumbered by legal obligations.³³

Under customary right of occupancy land was considered to be occupied during the time when a person or a villager is occupying but once he ceases to utilize it then it becomes a community land not owned by an individual. Communities could prove ownership through occupation and use, but land that was not used continuously was considered ownerless.³⁴ So, the main legal difference between customary land tenure and statutory tenure is the process of acquisition. Customary land tenure involves no formal procedures a person can acquire it through communities meetings or by inheritance while statutory tenure can only be acquired formally and the tenure has a specific end. Customary tenure is still a practice in Tanzania in most rural areas though there are efforts to formalize customary land through land use plan. The prevailing wind which is encouraging investment both local and foreign investors makes it necessary to re-visit customary tenure legal administration to suit the situation so as to avoid land disputes.

³² Land Act, CAP 113, Section 4(1)

³³ Shivji, G Issa Where is Uhuru? Reflections on the struggle for Democracy in Africa. Pg 115

³⁴ Focus on LAND IN Africa Brief, A U G U S T 2 0 1 0. World research institute , Landesa Rural Research Institute. Pg 12

2.4 STATUTORY LAND TENURE

In Tanzania statutory right to access land can be traced since the intrusion of colonial masters as from German colonial reign before British who were the trustee to the league of nation. Germans introduced free hold land practice whereby the introduction of private ownership, access to land through a legal process. Land titling was first introduced during German colonization, the crown was responsible to allocate land to those who want to access land for utilization. In this regard, the Land Registration Ordinance, which was passed in 1903, established a registry system under which title to land had to be registered and documents of title issued to the owner³⁵. Statutory land tenure is obtained through a legal process as opposed to customary tenure or deemed right of occupancy where access to land is guided by customs of a certain locality. Statutory tenure favours modern investment where there is certainty of legal protection and most because of both local economy integration as well as global economy practice. The rights of statutory holders were created, defined and protected by statutory and contractual law.³⁶

However, the prevailing land laws assure legal protection to both customary and statutory tenure, both enjoy legal protection. Case law also tried to set precedence to show that there is no superior tenure than the other. In the case of *Mwalimu Omari & Ahmed Baguo v Omari A Bilal*³⁷; the Court inter alia said; A deemed right of occupancy is equal to the granted right of occupancy under the Land Ordinance, hence non takes precedence over the other. The essence of having land title is to exclude the general public from accessing it and to have legal protection against anyone who wishes to access the titled land. the colonial masters decided to introduce this registration system so as to access land and use it exclusively against the indigenous and to use their administrative power to eliminate indigenous from the land they see potential for their utilization. The registered land enjoy economic benefit compare to non-registered land, this remain a technical truth in Tanzania that differentiate statutory tenure and customary tenure. Financial institutions are more of

³⁵ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 53

³⁶ Shivji, G Issa Where is Uhuru ? Reflections on the struggle for Democracy in Africa. Pg pg 107

³⁷ [1999] TLR 432

confidence to accept a registered title of land for any financial assistance as opposed to a customary land.

The colonial masters introduced this system to suit their interest and it was none but to collect raw material from Africa and this was investment though in a way which was not in consensus with locals and then the concept of land alienation or perhaps land grabbing. Land made possible for lease through statutory right of occupancy, the state under the trusteeship of the president leases land for different terms. In Tanzania the common lease tenure is 33, and 99, this has its legacy from the colonial masters. Once land is granted, the grant may be classified according to the duration of the grant, such as long term right of occupancy of 99 years; short term right of occupancy from 5-99 years, and; periodic right of occupancy of year to year³⁸. Statutory land tenure has legal obligations which the occupier must fulfill a failure that may result in the revocation of the granted title, the obligations to mention few are tax obligation, and one must abide with land use and other municipal laws that guide the land.

Statutory land tenure also entails the centralization of land management as the government will directly be responsible to allocate land to those who are in need and it will impose sanctions and other conditions as it may deem fit compare to customary land tenure where the management of land is vested under a specific community or clan. Modern investors prefer registered land compare to customary land and this makes village land necessary for conversion and this a legal requirement. Once an investor is allocated land through TIC or he made his own arrangement to ascertain the suitable land for his project he has a duty to process for the title, the right of occupancy and this will be obtained from the commissioner for lands and after that the land ceases to be customary land and becomes general land.

Statutory land tenure is preferred by investors because often its value is certain and it attracts the current economic liberalization as opposed to customary tenure which the value of land is not certain. The certainty of the value comes from the fact that the land to attract titling and registration must be surveyed and documented. Official

³⁸ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 99

search is possible for the statutory land tenure and this makes it more viable compared to customary land tenure as a person may observe whether the peace of land has any legal encumbrance. The liberalization of the economy and emphasis on privatization fueled by the IMF/World Bank agenda on markets and privatization has increasingly opened the rangelands to a host of external forces³⁹

It was not possible to register and grant statutory tenure to all land of the country, there is no uniformity on land ownership in the country due to land categories provided by land laws. The large part of land in Tanzania still are administered under customary tenure as the process of granting statutory right of occupancy involves costs which the government cannot afford nor the individuals.

The land which is not under granted right of occupancy create an automatic difference in terms of value of the land as granted right of occupancy tend to attract high value compare to customary land. The land laws provide that both granted right of occupancy and customary right of occupancy enjoy the same legal protection but legal technicality does not provides equal protection. The revocation of a land owned under granted right of occupancy has to follow legal procedures until the president revoke it but the customary owned land has no due cause to be followed the government use provisions of statutes that all lands are public land under the trusteeship of the president. It can be learned from the Act, for example, that when it comes to revoke titles, the law requires revocation not only to be for good cause, but also it is a gradual process involving a sequence of procedures.⁴⁰ This sequence of procedures is not seen for the land under the customary land tenure and this is a causative of land dispute as most of the time there is no fair and equitable compensation when the land is taken for public purposes. The due process involves the revocation of one's land title is enough evidence that shows the tenure security that granted right of occupancy enjoy which other land tenure does not certainly seen. Granted right of occupancy were first seen to government institutions which

³⁹ Olengurumwa, P.O. Onesmo (Legal Officer LHRC), 1990's Tanzania Land Laws Reform and its impact on the pastoral land tenure. A Paper to be presented during pastoral week at Arusha 14-16 Feb 2010. Pg 4

⁴⁰ Rwegasira, Abdorn. Land as Human Right. A History of Land Law and Practice in Tanzania. Pg100

own lands and few elite who actually understand the procedures and afford to meet the costs of accomplishing the process. While all parties involved are likely to encounter varying levels of uncertainty or confusion over land procedures, rights, and administration, it is rural people who are likely to be most adversely affected⁴¹. With global economy which necessitates economic integration not only between locals but also between one nation and another land becomes a vital property and access to it posing legal challengers mainly because of legal pluralism. There is a pressing need for detailed research, analysis and debate on the less than transparent village land transfer process and involuntary resettlement and compensation processes for land acquisition for investment⁴².

Land in Tanzania currently is in high demand because of various factors; investment factors, urban development, there is also a demand of land between pastoralists and farmers. Large scale of land is currently in demand by investors and the government through its centre is allocating to investors, and this is sometimes creating chances for land grabbing. In grabbing land, the colonial government completely ignored the rights of the native people who occupied their traditional lands under their respective native laws and customs prior to colonial intrusion.⁴³ To date village land which is under customary land tenure several times is accessed by the government and transferred to general land, for investment purposes or through local governments for the sake of public interest and because law is nit strict on due process to transfer land.

Land laws (Land Act and Village Land Act) respectively have failed to resolve the land problems of the country and this is mainly because it carries elements of colonial administration which were purposely for the interest of the few and they intended land to be a private property. The two pieces of legislation (Land Act and Village Land Act) do not introduce new things to our land tenure system, save for a

⁴¹ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 9

⁴² Makwarimba, Melissa and Dr, Ngowi, Prosper. Making Land Investment Work for Tanzania; Scoping Assessment for Multi-stale holder. Dialogue Initiative. Final Report March 2012. Pg 4

⁴³ *Opcit* Rwegasira pg31

few procedural matters in management of village lands and dispute settlement mechanism.⁴⁴

2.5 CATEGORIES OF LAND IN TANZANIA

Land in Tanzania is divided into three categories, and these categories depend on land administration, and both categories are under the administration and management of the Ministry of Lands Housing and Urban Settlement. There are three categories of land available in Tanzania; general land, reserved land and village land. All these three categories of land have legal implication when it comes to investment; this is in regard to access, titling and registration, land utilization.

2.5.1 GENERAL LAND

General land is land which is not village land or reserved land and it is generally governed by Land Act and the management is directly under the Commissioners for Lands. General land is any land which is neither reserved nor existing a village land, and may, somewhat confusingly, include village large land which is “unoccupied or unused”.⁴⁵ In Tanzania general land constitutes a small fraction of the remaining categories of land as it is just covers urban development. This is because as it was seen in the previous discussion the registration of land and titling was caused by the colonizers hence it was a small part of land they managed to alienate the indigenous. General land which is considered to be 2% of the land, mainly under urban use and supporting around 20% of the population⁴⁶. This category of land has its role when it comes to investment because access to land other than general land one must transfer to general land for her to obtain the Certificate of Incentives from TIC and the transferred land will be under the management of Commissioner for lands. The Land Act is responsible for the administration of general land and it favours this category as it makes it superior, general land can also be unused from village land but the otherwise is not true.

⁴⁴ Olenasha, William, Programme Officer PINGO’S Forum, Member of HAKIARDHI. Reforming Land Tenure in Tanzania: For whose Benefit? (UNPUBLISHED) Pg 11

⁴⁵ Developing commercial bio-fuels through securing local livelihoods and land rights, Information Brief May 2009, Tanzania Forestry Working Group, Tanzania Natural Resources Forum. Pg 6

⁴⁶ Makwarimba, Melissa and Dr, Ngowi, Prosper. Making Land Investment Work for Tanzania; Scoping Assessment for Multi-stale holder. Dialogue Initiative. Final Report March 2012. Pg 9

The Act also went on and provides that should any other written law contradict with Land Act then Land Act will prevail and this is the evidence that Land Act is superior to the Village Land Act. *“On and after commencement of this Act, notwithstanding any other written law to the contrary, this Act shall apply to all mainland Tanzania and any provisions of any other written law applicable to land which conflict or are inconsistent with any of the provisions of this Act shall not extend of that conflict cease to be applicable to land or any matter connected with land in mainland Tanzania”*.⁴⁷ From the words of the provision one can see granted right of occupancy is technically superior to customary right of occupancy. It follows critically that for a person or a company to enjoy the benefit from TIC then he must transfer land from other categories of land to general land. Land laws created unnecessary gaps which because of high demand of land for investment purposes the process of transferring land from other categories to general land create disputes as no due process backed by law governing the process. Land disputes over land accessed for land purposes emanate from legal pluralism which undermines other land tenures and recognizes general land which is simply granted right of occupancy. The definition of general land in itself is a gap left to government officers to use for their interests, as the provisions of Land laws stand it provides wide chances of abuse of land tenure.

Tanzania is a country which is made up with various tribes, and each tribe has its ways of utilizing land basing on geographical location and the nature of activities hence land cannot have uniform utilization. The definition of general land as it is provided by Land Act is subject to abuse of some tribal land, for example pastoralist land. The practice of pastoral activities in Tanzania, it is easy for the notion of unused land be invoked and then offered for to others under granted right of occupancy. This is highly possible with the wind of welcoming foreign investors. It follows therefore that, pastoralists are justified to worry about the increase of such encroachments now that investment is a top priority of the country and because the

⁴⁷ Section 180, Land Act, Cap 113

Act does not provide for effective public participation at the ‘unregistered’ village level⁴⁸

2.5.2 RESERVED LAND

This category of land⁴⁹ is for specific purposes depending on the nature, and the declaration of the same can be done by the president or the commissioner for lands. Reserved Land is land set aside by sectoral legislation as national parks, game reserves, forest reserves, marine reserves, and so forth, and makes up around 30-40% of Tanzania’s total land area.⁵⁰ The management of reserve land however can be under the responsible authority where the land declared reserved land is situated. These lands includes land designated or set aside under the provisions of the Forest Ordinance, National Parks Ordinance, Ngorongoro Ordinance, Wildlife Conservation Act, The Marine Parks & Reserves Act, Town and country planning Ordinance, High way ordinance, Public Recreation and Grounds Ordinance, Land Acquisition Act, Land Parcel within Natural Drainage System, Land reserve for public utilities, declared to be hazardous land⁵¹. This category of land cannot be left out of the discussion as it involves potential land for investment purpose. Reserved land often attracts tourism industry, timber industry, hunting and game activities. Reserved land most of the time forms part of village land as they it is established within village land and the laws applicable interact with VLA.

There are licensing and various permits that are available for an investor to carry on investment purposes within the reserved land. For example, for reserved land which is for wildlife protection or Ngorongoro Conservation Area then the Ministry for Natural Resources and Tourism is responsible for licensing and other required permits. It is easy to allocate reserved land to investors as it is under the management of the authority responsible.

⁴⁸ Elifuraha Laltaika, A Review of the Tanzania Investment Act in the Light of Pastoralist livelihood System. Report Prepared for the Tanzania Pastoralist and Hunter Gatherer Organization (TAPHGO) December 2009. Pg 12

⁴⁹ Section 4(4) c. Land Act Cap 113

⁵⁰ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 38

⁵¹ Section 6, Land Act 1999

Tanzania is blessed with many natural resources which have been used by the government officials including the President to attract and invite foreign investors. This is a legal challenge to investment in Tanzania as reserved land is under various government authorities basing on the law establishing the reserve land. There are several cases that have been reported concerning expansion of reserved land boundaries i.e villages around Tarangire National Park have several times complained over the encroachment of the authority to the known boundaries. The Policy became a thorn to rural communities particularly pastoralists, as it advocates for dispossessions and expanding of boundaries of protected areas at the expense of pastoralist (e.g. Mkomazi game reserve and NCA).⁵² For the purposes of subsection (1), public interest shall include investments of national interest. Now that investment, in particular Foreign Direct Investment (FDI) is viewed as a panacea of our economy, pastoralists have reasons to worry that applicable wildlife management laws can be construed in favour of using their lands for investment⁵³.

The land laws create gaps for abuse of the process as eviction of local communities who own land before the declaration of the same as reserved land. Once land declared to be reserved land then it will be under the authority responsible whereby it is responsible in making various regulations. The authority will be allowing investment activities in land and through TIC investors obtains derivative right of occupancy. According to the available record the background of the Nyamuma eviction case is related to the intended extension of the border of the Ikorogo Game Reserve made by the Serengeti District Council vide a resolution in 1994⁵⁴. This case shows how the government can easily expand boundaries of these reserved lands. For the better future of investment in Tanzania the process of declaring part of village land reserved land shall have a due process which is supported with transparency. It is easy to accommodate investors in reserved land as investors will

⁵² Olengurumwa, Onesmo P. K.. 1990s Tanzania Land Laws Reforms and its Impact on the Pastoral Land Tenure. A paper presented during pastoral week at Arusha from 14-16 February 2010.

⁵³ *Opcit* pg 14

⁵⁴ Rwegasira, Abdorn. Land as Human Right. A History of Land Law and practice in Tanzania. Pg 35

obtain land through TIC with collaboration with the authority under the control of the land. Reserved Land constitutes 28% of all lands in Tanzania⁵⁵.

2.5.3 VILLAGE LAND

Village land is land other than general land and reserved land, and constitutes large fraction of land in the country. Village land supports the majority of rural population taking into consideration that large number of population in the country is found in village. More than 70% of Tanzanians live in rural areas and over 80% earn their livelihoods through farming and livestock keeping.⁵⁶ Before colonial intrusion there was no any other category of land other than village land which was communally owned and administered traditionally. Village land is governed by the VLA and administered by the village assembly. Village land is largely under the customary land tenure as the way of access to land is through customs of a given tribe where the land is situated. This was the only tenure before colonial masters and after independence the government maintained the categories established by the colonials. Granted right of occupancy was meant for first the ruling government and later for few who were then called investors and to support urban development.

The two other categories were once village land then transferred and this transfer will continue as a matter of fact according to land economic setup and the land legal framework. The legal regime over land developed by the British administration was in essence based on giving the state a free hand, to control and alienate indigenous land unencumbered by legal obligations.⁵⁷ To date land laws facilitate the government to alienate village land by using provisions which allows the transfer of land without giving any command to the government to observe due process to make sure the right to own land is not abused. The radical title given to the president is purposely made by the government to maintain free hand in controlling land in the country and this has been a tool make it possible the transfer of land from village land to general land. In other word one can conclude that the government is making

⁵⁵ Focus on Land in Africa Brief, A u g u s t 2 0 1 0. World research institute , Landesa Rural Research Institute. Pg 3

⁵⁶ Land Acquisition for Agribusiness in Tanzania; Prospects and challenges. Lawyer's Environmental Action Team (LEAT) Nov 2011

⁵⁷ Shivji, G Issa Where is Uhuru ? Reflections on the struggle for Democracy in Africa .pg 109.

village land “land bank” for its activities practice over village land by the government is suggesting that way.

The government has been using land as a factor to call for foreign investors, it is maintaining that Tanzania has abundant land which is suitable for investment and this land is none but village land. The growing demand of land for agribusiness, land for tourism industry to a large extent saw the large scale of land being allocated to investors. Much of the land identified as suitable for investment in different parts of the country is, however village land and is used or occupied by local communities in various ways.⁵⁸ This entails that investment in the country involves land and the land is village land and this is why due process in accessing village land is mandatory for better present and future investment in Tanzania.

2.6 CONCLUSION

It can be concluded that the laws that are governing land laws in Tanzania have to a large system inherited the colonial style of land management and administration. However, there are slight changes which can be identified to be an improvement. The land Village Land Act provides for village land registration as well as it recognizes the customary right of occupancy and there is certificate right of occupancy. The literature shows that land demand is high due to various economic activities which directly require land for its implementation. The land categories show that there are legal loopholes that need to be filled so as to avoid the misuse of one category against the other.

Generally, the land laws to a large extent make land an asset to support investment in the country; there are substantial changes that can be picked as the land development. However, there are those impurities which hinder fair utilization of land for both the investors and the indigenous.

⁵⁸ Biofuel, land access and rural livelihood in Tanzania. Sulle, Emmanuel,& Nelson, Fred. Pg 39

CHAPTER THREE

3.0 ACQUISITION OF LAND FOR INVESTMENT PURPOSES IN TANZANIA: LEGAL FRAMEWORK

3.1 Introduction

Chapter two discussed about the history of land tenure system in Tanzania, its historical background and the current land tenure system in Tanzania.

It follows that this chapter examines acquisitions and access to land for investment purposes in Tanzania as it describes how one can access land for investment activities. Access to land before colonial reign was just for domestic purposes and meant to support the livelihood of communities, and there was no commercialization of land as the case during colonial reign and after. Land before colonialism was on communal basis as it was not centralized or made to be private property as it is now. Germany Government passed a decree in 1895 in which it expressly declared all land, except the land already in private ownership or possessed by indigenous communities to be un-owned Crown land vested in the German empire⁵⁹. The radical title vested to the president under the trusteeship of Tanzanians maintained the colonial legacy as it gives the president power matters of land on behalf of Tanzanians. So, the discussion focuses on various legal statutes that regulate access to land for investment purposes.

3.2 NATIONAL LAND POLICY

The National Land Policy in Tanzania came into effect in 1995 after a long time awaited event to happen in the country with vast land with different tenure systems. The 1995 national land policy to a large extent changed land management in the country as it has helped for the enactment of two principal legislations which govern land in Tanzania the (LA and VLA). Economic liberalization contributed or perhaps necessitated the making of the national land policy as land management became more sensitive due to its role in investment.

⁵⁹ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania.. pg 53

The national land policy covers various land-related aspects, but its principal goal appears to be “a clearly defined institutional hierarchy for land administration.”⁶⁰ Institutional hierarchy for land administration is vital because it is obvious that land needs proper administration however the institutional framework that has been laid down is not suitable for the current land demand as it solicits unnecessary land mismanagement. By proper land management we are talking about making sure that land is well utilized for optimum production, with simplified procedures to be followed in acquiring land.⁶¹

The National Land Policy, *inter alia*, reiterates and retains the four central land tenure tenets in a modified form as follows;

- (a) Land is owned by the public and is vested in the President as a trustee on behalf of the citizens.
- (b) Speculation on land will be controlled
- (c) Rights of occupancy whether statutory or customary are and will continue to be the only recognized type of land tenure and
- (d) Rights and title to land under any consolidated or new land will continue to be based mainly on use and occupation.

The above mentioned four central land tenure tenets are crucial in managing the in Tanzania especially after the change of land tenure administration which was caused by the colonialists who wanted their goals of raw materials to support their economy. As regards liberalizations, this meant a package of economy policies and measures adopted especially by the government in the middle of the 1980s to privatize economic resources and encourage foreign investors.⁶² Now therefore with the force of economic liberalization it was important for the government to prepare the document taking into consideration that the country inherited the colonial laws which were necessary to make changes so as to fit in the country which was independent. However, the radical title that the President is given continues to carry forward the element of colonial administration. That it should not be taken that the capacity of

⁶⁰ Gondwe, Zebron Steven. (2001) Manual For Transfers of Right of Occupancy. Pg 23

⁶¹ Nola. The Justice Review. (Vol 7 No. 1, 2008). Twenty years of the justiciability of the Bill of Rights in Tanzania, 1998-2008. Pg 120

⁶² Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania.. Pg 77

the president is undermined but this will make the process more cumbersome as the President as an institution is a busy institution, thus to take care of land and raise high need of investing on land might turn down the integrity of this honorable institution.

The aim of National Land Policy is to promote and ensure a secured land tenure system, to encourage the optimal land use management and to provide for a broad based social and economic development without upsetting or endangering the ecological balance of environment. This aim is not yet attained, there is still a need to improve land tenure system of the country, and land policy must address all the land matters from different aspects of land management. The Land Act and Village Land Act still aspire for amendment so that land tenure and land use can suffice all groups that need land for any purpose. Speculation of land is still high, land for investment purposes is still in a way not considering the right of those who are the owners of the land especially those who are occupying land under deemed right of occupancy. [t]he issue of deemed right of occupancy is nowhere to be seen as secured by the land laws due to the controversy surrounding section 18 of the village land Act,1999.⁶³ The validation of land use into granted right of occupancy is to a large extent infringing customary right of occupancy and this has become a way of taking village land and supply to foreign investors through the validation of land use. Land is space for all human activities and it is because of this fact that responsible governments, the world over, desire to ensure good custody of land through grant and guarantee of land rights.⁶⁴

Good policy maintains good land management to land users, at this time where land is in high demand policy is a tool which shall provide a way for land investment. National land policy reiterates that it will control land speculation, land speculation is dangerous to the welfare of the village land and its owners because few individuals can access huge chunk of land and buy it at a low price and there after they sell it at a

⁶³ Olengurumwa, P.O. Onesmo (Legal Officer LHRC), 1990's Tanzania Land Laws Reform and its impact on the pastoral land tenure. A Paper to be presented during pastoral week at Arusha 14-16 Feb 2010 .pg 9.

⁶⁴http://www.nlupc.org/index.php/highlights/more/tanzanias_experience_with_land_administration_policy_reforms/ visited on 6/5/2012.

high price. In Tanzania land speculation has started to take pace due to land commercialization and the government has opened doors to the world that whoever wants to invest then he is allowed. Real estate development also is to unprecedented extent increasing; all these factors contributing to land demand. Land investment in developing countries in Tanzania has been used by developed countries as a short cut to their prosperity. They sell their technology on matters pertaining to agribusiness, minerals, and other industrial activities to access land in Tanzania.

Majority of Tanzanians as a matter of fact live in rural and is their central source of their needs from social to economic as they either cultivate, undertake livestock keeping, do hunting and any other activity of the like.

3.3 LAWS GOVERNING ACQUISITION OF LAND IN TANZANIA.

Tanzania has several pieces of legislations that govern land and land transaction in Tanzania. The main legislations are two which are LA and VLA, these two provide for the management and administration of land in Tanzania, whereby LA deals with all lands under granted right of occupancy and the VLA deals with village land. These are two main statutes which came after the National Land Policy of 1995; this to a large extent changed the land legal framework in the country since independence in 1961. These statutes can be said to be a product of the Commission of Inquiry on Land Matters which was appointed by the then President Ali Hassan Mwinyi in 1991. The report of the commission came out with its recommendations which created the National Land Policy in 1995. The NLP made it possible for the draft of the Land Bill which was presented to the parliament in 1998 there after passed to be laws in 1999. There are several factors that prompted the appointment of the commission but to mention the few are; lack of clear national land policy to govern the overall management and administration of land; existing of conflicting land laws; increased land demand by investors, local and foreigners; and land disputes, these are the key factors for the need for land reform. However there were other external forces which indeed also accelerated the government to form the commission, these external factors based on economic liberalization. In the midst of all these was the external pressure for political and economic reforms from the World Bank, the

International Monetary Fund, and other international donors.⁶⁵ Other legislations that govern land management are; The Courts (Land Disputes Settlements) Act, 2002, The Land Acquisition Act, 1967, The Forest Act, 2002 and Written Laws (Miscellaneous Amendment) No 19, 2004, The Land Use Planning Act, 2007, The Mining Act, 2010, The Wildlife Conservation Act, The Tanzania Investment Act, 1997. All these statutes in one way have impact on investment activities as there are various opportunities that are attached to the land governed by a piece of legislation. However the Constitution of the United Republic of Tanzania in a way governs land as the right of a person to own asset.

3.3.1 THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA.

The constitution of the United Republic of Tanzania is the supreme law of the country just like in any other country. The study decided to see the insight of this supreme law in regard to land, land as the central axis of the economy of the country therefore it is important that the constitution provide its security. Hence land demands range from those people requiring rural and urban land for settlement purposes, to those who depend on land for their material survival, and others who view land as an avenue for them to undertake socio-economic activities such as religious services, burying the dead, agricultural, and industrial undertakings, pastoralism and other activities.⁶⁶ Land dependants therefore vary in different ways, land still remains the central source to life as it supports the human being existence as well as wildlife and that is why its management is very sensitive hence it needs a well-established institutional framework for land administration.

The constitution shall provide a clear set up of governance to land, there shall be principles of land that are to be shown in this supreme law of the land. This is the document which is expected to be vibrant on matters relating to land especially at this time were land is becoming scarce due to several obvious factors. However, the Tanzania constitution despite the sensitivity of land does not seem to care much or the extent expected, the supreme law indeed failed to accommodate land properly.

⁶⁵ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania.. Pg 88

⁶⁶ Nola. The Justice Review. (Vol 7 No. 1, 2008). Twenty years of the justiciability of the Bill of Rights in Tanzania, 1998-2008. Pg 119.

No specific part or provisions that talks about land as one might have thought to be the case. There is only one article which that has been used by courts to invoke land as a constitutional matter. The constitution of Tanzania provides as follows: every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.⁶⁷ This does not suffice the need of tenure security over access to land for various purposes. Land matters are serious and the constitution seems to be left behind, it shall be more elaborative, in the article no word land which means land has been put in the same value with for example a right to own a car. The commission⁶⁸ during the inquiry came out with recommendation that land should be a constitutional matter in its wide perspective but surprisingly to reasons known to the government itself the recommendations of the commission were left without any weight.

On the basis of these areas the Commission made recommendations including, *inter alia*, that matters of land and the right thereto be constitutionally recognized and protected; that the tenure system should allow for the classification of land into national land and village land in order for the radical title to be diversified and democratized into the Board of Land Commissioners and the Village Assemblies respectively; instead of the pre-existing system that created a monopoly of a radical title into the President; openness and transparency in land allocation procedures; peoples participation in land administration and a viable system of dispute adjudication.⁶⁹ So, the Tanzania constitution failed to accommodate the recommendations which are the key to the land rights protection for the healthier land investment.

⁶⁷ The constitution of the United Republic of Tanzania of 2008, Article 24(1)

⁶⁸ Report of the Presidential Commission of Inquiry into Land Matters, Volumes I, 1994

⁶⁹ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 90.

3.3.2 LAND ACT

Land Act was enacted in 1999 and this came after the National Land Policy of 1995, born from the recommendations of the Presidential Commission of Inquiry into Land Matters of January 1991. The LA is the piece of legislation which essentially governs general land. The Land Act essentially provides for the basic law in relation to land, other than the village land, that is to say: the management of land; and settlement of dispute and related matters.⁷⁰ At the time without the LA Tanzania mainland by then Tanganyika was using the **Land Ordinance of 1923 which was enacted by the British who were controlling Tanganyika** as the trustee to the League of Nation; to govern and manage land and there were no village land. Land matters as a matters of fact is very complex, especially in a Tanzanian country that has been blessed with vast land with different climatic conditions which has influence on population and the nature of socio economic activities that takes place in a specific part of the country. The land Act comprises fourteen parts with 186 Sections which apply to general land. The Act to a large extent managed to accommodate the necessary provisions which regulate access to land for investment purposes and the legal protection for the tenure over the land other than village land.

Land Act provides for the categories⁷¹ of land in the country, and the Act to a large extent is seen to have wide coverage over land in Tanzania compared to village land Act. The dominance of Land Act also can be observed in the interpretation section as it provides that the unoccupied or unused village land is general land. Land in Tanzania being a public property entails that right of the occupier is only to the extent of the purposes he acquired it and not as a private property as how the colonizers wanted it to be. In the era of economic liberalization land as a public property faces challengers as it allows the misuse of others rights for the reasons of public interest, the President who is the trustee of Tanzania land can use this reason to transfer village land to general land without any due process. The modern economy makes land more suitable to be a private property but only under provisions on land laws that give power the government after proper legal guidelines to take

⁷⁰ *Ibid* pg 91.

⁷¹ Land Act, Section 4(4)

land for the public interest and public interest has to be clearly defined to avoid the misuse of law.

This has not changed and under the present Land Acts public interests includes private investments; officials may use this loophole/advantage to alienate locals from their land under the umbrella of investments as public interests.⁷² Since Tanzania has accepted economic changes to mean economic liberalization land law also has to change so that land can be a private property and the radical title that the President has been conferred by law is extinguished. The radical title conferred to the president is a source of land speculation as the officials through law can misuses the land and allocate to investors while the indigenous are suffering as a result of community unrest which most of the time end up causing land dispute between the indigenous and investors.

Local government authority has no legal power to process right of occupancy,⁷³ it denies the local authorities which is constitutionally established to deal with allocation of land to investors. This denial could be the reason why land grabbing is increasing as the local authority technical personnel are not responsible hence they are not accountable for any default. Local government authorities has land officers who could be used to provide these services as they are within and employed to serve the local community. Local government administratively works with the community therefore allowing them to be part of the process could widely reduce unnecessary claim as the community cannot complain because local government works with political leaders who are the people's representatives i.e councilors. The National land policy could have seen it and found a way to incorporate the local government in the process and the assertion that land is the public property could be more meaningful as there is public involvement from grassroots. A local government authority, shall not, unless specifically authorized by this Act or any regulation made under the authority of this Act, make an offer or grant any right of occupancy to any

⁷² HAKIARDHI, Land Grabbing in Post Investment Period and Popular Reactions in the Rufiji River Basin. Pg 32

⁷³ Section 18 Land Act

person or organization and any such purported offer or grant shall be void.⁷⁴ This prevention is one causing bureaucracy and lack of transparency in the land allocation process. It would be wise for the legislature to find a way that allows full local participation of local government in the process of land allocation even if the final say could be under the commissioners for lands, this could be a good way of maintaining transparency even avoiding double allocation of land.

Foreign Investors though the law is not certain can access land through TIC or by identifying land and purchasing it and thereafter the investor has to just receive the Certificate of Incentive from TIC. There are greater chances that the land obtained by the foreigners by negotiating with the village council and thereafter approval from the village assembly to be marred with improper procedure as well as entering into false agreement as the villages are not technically accorded with the ability to deal with investors. This in itself could be a reason that the Local government authority be given more power to deal with land and this will for sure increase accountability to land officers.

The Act provides that; the local authority upon receiving the application for a granted right of occupancy, the same shall be forwarded to the commissioner for recommendations.⁷⁵ These cause unnecessary delays for the applicant has to wait for the recommendation from the commissioner; it was supposed to be the other way round that the local government has to submit recommendations to the commissioner upon the receipt of application of right of occupancy. Land for investment purposes would be at a better chance to be successfully allocated through the local government in collaboration with Tanzania Investment Center and the commissioner for lands would only receive information and given time for his comment.

Foreign investors can occupy land through TIC, a person or a group of persons, whether formed into a corporate body under the companies Act or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are no-citizens may only obtain a right of occupancy or derivative right for

⁷⁴ Land Act Section 14

⁷⁵ *Ibid* Section 14(5)

purposes of investment prescribed under the Tanzania Investment Act.⁷⁶ The good intention of the parliament can be seen here especially liberalization of economy where boundaries are open to come and invest in the country; the establishment of the center for investment as well as the enactment of the Act is commendable. However there are shortcomings that seem to be contributed because of the presence of this center and it is a causative due to the way it involves itself in land matters. The center has now become a lee way for easy access to land by foreigners without enough criteria and through TIC land speculation is high. Land laws and Tanzania Investment Act are lacking a clear link, this can be seen as nowhere specifically provides the connection between the Centre and the Land commissioner though practically they work together.

The procedures to access and acquire land for investment purposes is not certain if one considers that and investor can be allocated land by the Center itself or he has an option to search for the suitable land and thereafter obtain the certificate from the Center. The Act provides as follows; land to be designated for investment purposes under subsection one of this Section shall be identified, gazetted and allocated to the Tanzania Investment Center which shall create derivative rights to investors.⁷⁷ From the words of the statute it follows that the role of TIC is to identify, gazette and allocate land to foreigners; the critics that follow are where is land that the centre has to identify? What are the criteria to be followed?; the Act both are silence on this.

Moreover, foreign investor can identify the suitable land for his project without any aid from TIC, and make all contract arrangement and thereafter submit the document for the letter of offer and then to TIC, this is a practice but nowhere is written in any legal document to provide guidelines for the arrangement. This arrangement is subject to critics as it opens loopholes to scrupulous land officers to collude with investors together with village assembly and make false contract agreement which at the end may result in complaints from the locals. The challenge which is facing TIC with the identification of land which then is to be gazette is what is that land which can be identified and wait for investors to be allocated. The local community may not

⁷⁶ *Ibid* section 20 (1)

⁷⁷ *Ibid* section 20 (2)

be happy with the arrangement as they stop to have access over the land and are paid compensation which is also unreliable as the value sometimes does not match with the size of land and future prospect of the land in question. This is another kind of land speculation, it is wise that the Center, TIC conduct a research and have all viable and accessible land for investors whereby if they come they identify and the process of allocating land to investors starts there. If the process of identifying land and gazetting it waiting for investors then this should be the fourth category of land in the country.

3.3.3 VILLAGE LAND ACT

This piece of legislation was intentionally enacted by the legislature to provide for the management of village land. Village land support the majority of population of the country, and it is expected that 70% of Tanzania land is village land which supports rural life. Village land is important when it comes to economy of the country as well as food security. This is because large scale of land suitable for investment is available in village but at the same time the food crops are cultivated in village land, business crops for exportation also come from village land.

Access to village land just like general land has to follow procedures laid down by the Act⁷⁸ there are conditions attached to the one who occupies the village land. It should not be forgotten that the right to apply for and be granted a right of occupancy over the village is also available under, and is regulated by the Village Land Act.⁷⁹ However, the difference that can be seen is the fact that village land was there before all these other categories therefore most of village land occupants have no these certificates of customary right of occupancy, as compared to general land whereby on must have the certificate of right of occupancy and with fulfillment of the attached conditions.

Village land has been continuing to be a victim of modern investment including FDI as well as urban development to mean urban expansion, all these depend on village land and the transfer of village land to general land is the consequence. The village

⁷⁸ Section 22, Village Land Act

⁷⁹ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 104.

land became inferior to general land as the transfer of land is under the control of commissioner of lands with very little participation of village land council and where there is participation the village land council seems to be toothless. The village Assembly which is the supreme foreseer of the village land seems to be lacking full mandate over the village land whenever there is intervention of the commissioner of lands. Village land is under the managerial authority of the village councils, which is answerable for land management decisions to the village assembly.⁸⁰ The commissioner of lands has power to provide directives to the village land council on matters pertaining to village land and the directives seems to be binding; with the legal power vested to the commissioner of lands then the law itself took away the village assembly superiority over issues of village land.

Amongst matters also considered at that workshop, but which were not, eventually, included in the National Land Policy or the Land Act, 1999 include the reintroduction of freehold tenure; divesting the President of reversionary (some call it “radical” title); the vesting of “national land” in a “land commission”; and vesting of village land in the “Village Assembly”.⁸¹ These provisions sound good to make sure land management in the country is properly structured compared to what the national land policy and the Land law Acts provide. The recommendations suit the current land demand which makes land a commodity or capable of being owned as a private property, the existing legal framework which seems to restrict the whole community to realize the role of land in investment but also allows the violation of human rights which is a right to own property. Despite the fact that village land to a large extent is the land which is allocated to foreign investors but the Act is silent on the matter, the LA only provides for access to land by foreigners for commercial purpose. This continues to show the dominance of LA to VLA something which does not provide for better future of village land. Moreover, the definition which is found in the LA concludes the disparities that surround these two pieces of legislations; that the general land includes unoccupied or unused village land⁸² ; this is quite unfair and

⁸⁰ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. pg 38

⁸¹ Gondwe, Zebron Steven. (2001) Manual for Transfers of Right of Occupancy. pg 4

⁸² Section 2(interpretation section) LA

the legislature was not supposed to allow this serious mistake which undermines village land composition. Unfortunately, there is no provision in the Land Act which provides the definition of unoccupied or unused village land. Even seemingly unoccupied lands traditionally may be important areas for seasonal livestock grazing, extraction of forest products or other important livelihood uses.⁸³

The VLA made a commendable step by providing pastoralist land in the provision of the statute to signify the recognition of that traditional livestock keeping; but the definition of general land and the traditional livestock keeping provides doubts. General, land is any land which is not reserved land or village land, and may somewhat confusingly include village land which is “unoccupied or unused”.⁸⁴

The VLA is silent on access to land by foreign investors or non-citizen, much as it has been established that village land suffers much on foreign investors who wish to invest on land but the Act which provides the management kept silent; this is unacceptable. The village land therefore is allocated to foreigners or non-citizen for investment purposes without any due process provided under the VLA and all these are managed by the Ministry responsible for lands and the Commissioner of lands. The village land Act provides the legal framework for management and administration of village land, which is by definition held under customary rights of occupancy held in perpetuity.⁸⁵ It is therefore important that the VLA address all matters that may require the transfer of the land from one category to another, any arrangement that affects the interest of village land or the community as a whole. There are dangers that the village is the direct victim but the village land is not involved or the Act remain silent but the LA is then addressing the issue, all these leave the village land management into a dilemma. Amendment to the LA passed in 2004 also provides for joint ventures to be established between private companies and villages, whereby it is used for commercial purposes but villages retain their rights over the land subject to certain agreed limitations.⁸⁶

⁸³ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 38

⁸⁴ *Ibid* pg 38

⁸⁵ *Ibid* pg 38

⁸⁶ Land Amendment Act, 2004.

3.3.4 WILDLIFE CONSERVATION ACT

The study saw it important to include the insight of the Act as it has effect on land management for land found within wildlife conservation areas in Tanzania. The Wildlife conservation areas several times caused land disputes between the indigenous and the government or investors who are carrying out their business in conserved land for wildlife. Wildlife conservation therefore involves the administration and management of land which also may attract investment especially tourism investment. Land and wildlife conservation are inseparable as wildlife depends on land and there are steps to identify land as a conserved area and it is attached with sanctions and other conditions.

Wildlife conservation areas several times attract tourism activities and Tanzania has experienced huge capital that has been invested in those areas such as construction of hotels, camping, and blocks for hunting in game reserves. Encroachment of the pastoral lands to allow huge investment and expansions of the protected areas has been an order of the day and leave pastoralist as internally displaced people.⁸⁷ The displacement is caused because the protected areas are not supposed to be entered by the indigenous and the declared area follows that the people who were the occupants of the land have to vacate from the land. The Act however provides for the objectives of this piece of legislation.

The Act provides; for the purpose of giving effect the provisions of subsection (1), any person who has a right in any land within an area declared to be a game reserve shall be entitled to adequate compensation as per the provisions of the Land Acquisition Act and Land Act. The declaration of these reserves has experienced several bad precedents as the indigenous suffers consequences of the declaration. The authorities do not provide for proper due process which will allow the inhabitants of the land to have enough time and compensation which support their new life. Most of the time the land to be declared as wildlife conservation if it is found in village land which is owned by villagers for various activities such as

⁸⁷ Olengurumwa, P.O. Onesmo (Legal Officer LHRC), 1990's Tanzania Land Laws Reform and its impact on the pastoral land tenure. A Paper to be presented during pastoral week at Arusha 14-16 Feb 2010. pg 20.

grazing of livestock, hunting and cultivation and sometimes shifting cultivation, and, once declared the reserved area then it follows that they have to surrender their land and the extinction of access for whatever reason. In all pastoralists' areas where Game Controlled Areas are in village lands, conflicts over land mostly involving investors are the norm rather than an exception.⁸⁸

The law then must provide the due process to be followed by the government before a certain land is declared to be a game reserve, this is more needed especially now where land is in high demand for investment purposes. The law also should find a way of providing restriction on eviction of local communities who live on the land declared to be a reserved land otherwise a participatory study shall be conducted to prove the need for the eviction. Proviso provides; provided that in the case of land in a rural area which is used for agricultural, pastoral, or mixed agricultural and pastoral purposes, the land shall not be deemed to be vacant ground unless such land has not been used for cultivation or pasturage or mixed cultivation and pasturage, as the case may be, at any time during the period of twelve months immediately preceding the publication of the notice of in the Gazette stating that the land is required for a public purpose⁸⁹. This proviso creates some sort of confusion by providing a period of twelve months; this is unfair to local community or indigenous who own such land. These communities practise shifting cultivation or shifting pasturage, twelve months is does not mean vacant land or perhaps they moved because of draught or diseases and after a while they come back for their normal business. This is another way which may create land disputes with the government and this undermines the economics of the local as well as for investors if the land is granted to them.

The nature of pastoral communities' activities in Tanzania is known that they don't settle in one place they keep shifting from one place to another searching for water and pasture for their livestock. Hence, vacating from one point of land for a period of twelve months is usual and this suggests other criteria to be established to consider the land vacant. To this end, it requires mobility or unrestricted movement of

⁸⁸ Elifuraha Laltaika, A Review of the Tanzania Investment Act in the Light of Pastoralistlivelihood System. Report Prepared for the Tanzania Pastoralist and Hunter Gatherer Organization (TAPHGO) December 2009. Pg 14

⁸⁹ Section 5 (4) the Land Acquisition Act .

livestock from a point of resource abundance to the point of resource scarcity as may be determined from time to time using indigenous knowledge system (IKS) or as it may be necessitated by ecological needs.⁹⁰

The legislature should find a way to properly legally protect the right of communities over their customary land. The law sets unnecessary procedures that ultimately create chaos between the government and or investors, it presses for a mandatory requirement that a person or locals have to seek for the permission to enter into the land declared to be game reserve for grazing livestock. The Director of the game is the one responsible for the grant of the permission to access the land for grazing or hunting⁹¹. The village government therefore has nothing to do with the management of the land. This process just creates unnecessary bureaucracy and undermines the power and the role of village government. This will outright be in contradiction with the powers that Village Councils have been given under the provisions of the WCA and LGA⁹².

Nevertheless there is another challenge that remains on land which was declared to be game reserves and it happens that the communities that own the land are pastoralist or perhaps the minority hunters. The challenge is the method of computing the compensation of the people who are supposed to vacate the land. The question of unexhausted improvement is remaining unfair to the pastoral communities, they own cattle, and the law does not provide what then shall be done. The land acquisition provides that the alternative land is only to the option of the government if it sees it ok therefore it is not necessary that these victims get land for their cattle. Pastoralists lost their homes and properties during evictions in many parts of the county.⁹³ The kind of livestock keeping that is in practice needs large scale of land a fact that is forcing them to access other land which is not meant for the livestock keeping. This also has several times caused conflict between the pastoralist and farmers. The condition undermines the domestic investment and the future economic strength of the nation.

⁹⁰ *Opci.t* pg 12

⁹¹ Section 45 of Wildlife Conservation Act.

⁹² *Opc.it* pg 13

⁹³ *Opci.t* pg 12

3.3.5 THE LAND ACQUISITION ACT

This is the piece of legislation which was enacted specifically to deal with the land acquired for the public use, and that is also the land acquired by the president. It is important to describe this piece of legislation as the one which provides for the procedures to be followed by the president when he is directing the minister. The president as the matter of fact in Tanzania is vested with power to acquire land for the public interest however there are conditions to be followed and the protection of the owners of the acquired land is of paramount importance. It is so important to regulate the process because if there are no regulations then it easy for the locals or perhaps the indigenous to lose their rights attached to the land. Most important for local communities, however, is a loss of rights over customary lands, and the way this could negatively impact local villages' livelihoods.⁹⁴ The term public use is ambiguous as it stands, nevertheless it includes investment, the most affected land to this regard is village land. Public interest is not sufficiently defined save for the indication that public interest can mean development projects which include investment.⁹⁵ Despite the presence of this Act, there are so many untouched crucial areas that are important to maintain the rights of land owners. The amendments of the land laws that have several times taken place reflect that they are more of private property and hence the protection shall be of paramount importance. The failure of the definition to clearly define the term public use is of course a way to take someone's property on the basis of public while in real sense one is going to make profit out of that land.

3.3.6 TANZANIA INVESTMENT ACT

Tanzania in late 1980's enacted a number of laws that will regulate the change of economy which was in transformation to privatization of the major means of production; this was mainly to harmonize globalization which necessitated economic liberalization. So, this piece of legislation came out specifically to promote and

⁹⁴ Sule, Emmanuel and Nelson, Fred. Biofuels, land access and rural livelihoods in Tanzania. Pg 3

⁹⁵ Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. Reforming Land in Tanzania: For Whose Benefit? Pg 12.

regulate investment in the country, it also establishes Tanzania Investment Centre with the sole duty of promoting investment in the country.

The provisions of the Act are grouped into four main parts. These are; preliminary pages 1-2, the centre and its functions 4-14; provisions relating to investment 15-26; General provisions 24-31.

The centre shall among other things initiate and support measures that will enhance the investment climate in the country for both local and foreign investment.⁹⁶ This Act presided with Investment Promotion ACT, which then repealed with motive to accommodate effectively the need to improve investment in the country. The Act widely supports investment in the country as there are a lot of improvements and opportunities that are provided by the law. The Act for example provides that the centre shall assist investors to access land and the Act further allows that even foreign investors can access local financial institution and process loans.⁹⁷

A foreigner therefore can access land and makes it a security to the loan; this encourages and builds capacity to investors; but at the same time the demand for land is increasing and this needs good guidelines for the access of the same. However, the law does not provide the time or the stage in which the investor can use land as the security; that is after the payment of the compensation to the indigenous/local owners or before the payment of the compensation. As a result, communities carry a great deal of risks, in that they are agreeing to the transfer of land from village land to general land, and from village to central government authority, on the basis of an investor's presumptive ability to use land title to secure bank loans.⁹⁸

The need for biofuel agribusiness is to a large extent open doors to land demands, large scale of land has been requested and allocated to investors. The area of land which each commercial biofuel investor in Tanzania has requested has varied from 30,000 ha to two million hectares of land at a time.⁹⁹ All hectares in a way have an authority of TIC and this makes the law to be of more effect on land matters. There is

⁹⁶ Section 6, Investment Act

⁹⁷ *Ibid* Section 25

⁹⁸ Developing Commercial Biofuels through securing local community's livelihood interest. Information Brief (2009). Tanzania Forestry Working Group. Pg 7

⁹⁹ Sule, Emmanuel and Nelson, Fred. Biofuels, land access and rural livelihoods in Tanzania. Pg 15

a legal problem which can be seen in accessing land through TIC as the land required by TIC is not legally specified as to the acquisition of that land. Many of these allocations have become a veritable source of complaints and land disputes in that, either the customary land rights have been disregarded, or the present and the future land requirements of communities have not been considered, or both.¹⁰⁰ There is not enough general land that can support this demand of large scale of land and therefore the village land is the option for the centre but this has been several times a cause of disputes.

Another observation that can be argued is the fact that there is no any form of liability that has been attached to the investor. This may lead the investors to play around with malpractice such as corruption, fraud and any other form of the kind and the law is silent and this is dangerous as there are investors both foreign and local investor who go direct to villages and negotiate to get land

3.4 THE RADICAL TITLE

The president of the United Republic of Tanzania plays a major role in land administration, the land in Tanzania is under the trusteeship of the president, and this is the power given by the laws of the land. However, to a staunch critic of colonial legality, this legal reform has not all together altered the land tenure as it continues to affirm 'a radical title' that is, it still vests all land namely public land, and its administration in the President as the trustee for and on of all citizens in Tanzania and as such, does not repeal the Land Acquisition Act.¹⁰¹ With this power vested to the president, it follows that the president is among the important institutions in land administration and it is kind of apex in decision making on land matters. The law makes it public property and that is the way that the president can use his power to designate land compulsorily for public use. The application of the word public land and public use causing some confusion if one infuses with the change of wind in respect to land demand for investment purposes and investment can be included to

¹⁰⁰ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 77

¹⁰¹ Accumulation by Land Dispossession and Labor Devaluation in Tanzania. The Case of Biofuel and Forest Investment in Kilwa and Kilolo.(2011) Land Rights Research & Resources Institute. Pg 9

mean public use hence compulsory acquisition by the president. The power vested to the president can be seen from different angles as he can transfer land from one category to another category and all these changes of land category have some economic effects on investment.

The village land Act empowers the president to transfer in public interest –any area of village land to any other category of land whereby under the Act the term ‘public interest’ also includes “investments of national interest”.¹⁰² This arrangement is not suitable as it undermines the constitutional right to own property but nevertheless the public use is not a strict meaning so that one can clearly understand and the community must agree on content of the definition. As the way laws of land stand it is easy for land commissioner to advise the president on acquisition of land which actually is for private benefit and not for the public which one can think of.

The powers vested to the president on land matter need a clear description and this must be done in respect of the current existing nature of the economy and also in consideration with the idea of land to be an economic capital which embraces the development of all Tanzanians. The problem with the radical title is it provides unlimited powers to the president and assisted with the definition of land; that is all land in Tanzania is public land.

3.5 LAND MANAGEMENT AND ADMINISTRATION

Land in Tanzania is attached to the executive as it can be seen from the President flowing down to the minister and then to the land commissioner who is also found within the ministry of land; both the minister and the land commissioner are appointed by the president. The minister is responsible for all land matters irrespective of the category; he is also responsible for policy formulation. The commissioner as the president appointee has duties to monitor and foresee the development, administration of day to day land administration and he is responsible and accountable to the minister. This kind of administration is weakening the land administration as it is too bureaucratic and this hinders the land rights protection

¹⁰² *Ibid* pg 10.

especially for the indigenous. All these two important leaders of land are appointed to the president who is also vested power by land laws and therefore it follows that the important aspect of check and balance is denied.

Land management and the role of communities provide legal uncertainty, because central government controls land through local institutions, which are vested with powers over it¹⁰³. The practice shows that once the investor identifies the land that is suitable for his project or submits his application through TIC, the ministry through the land commissioner and sometimes the president allocates the land to the investor without any further consultation. The law therefore does not provide a room for public participation so as to collectively approve the allocation of land to the investor. Public participation would to a large extent prevent the occurrence of land dispute and provide a bright future for the economy of the country.

The law does not provide the tenure of the land commissioner, this is for real a mistake since the role he is plying is of great importance to the community, the law does not provide conditions that can be used to sanction the commissioner once he goes against his obligations and moreover to hold him accountable. The land administration of the country contained elements of the colonial administration and this is because the state has much power and authority over the land matters. Though the land policy and land laws are the result of the land reform which came after a lot of complaints from the public but it is still within the ambit of colonial legacy which undermines the essence of public land for the benefit of the entire community of Tanzania. The system of administration is in favour of the investment just for the government to achieve its goals without providing the community an opportunity to benefit from their land; it also allows a group of few or a certain class of people to benefit from land. Land tenure in rural Africa is often characterized by high level of insecurity, as a result of the colonial legacy of centralized ownership of land by the state, coupled with weak mechanism for accountability and enforcement of land

¹⁰³ Bofuels, Land Grabbing and Food Security in Africa. Matondi,(2011) Prosper B, Havnerik, Kjell and Beyene, Atakilte. Pg 76

rights.¹⁰⁴ Land as a part of life to the majority of Tanzanian the administration must be structured in a way that it allows participatory decision making. The administration while performing the obligations of the policy of the government and it shall also assure the right of indigenous; land has to be economically viable even to rural indigenous.

3.6 VILLAGE LANDS MANAGEMENT

Village land by virtue of law has given a separate administration and management from that of general land though according to the nature of institutional framework there are times where village land is intervened by administrators other than village administrators. As a fact that a large fraction of land in Tanzania is found in village rural land whereby its right of occupancy is under customary right of occupancy, Tanzania is calling for foreign investors to come and invest in the country; one of the factor they keep telling the investors is that the country has enough land which is suitable for investment. However, the definition of land that is provided in under Land Act is confusing and ambiguous as it includes unused or unoccupied village land.¹⁰⁵ Village land is to a large extent land which is accessible for investment purposes and again it is reliable source of economic survival to majority of rural people who form the large part of the population of the country. The nature of life and economy in rural areas is neither universal nor formalized; it is therefore a challenge to say the land is unoccupied or unused. The land can be considered unoccupied or unused but the indigenous in fact are depending on that land to support their life either economically or other traditional functions such like spiritual events. These tensions are compounded by conflicting definitions of ‘general land’ and ‘village land’ among other areas of apparent ambiguity in the nation’s land legislations.¹⁰⁶

This ambiguity is cemented by the fact that village land administration is not independent as the land commissioner is legally given power to provide advice to

¹⁰⁴ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 8

¹⁰⁵ Land Act, Section 2.

¹⁰⁶ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 9

village council and they are supposed to consider such opinion of the land commissioner¹⁰⁷. The construction of the words of the provision means that the land commissioner has power over village land. The policy of the country is to attract investment and foreign investors, the land commissioner with the policy is easy and gives him a reason to intervene village land by provide advice to the village council; and the village council is unfortunately not composed of technical personnel. At best village councils are an extension and servants of the central bureaucracy in the management and administration of village lands.¹⁰⁸

The village land administration and its management framework is weak to meet the demand of economic liberalization which warranted the commercialization of land in Tanzania. It follows that it does not seem likely that the Village Land Act will be conducive to economic growth and/or improved food security¹⁰⁹. Village land therefore needs conducive law as it is facing this challenge of globalization and investment policy of the country; the TIC is responsible to identify large scale of land “land bank” to allocate investors. Without firm laws to regulate village land then land rights protection will not be seen and at the end there will be increase in land disputes which will harm the economy of the country at large.

3.7 CONCLUSION

This chapter examined the procedures for access to land for investment purposes in the country. It has spelt out the necessary procedures that the investor is required to follow for the acquisition of land. It has touched various pieces of legislations that provide guidelines on access to land and its management. The chapter saw it that the legal pluralism that involves land management marred the stability of land management in the country. The provisions that are available within the pieces of legislations cause the weakness of land management as they make land access complex with uncertain and ambiguous provisions. The legal statutes are not efficient to enable stable investment on land which supports equal opportunities to

¹⁰⁷ Section 7 village Land Act

¹⁰⁸ Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. Reforming Land in Tanzania: For Whose Benefit? Pg 23.

¹⁰⁹ Kwonkwo pg 147.

all, that is local and investors both foreign and local investors. The radical title is a major cause of acquisition of land which violates land rights. The president is vested with much power to deal with land a fact which allows misuse of the power. The land acquisition Act accords the president power of compulsory acquisition; the compulsory acquisition of land is for public interest. However, the problem that rises is that the question of what amount to public interest is still not certain as it includes investment for the national interest.

CHAPTER FOUR

4.0 PRESENTATION OF FINDINGS AND ANALYSIS

4.1 Introduction

This chapter provides for the analysis of land laws and data collected so as to examine the strength of land laws and the strength of TIC legal framework on land matters in the country. Moreover this chapter provides the study findings from respondents who interviewed and who supplied questionnaires to make researcher study complete. In this study, the totals of four (4) people interviewed and two (two) questionnaires were distributed and all were back after filled which constitute 100%. This means to a large extent, the study was successful in collecting and getting information as it was intended.

4.2. RESEARCH FINDINGS AND EXAMINATION OF THE STRENGTH OF LAND LAWS

Under this chapter the researcher presents the findings of the study as per the data collected through questionnaires and interviews. The essence of the study is to look whether land laws in the country assures security to local and to assess the legal frame work of TIC on land matters.

For the purpose of accomplishing this study, the researcher used two types of data collections methods; the first one involve the secondary data collection in which various text books, pieces of legislations, research reports relevant to the topic were consulted. But on the other hand the study used the primary data collection method through which interviews and questionnaires were used to facilitate the acquisition of some information relevant to the study. However in presenting the data collected the researcher analyzed collectively; both the respondents who interviewed and those who were supplied questionnaires and the library findings.

The findings collected in library, internet and respondents shows that there is an existing problem on land acquisition for investment purposes. Both experts and non experts on land laws confirmed that the land laws are weak and TIC contributes land

disputes over land accessed for investment purposes though in different angles basing on their knowledge. Land laws considered to have loopholes which create problems which lead to disputes among investors and local communities.

4.2.1 INADEQUATE COMPENSATION

Respondents in answering whether the land laws in the country properly addresses the processes so as to protect land rights for local occupant said it is properly stretches the protection. This is a response of respondent except respondent from TIC who remained silence on the question. The respondents complained of inadequate compensation for the land which is compulsorily acquired for investment purposes and this has been always a factor for land disputes between investors and the surrounding communities. They lamented on the procedures that normally used by the government as they are not transparent. The respondent also complained that laws does not protect the right of local owners as the government proceed in acquisition of land even if the local does not agree with the compensation.

Inadequacy crowned with delays can be devastating, given the inflationary trends of the last twenty years.¹¹⁰ This was a discovery by the commission from the public, as compensation is among the serious complaints on land matters once taken by the Government for reasons of public use. Today the situation is prevailing as the compensation process is yet to stabilize as there are no strong legal provisions to regulate the procedures and assure adequate and timely compensation. The most recent example about people's dissatisfaction for the compensation payable in the process of land acquisition has been the case involving the Kipawa residents in Dar es salaam and the Government¹¹¹.

¹¹⁰ Report of the Presidential Commission of Inquiry into Land Matters Vol. 1. Land Policy and Land Tenure Structure. Published by the Ministry of Lands, Housing and Urban Development, Government of the United Republic of Tanzania I cooperation with the Scandinavian Institute of African Studies, Uppsalla, Sweden. Pg 86

¹¹¹ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania.Pg 208

In Tanzania, as in many other countries the central government retains the legal right to appropriate local villages' or private individuals' land.¹¹² The land laws structure is bureaucratic and it does not allow individuals to exercise their right of fair and equitable compensation. The VLA states as follows; No village transfer land shall be transferred; (a) until the type, amount, method and timing of the payment of compensation has been agreed upon between; (i) the village council and the commissioner; or (ii) where subsection (3) and (9) apply, the persons referred to in those subsection and the commissioner. The law therefore mentioned criteria before the transfer of the land but it have the following weaknesses; the first on is the commissioner has to agree with the village council. Village council is the team of few people who cannot make any decision on behalf of the village.

The village assembly is the supreme decision maker of the village land, making agreement with the council itself without mentioning village assembly decisions which is normally through a public meeting is to deny individuals their right collectively. The second weakness of the provision is it provides power to the land commissioner to decide and this again is evidence that the land laws are weak as there shall be an independent board which deals with land matters. Within the land acquisition process, land valuation and compensation practices are currently poor and have serious flaws in the way community consultations are carried out, including political interference, lack of transparency, lack of local awareness of the process, and lack of constructive engagement between investors and local communities¹¹³.

Land laws in the country by necessary implication seems to embrace land as a commercial asset, this is seen in the land Act and the Land Amendment of 2004 and extending land as a private property; however this is not the case in village land. Village land has been a victim of the Land Act and national policy and other laws of the land. For example as a matter of law an investor can use land to access loan on financial institutions but transfer of land to general land is a requirement but it does not strictly provide a means that gives individuals a handsome compensation over

¹¹² Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 51

¹¹³ The Oakland Institute UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA: TANZANIA. Pg 45

their land. It thus appears that in relation to the protection of collective rights to communal lands, the Tanzanian Land Acts could be seen as in line with a free market-oriented system of land management.¹¹⁴ The provisions of Land Act and VLA respectively accelerate poverty and food insecurity and this may add as factor for land dispute; it does not provide a way that foresees timely, adequate and justifiable compensation to local land owners. This will result to unsustainable investment in the future.

4.2.2 LAND: POORLY PROTECTED BY THE CONSTITUTION

Indigenous peoples' right to land is so important that many have linked it with some aspects of the right life¹¹⁵. The respondents affirmatively agreed on the question whether the Constitution of the United Republic of Tanzania Stretches protection to land rights. They also commented on the need to make sure the constitution provide protection to all land owners as land shall be a constitutional matter. It is therefore inconceivable to see that the supreme law of the land does not the required protection to this vital property which supports life. The report of the commission vehemently suggested that there shall be a chapter in the URT constitution specifically providing articles for land¹¹⁶. The commission saw the danger of living the ordinary laws to govern land as they can often be amended by the government; the constitution therefore is supposed to provide principles that are to guide any amendment to assure non violation of land rights. International donors have not only pressing for the liberalization of land ownership, but also providing important support for new laws, reforms, and projects which are blamed for the continuing assault on an already weak and almost non existent system of protection afforded to native communities' land rights.¹¹⁷

¹¹⁴ Kwonkwo, Albert. Land Rights. Pg 149

¹¹⁵ Kwonkwo, Albert. Land Rights.pg 55

¹¹⁶ Report of the Presidential Commission of Inquiry into Land Matters Vol. 1. Land Policy and Land Tenure Structure. Published by the Ministry of Lands, Housing and Urban Development, Government of the United Republic of Tanzania I cooperation with the Scandinavian Institute of African Studies, Uppsalla, Sweden. Pg 145

¹¹⁷ Kwonkwo, Albert. Land Rights. Pg 74

The respondent from HAKIARDHI while responding to questionnaires supplied to him, went on saying it is difficult to file a constitutional petition where people's land taken for compulsory acquisition without due legal process. All these are factors that make a call for the constitution to provide and give out guidelines on land management, administration and its distribution. Matters pertaining to land are such are such important decisions, and in keeping with the thrust of our recommendations, we believe making land a constitutional category will make it imperative that people are consulted whenever changes to the land tenure system are contemplated.¹¹⁸ The constitution of the country can be said it does not provide the required protection of land rights to local owners or even constitutionally land management which is a threat to the stability of land allocated for investment purposes. The Article of the constitution takes land leniently by first not allocate the chapter which specifically deals with land matters but second it just consider land to be a property just like any other property.

4.2.3. THE NEED OF LAND FOR BIOFUELS PROJECTS

The respondents of the researcher both except from TIC explained the growing phenomenon of land grabbing they supported this phenomenon due to the fact that foreigners are allocated large scale of land without proper legal process of acquiring land and with inadequate compensation. This was an addition point while explaining the role of TIC in assisting investors to access land for investments purpose; they complained that investors are getting land without fulfilling the need of indigenous or the land laws requirements. This has been a factor of hatred between the government and the surrounding communities as well as communities and investors.

Land grabbing for growing biofuels and to ensure food security is capturing the imagination of multilateral institutions, donors, Non-governmental organizations (NGOs), land activists, academics and the media worldwide.¹¹⁹ Tanzania therefore is not left behind the growing demand of land for biofuels projects, and this is currently fueled with the government campaign of green revolution which emphasizing for

¹¹⁸ *Supra* pg 39

¹¹⁹ Matondi, B. Prosper, Havneric, Kjell and Beyene, Atakilte.(2011) Biofuels, Land grabbing and food security in Africa. Pg `1

agriculture. The area of land which each commercial biofuels investor in Tanzania has requested has varied from 30,000 ha to two million hectares of land at a time.¹²⁰ The rush by foreign investors has also triggered a local land rush and under the guise of the currently over-celebrated 'Kilimo Kwanza' initiative, business elites are rushing into the rural areas to secure land for various purposes purportedly associated with this initiative.¹²¹ The respondents therefore expressed their views that TIC should not only assist investors to access land but also it has to advise the government on how to properly assure equal opportunities for all.

The Tanzania Investment Centre estimates that, at present Tanzania has about 44 million ha of arable land, yet only 10.2 million ha is currently under cultivation.¹²² The TIC therefore is measuring the Tanzania in terms of cultivation only without considering other activities that local communities may carry on the land. The land laws and policy should provide limitation of land that can be allocated for investment purpose. As the law stands the large part of land especially village land can be found at the end of investors. This was supported by the land officer of TIC who affirmatively said they can even allocate the whole village to the investor¹²³. If no good laws that govern the access and allocation of land to investors who need large tracts of there is a threat of having a large population of rural areas with land less with no any other alternatives. The land use plan must be established and this shall be with the aid of technical personnel, the Land use plan is enacted but it does not provide for participatory plan and the plan must specifically provide limitation of the land that is to be allocated to investors. The respondent proposed for the necessary intervention to prevent this growing phenomenon as TIC and the government relies on village decisions but the villagers have no enough knowledge to know the future effect of their decisions.

¹²⁰ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 15

¹²¹ Accumulation by Land Dispossession and Labor Devaluation in Tanzania. The Case of Biofuel and Forest Investment in Kilwa and Kilolo.(2011) Land Rights Research & Resources Institute. Pg 26.

¹²² Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 15

¹²³ Interview with TIC land officer who is also an Advocate of the High Court.

Food insecurity is the source of land dispute as indigenous would dispute land to grow food crops; the means to prevent this is also to make sure that the village assembly agree with the nature of crops that the investor is planning to grow. Common understanding is good so that the village assembly will be aware of the land allocation compare to the practice where the laws recognize the communication of the village council and the land commissioner. Large-scale biofuels investments that require the transfer of village lands to privately owned companies are inherently subject to problems of, equity, transparency and difficulty in evaluating the distribution of costs and benefits.¹²⁴ So therefore there is a need to assess the process of allocating land to investors who are planning to grow biofuels in Tanzania taking into consideration assurance of food and to avoid a community with no land to support their life.

4.3 BUREUCRATIC LAND INSTITUTIONAL FRAMEWORK

The land institutional framework in the country is centralized under the management of central government even village land which is ought to be under the village management. Land laws of the country provides institutional framework which allows the abuse of land tenure and access to land. The study respondent both without reservation accepted that land institutional in Tanzania is too bureaucratic. The respondent said lack of one body which deals with land matters add bureaucracy of which often witnessing the violation of land laws. This was a reaction while responding to the question whether the land institutional framework in Tanzania is good enough to protect land rights in Tanzania at this era of economic liberalization. But due to complexities and challenges with this structure, land acquisition for large scale investment can fall to the authority of the President, who can transfer village land to general land for investment purposes¹²⁵. The institutional framework of land in the country is not independent as it has been noted earlier in this study, the structural hierarchy and the appointment of land commissioner is hindering

¹²⁴ *Ibid* pg 86.

¹²⁵ Tanzania Natural Resource Forum March 2012. Understanding Land and Investments in Tanzania. Pg 3.

efficiency of land matters. The President remained with his powers as a trustee of land on behalf of the citizens of the country.

4.3.1 THE PRESIDENT

In responding to this, the respondents provided their opinion that the president has vested excessive powers over the land. They said so as the powers to appoint officials and revocation of land most of the time reduce efficiency in land management. The interviewed members of the village councils said it takes so long for the president to revoke the title as the bureaucracy involves the whole process. The same concern was raised by the remained respondent, the commented for one entity which is independent to deal with land administration.

The President of URT plays a major role on land matters in the country. The role of the President on land matters are overwhelmingly provided by the law; the President is the one who is responsible to appoint the Minister responsible for lands, he shall also appoint the land commissioner who is accountable to the minister. The President also is the one to appoint the chairman of land advisory committee. The president also has been given power to acquire land compulsorily for public use. He is also the one to transfer land from one category to another. Currently, we have witnessed several cases of land acquisition to enable activities such as mining operations, road constructions, tourism, industrial installations and many similar activities to be conducted.¹²⁶ The power vested to the president does not allow accountability as the powers are vested to the single institution. The Land Act retains the Radical title vesting ultimate control and ownership over land to the sovereign with power being centralized and concentrated on commissioner for lands.¹²⁷ With legal pluralism that surrounds land administration, the need of land for investment purposes which allows the allocation of large scale land to be allocated to investors this radical title is not suitable within land management.

¹²⁶ Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in Tanzania. Pg 203

¹²⁷ Maoulid, Salma. (2004). Critical Analysis of the Land Laws. Land Rights and Resources Institute (HAKIARDHI). Pg 16.

The power of compulsorily land acquisition given to the president reduce the power of individuals to challenge the decision as most of the time the government proceed with its decision even if the victims of the transfer of land are not satisfied. Though the requirement of consent from the village is provided by the law, but this cannot work with this arrangement. The consent here is not absolute as, one, the consent of the village council does not amount to that of the whole village, second, it is inconceivable for the council to refuse a directive from the president (the radical land lord) or his land delegates.¹²⁸ With the current situation where commercialization of land is widely increasing, the president role on land matters is still a challenge, rights of land indigenous is of paramount. The President decision may prejudice the whole process of land transfer or land acquisition. The President also has an exclusive right to revoke the title of occupancy. There is no any other body which can deal with the revocation of the title once a person is granted the right of occupancy. This may cause unnecessary delay for land rights even if the land is no longer in use but it has to wait for the president decision.

4.3.2 POOR INSTITUTIONAL LAND MANAGEMENT AND ITS ADMINISTRATION

The respondents from the selected village council and the elder citizen both expressed their concern on this area. They commented on the role of land commissioner on village land as the violation of their right and a lee way to disregard their decisions. The other respondent from TIC and HAKIARDHI both said there is a need to change the current institutional framework so that land could be manageable without conflict and to assure future stable economy.

Land as the major concern to the communities in the country due to its role makes it necessary for the nation to have structural and management setup which assure equal access to land. The land administration of the country is centralized save for the village land which is also partly covered by this centralized land administration. The village land is under the management and administration of village council with village assembly which is the final decision maker of the village land. Another

¹²⁸ Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. Reforming Land in Tanzania: For Whose Benefit. Pg 15

important facet of the corpus of the national land policy is the retention of centralized and bureaucratized management and administration of land.¹²⁹ The selected elder citizen from Kilindoni Mafia also said most of the time citizens loose hope and drop their cases due to the institutional framework which is poor and does not provide efficiency in service delivery.

The management and administration of land in Tanzania starts from ministerial level, the president is the one who appoint the minister responsible for land matters and who shall be responsible to prepare and lay down the land policy of the country. There shall be the land commissioner for lands who is also the appointee of the president who shall have regard to all land matters concerning the land management and administration; he is also the chief advisor of the president and the minister responsible, this is in accordance with Land Act.¹³⁰ The land management and administration is attached to the executive arm, this structural setup allows political to interfere land matters. This situation makes it possible to mislead the reality of land matters that may result to poor land management and administration.

The powers vested to the president who is elected through a political party and he is also the one to appoint the minister who is also a politician makes it possible for them to intervene and administer land to suit the interest of the party and not the community. The structural setup of land in Tanzania does not allow the local communities to enjoy their land and it does not allow them to see land as a capital for investment, the land laws and national land policy weakening the commercialization of land and allows the compulsorily land acquisition and land allocation to big investors leaving the indigenous with inadequate compensation. It is difficult for the local indigenous to realize land as a capital which can transform him into modern economy.

Principally, we are mindful of the following; (a) that the structure should be independent of the executive and its accountability should be to the people through their most representative organ, the parliament; (b) that the administration of land

¹²⁹ *Ibid* pg 16

¹³⁰ Land Act section 9

should involve the participation of people generally, and the land users particularly; (c) that land matters should be conducted in the open and that its administration should be transparent; (d) that land management and land delivery systems should be seen as a provision of professional service as opposed to administrative and (e) that necessary institutional checks and balances should be built into the structure so that the NLC is prevented from developing into a monopolistic bureaucratic body.¹³¹ Despite this advice of the commission but the land laws of the country and the land policy are far from it, the recommendation of the commission makes land practice to be good and allows the community to participate on land management and its administration. The land institutional framework makes it hard for the indigenous to realize the benefit of land reforms; they don't enjoy the land transfer for investment purposes and they don't see it as an opportunity rather the denial of their right to benefit from their land. This is a respond from the locals' individuals interviewed by the study.

Yet a fundamental problem with land administration is with the system and mechanism to require and ensure accountability where the executive is the sole administrator and arbiter of its own decision and actions.¹³² Efficiency is the success to land management and administration, lack of efficiency and transparency the end of land allocation to investors will result to complaints.

4.3.3 VILLAGE LAND: ADMINISTRATION AND MANAGEMENT

The interviewed members of the village council (Kilindoni and Chem chem. Village) confirmed that they are illiterate of land laws, this causes them to reach into decisions which are contrary to their wish and this create a loophole for unscrupulous individuals or investors to benefit out of their ignorance. This follows that most of the time the decision of the commissioner will prevail even if the villagers are not in support of the deal. Village council according to the legal framework can be said to

¹³¹ Report of the Presidential Commission of Inquiry into Land Matters Vol. 1. Land Policy and Land Tenure Structure. Published by the Ministry of Lands, Housing and Urban Development, Government of the United Republic of Tanzania I cooperation with the Scandinavian Institute of African Studies, Uppsalla, Sweden. Pg 174

¹³² Maoulid, Salma. (2004). Critical Analysis of the Land Laws. Land Rights and Resources Institute (HAKIARDHI). Pg 7

be a representative of the commissioner at village level. During the interview with the land officer of TIC he expressed his dissatisfaction with the composition of village council, he stressed that they are not capable of making reasoned decisions and this is why after they make decision and land allocated to investors often disputes arise.

Village land is under the authority of Village Councils and Village Assemblies as the final land decision maker, with the latter comprising all the residents of a village who are over the age of 18¹³³. Village council is given power by law to take care of village land as all plans involves village land shall be under the council however the village assembly is supreme decision maker of land matters as the village council is also accountable to the village assembly. This was a good position of law that village land shall be managed by villagers themselves, but, there is a remaining challenge and that is; village council is not a professional team that can understand well land technicalities so that it properly advice the village assembly. With the current high demand of land investors including foreign investors can identify land themselves and negotiate with the village council before they obtain derivative right of occupancy. It is therefore easy for the village council to enter into agreement which they don't know well the implication to the locals that's to say villagers and with their role they provide the village assembly advice to accept the deal whereby the village assembly agree by vote. In contrast to obtaining land from the TIC 'land bank', where the investor does not negotiate with local communities, investors have to start negotiations from the village level.¹³⁴

Negotiations at village level need technical personnel or at least legal experts who can understand the nature of the agreement and who can lead negotiation with investors; but the law does not provide that sanction. Land negotiations often occur in a context where the power equations are uneven, and that asymmetry has led to human rights abuses in many instances.¹³⁵ Investors usually use experts and high profile

¹³³ Village Land Act Section 8.

¹³⁴ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 40

¹³⁵ Preventing Conflict Over Land: Experiencing the role of business and the value of human rights approaches. Draft position Paper Nov 2009. Institute for Human Rights and Business. Pg 5

individuals to solicit land they identified to establish their projects; this makes it a necessary that the village council should have technical experts to assist them to reach their decision.

Nevertheless, just like general land, village land also has to abide with the administration of the land commissioner. This undermines the independency of village land administration as the commissioner can rule out decisions over the village land. It is a dangerous situation that is created by law if one considers that village council is not professionals and land in the country is public land.

However the National land policy makes it clear that the commissioner can advice the village council and that latter should have regard to that advice.¹³⁶ So therefore village land administration is not independent as the law tries to provide, the laws gives it the power in one hand and take it in the other hand. The Land Act as per provisions makes it superior than the village land. The law says that if there is contradiction in interpreting the two then Land Act shall prevail. See section 181. Village land covered large part of land available in the country; laws therefore must clearly provide a good administration so then local communities can enjoy the right town land and if the same disposed then it shall be the benefit of all.

4.3.4 WEAK LEGAL FRAMEWORK

Land laws are specifically enacted to govern land matters in the country, in Tanzania there are two pieces of legislations that are enacted to govern land laws and provides legal framework. The respondent from HAKIARDHI specifically pointed out the provision of the Land Acquisition Act which gives powers the President to acquire land for investment purposes. He said this provision need changes as land for investment purposes shall not be compulsorily acquired, this allows the use of law to grab citizen's land. The law shall make only land for public use, public benefit to be compulsorily acquired by the President, he addedThe history of land laws in the country can be seen in the early 1990's after the formation of the presidential commission for the inquiry of land matters. The commission established following overwhelmingly land complaints which needed a solution; but also the economic

¹³⁶ National Land Policy, 1995. Clause 4.2.2

liberalization had a place as land laws were necessary to undergo reform to adapt and allows easy access of land for investment purposes.

Poor participatory process which will assure that the whole community is aware with the intention of the government to take part of their land. the community are not afforded express their views on land that are to be acquired compulsorily by the government, even the village land council itself receives poor information and they don't know what to do. The selected members of village councils who interviewed by the researcher in Mafia complained that the law does not provide enough participation in reaching various decisions on land matters. They pointed out example of **Mafia Island Marine Park (MIMP)** the way they use to acquire land is not participatory and this normally cause weak relationship between the Park and the surrounding communities.

The land administration is still centralized just like before the appointment of the commission, the problem land centralization is obvious; it causing cumbersome procedures, bureaucratic and this is a way of making just few who are in the position to understand the procedures to benefit. There is plenty of indication to suggest that the primary objective of new land policy and legislation at this point is *not* to secure the land rights or interests of the majority poor but to make more land available for commercial and often foreign-backed investment.¹³⁷

This can be seen by the way land laws in the country are enacted, it gives more opportunity to investors rather than the protection of the indigenous, the radical title that remained in land laws favors investors; the compulsory accusation of land which is for public use is a room for abuse of power since the term public use is ambiguous and it includes the private development. Underlying this dual structure have been four important policy themes or continuities, of which the first three remain firmly in place to this day: that land belongs to the state and not individuals (with radical title⁵ still vested in the president), that rights to land depend on the use made of the land,

¹³⁷ Olengurumwa, P.O. Onesmo (Legal Officer LHRC), 1990's Tanzania Land Laws Reform and its impact on the pastoral land tenure. A Paper to be presented during pastoral week at Arusha 14-16 Feb 2010. Pg 6

that land rights are controlled administratively as opposed to judicially, and that land is not a saleable commodity.¹³⁸

Village land is poorly governed by the law, VLA does not stretches enough to protect the communities as there are provisions which gives out loopholes for access of village land by non villages for the sake of investment and other activities without proper legal procedure. The provision that allows the land commissioner to have his opinion considered by the village land council is one of the major weaknesses of the VLA as it gives away the powers of village land administration. Due to complex and unclear land tenure laws and land acquisition processes, security over land tenure at the village level is minimal at best, leaving communities vulnerable to have their land “taken” for investment purposes.¹³⁹

The Land Acquisition Act provides provisions which make village land and general land management weak as it allows for compulsory land acquisition without limitation to the application of the term compulsory land acquisition. The government can legally acquire Village Land in various ways, including willing seller—willing buyer purchases and by compulsory land acquisition.¹⁴⁰ This legal power vested to the government is weakening the independence of village land management; it follows that often the government is allocating land under the umbrella of public use. The respondents provided their opinion on this aspect and they commented that the legal frame work is weak as for the VLA and LA, they said the laws contradict each other and most of the time allows misunderstanding among the leaders and the citizens.

Legal pluralism is another concern on land management in Tanzania and has often contributed on land complaints which lead to land disputes. There are laws enacted by the legislature which authorize other bodies to have power on land and they hold power with exclusion of village land council. Laws such as Forest Act, and Wildlife Conservation Act, contain provisions that weakening the village land management.

¹³⁸ The Oakland Institute UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA: TANZANIA. Pg 9

¹³⁹ Tanzania Natural Resource Forum March 2012. Understanding Land and Investments in Tanzania. Pg 1

¹⁴⁰ Focus on Land in Africa. World Research Institute, Landesa;Rural Development Institute. Pg 4

These laws put restriction on land use, and limit access to land by individuals. These bodies are coming into power following the power vested to the president to transfer one category of land to another. The president therefore can transfer land from village land to reserved land.

The revocation of title incase the land transferred to general land and allocated to investors fails to meet the intended activity for which it was transferred for shall be regulated as what should follow. The law is silence on this, this is a threat to village land as the land taken from individuals can easily accessed by other people for their own interest. The government can revoke a lease if investors leave and others apply, and villagers are able to ask for it to be converted back to Village Land if there is no output being seen from investors.¹⁴¹ The option is left to the government itself but the law does not provide for the procedure or even as a mandatory requirement.

The provision of Land Act makes the land village land weak as it provides general land as superior land to village land. The essence among others that motivated the national land reform in 1995 and the enactment of the two pieces of land law legislations is to make sure both titles are equal. The intention of the legislature is not justifiable rather it is assuring the government its dominance over land matters. The Land Act contain provisions which are ambiguous as it has noted in this study; therefore the content of this provision is just cementing these ambiguous provisions and therefore makes it even difficult for one to challenge the actions of the land commissioner when encroaching village land.

4.3.5 ECONOMIC LIBERALIZATION IN TANZANIA AND THE STRENGTH OF TANZANIA INVESTMENT CENTRE

The respondent both agreed that TIC plays a major role in land acquisition and access to land for investment purposes. However the respondents except from TIC raised their concern as to question the strength of the Centre to be weak and several times it has become a causative of disputes between investors and local communities. They provided explanation to their views as foreigners are currently allocated large

¹⁴¹ The Oakland Institute UNDERSTANDING LAND INVESTMENT DEALS IN AFRICA: TANZANIA. Pg 21

scale of land for investment purposes through TIC and they grant the Certificate of incentives.

Tanzania like many other African countries were forced to liberalize its economy, this change was inevitable due to globalization which propagates for external market and transfer of technology. Land was also affected by this economy liberalization as the reforms were made to fit the demand of globalization, FDI in Tanzania is a result of reforms which allows foreigners to come and invest in the country. In recent decades major changes have taken place in Africa economics and societies including demographic growth, liberalization, monetization of the economy, livelihood diversification, greater integration in the global economy and cultural change.¹⁴² All these changes affect access to land and its management because the demand of land is too high as it is no longer a concern of indigenous only but it involves even foreigners. Liberalization of economy signify free movement of economy and this is much so in looking for competitive market for products or transfer of new technology to where it is not available. The movement can be within the boundaries of one country or across borders and this constitutes foreign investors.

The land laws of the country are among the product of the major economic reforms that took place in 1980's in the country. Land laws enacted in 1999 and came into effect in 2000 is the result of the Presidential Commission of Inquiry which formed in 1990 and came up with National land policy in 1995. The land reforms among other things took place to suit the demand of economy liberalization, and this is the first time the Act provides for procedures of a foreigner to access land in Tanzania. The land Act kept on changing according to economy and financial demand, the land amendment in 2004 (Section 113 of the Land Act CAP 113) was purely for investment purposes as land was given more value and made it flexible to use as a collateral. Land therefore is a good financial security as it can be used to secure loan from any financial institution, this indeed facilitate investment. Perhaps most

¹⁴² Cotula, Lorenzo. Changes in "customary" land tenure systems in Africa, March 2007. Pg 36

crucially it has been made easier for land to be used as collateral for commercial lending and mortgage transactions.¹⁴³

The respondent from HAKIARDHI had a comment in viewing the strength of TIC and the law that govern the institution; he explained that TIC prepares what they called “land bank” to allocate investors. He was of the opinion that where the centre could obtain this land bank as there is no bear land. The operations of the centre therefore have a hand on land disputes in the country which involves investors.

The land laws at this time of globalization makes land more of commercial compare to the time before where land was just a matter of domestic utilization. Land dispute before free economic was just between the indigenous of one tribe or between one tribe and another and it was easy to settle down as the mechanism was within the leaders of clan. Land dispute to date is not between indigenous but between indigenous and investors, investors can be local or foreigners and as matter of administration the government several times involved in these land disputes.

Foreign Direct Investment goes with large capital, and for this reason it demand large scale of land for the investors to invest on their project. This process of land allocation to investors has been a thorn to indigenous because they feel like their land is forcefully taken as the process sometimes does not give them fair prompt and equitable compensation. The process of Globalization creates unprecedented new opportunities, risk and uncertainties that are in equitably distributed this only a few members of the planet share its benefit while the majority cannot influence its design and course¹⁴⁴.

TIC remains another challenge on land allocation process for investment purposes. The sole purpose of the center among other things is to promote and encourage foreign investment in the country. Foreign investors according to land Act can access land only through TIC, the center has to award the certificate of incentives which entitle foreign investor to have derivative right of occupancy. The challenge therefore which remain is which land are they allocating investors, they are less

¹⁴³ Maliyamkono, TL, Mason, H. The Promise (2006). Pg 280

¹⁴⁴ Msambichaka, L A, Mwamba, N E.(2006) Globalization and challenges for Development in Tanzania. Pg 3

concern with the size and population against the resources available in land before allocation. The Act is silent on procedures laid down that is to be followed to conclude the transaction. The Act does not impose any obligation to the investor; the investor has no any legal liability to be punished once he contradicts with the provision.

Tanzania enjoys massive flow of foreign investors as the government is making effort to advertise the opportunities that are available and this is done through the government officials and the Tanzania Investment Centre (TIC), investors are coming with the added advantage that Tanzania politically is stable compare to majority countries in Africa. A government owned daily puts it well enough: “Land availability is not a problem in Tanzania where only 11 to 15 per cent of arable land is under cultivation.”¹⁴⁵ The growing demand of land for agriculture purposes and biofuel as an alternative energy saw a large scale of land allocated to investors but unfortunately many of these projects experienced non satisfaction from the indigenous whom their land especially village land are allocated for various agribusiness projects, without due process.

4.4 CONCLUSION

The chapter provided the weaknesses that are within the land laws. It gives out the structural setup of land administration and it shows institutional land management in the country. The findings shows that legal and institutional framework is weak as the provisions of laws are contradictory and it remains silent to matters that are supposed to be addressed to guarantee equity for both land stake holders.

The administration is centralized and executive administration took much power to land, the institutional framework undermines village land administration which is supposed to be under full administration of village council and village assembly.

¹⁴⁵ Emmanuel Sulle and Fred Nelson, 2009, Biofuels, land access and rural livelihoods in Tanzania. Pg 38

Legal pluralism emerged to be another weakness to land management in the country as there are bodies that takes charge over village land administration. They assume all powers of the village council and village assembly; wildlife conservation, the management became under the directors and it goes down to land management. Because of legal pluralism even issues of compensation lacks a way forward as to which authority is responsible for fulfillment of the compensation. The radical title allows the misuse of power; the definition of compulsory acquisition the president can legally acquire is vague and can act as a source of land disputes.

TIC has a contribution to land dispute as foreign investors can only access land in Tanzania through the centre, however the law is weak to regulate the process that is to be involved while identifying land for investment and the procedures for the award of the certificate of incentives.

CHAPTER FIVE

5.0 GENERAL CONCLUSIONS AND RECOMMENDATIONS

This chapter provides conclusion on the research study, it summarizes the information obtained during the study. It also provides recommendations on measures that are to be taken into consideration to address the problem.

5.1 CONCLUSIONS

Investment on land is fastest growing due to factors described in this entire study; economic liberalization, and the emerging demand of biofuel products as the world is campaigning for green revolution. Africa and therefore Tanzania is considered to still have arable land which is underutilization therefore even giant international institution are financing projects that touch land or perhaps attached to land. Since late 1980s Tanzania has been trying to enact various statutes to support economic liberalization and land therefore it became a victim of these amendments. It has witnessed various companies signing contracts on various projects which need large tracts of land. Foreign direct investment is the option for multinational companies that wish to invest in Africa, this kind investment requires large scale of land. Biofuel in Tanzania has already demanded large scale of land as the schedule of projects shows in the table appended in this study.

In Tanzania the high demand of land has been fueled by the ongoing strategy popularly known as 'KILIMO KWANZA'. The government in various parts of the country has allocated land to investors to run big agricultural projects; these projects target fertile land, water availability and other favourable factors. However, the protection of local land users is not given strong attention as a result of the growing phenomenon of land grabbing. The pace of land allocation for investment purposes revealed that the laws guiding access to land in the country are weak to provide the required security. Land is facing a serious legal challenge since the administration of land is much vested to the executive. The president is vested much power on land matters; this follows that land management is complex as the president plays a major role on land decision.

There are sensitive issues that arose during the study as weaknesses that need attention and an immediate intervention to arrest the situation. The key issues that the study observed as the cause of land disputes that may lead to the future unsteady economy are; poor constitution protection of land tenure in the country, legal pluralism, poor institutional framework, weak land laws and the radical title. Land as it has been and as matter fact is the source of livelihood to many; starting from individuals, community and to the state economy at large. Globalization and economic liberalization to a large extent contributed to the change of wave on land potentials. Land in Tanzania since economic liberalization has encountered a lot of challenges which need to be solved as they are causing social unrest which may threaten the stability of economy. Land potentials can be described in different aspects; land as source of sustainable food security, investment, political strength, and other social activities.

Since the attainment of political independence Tanzania has made efforts to improve land legal framework, land administration, improved land tenure security; however there are still shortcomings which need prompt intervention to assure smooth and harmonious land management. Land laws in the country contain a mixture of colonial economy, that is socialism ideology and capitalism, this problem is carried in the statutes and this can easily be observed with the fact that land is vested to the president as the trustee to Tanzanian. Moreover, land remains public land; the two political ideologies need reconciliation to avoid confusion and provide for equal opportunity and protection of land tenure to all.

Government keeps on showing interest to support investors to access land for investments but little is made by the government to assist villagers to secure security to their land. The Amendments for example of Land Act 2004 was made purposely to improve access and use of land financially, to enable the use of land as collateral to secure loans in financial institutions. These efforts are not seen anywhere in VLA indicating that they are not considered to enjoy the use of land or security to make their land more valuable rather the amendments. The interviewed individuals

affirmatively responded that laws that govern land in Tanzania are weak and they call for intervention by the necessary authorities.

Moreover weak protection of land rights has been another source of land disputes in the country; the URT Constitution is poorly protecting land rights and land based resources. With the enormous power and trust vested to the president, a constitution could be the only reliable instrument that can prevent the abuse of power or perhaps to provide for guidelines instead of living the president almost with power to deal with it in a way he sees fit regardless of community wishes or interests. The power of the president from the power of appointment of the land commissioner, the minister, chairman of the Notational Advisory Council, and his powers of acquiring land for public interest and changing land category to another is a threat and subject of abuse of power. This also definitely will undermine checks and balances to ensure the prevention of abuse of power.

The land laws in Tanzania are weak to guide the process and procedures of revocation of the right of occupancy. There has been always a problem when it comes to revocation of the right of occupancy granted to investors. During this study, complaints were heard as the revocation of the rights of occupancy to the community took a long time while the investor had ceased to operate on the land. This is largely attributed to the fact that the president is responsible for the revocation of the title which due to the busiest nature of this honourable institution it took years for the revocation to be accomplished. Because of the cumbersome procedures villagers tend to invade estate that were titled to investors who ceased to develop land and no any action was taken by the government regarding the abandoned land while villagers have no land for their activities.

Compensation is another serious problem that marred the whole process of land transfer to investors. Investors were allocated land through TIC but the process of compensation is completely not certain neither from land laws nor the Tanzania Investment Act, and this starts from the compensation negotiation to the payment point. No proper disclosure of valuation procedures as to criteria to be used, this does not follow the market price of land, the commercial crops, buildings and the

future benefit of the land owner as an individual or villagers. The payment of compensation is not timely effected and also not adequate. Price fluctuation and wrong criteria for evaluation have been always a source of complaints of local communities which have led to dissatisfaction with investment among the communities in Tanzania.

Nevertheless, village land management framework though intended to be independent, the composition of village council are not land laws literate and generally their level of academic background is very low with majority of them being standard seven leavers. This made their task very difficult especially with the nature of land tenure system of the country and the complexity of land laws in the country. The law ought to see the composition and its capacity to manage land, the law should have set for qualifications or academic criteria for membership of village land council. The land officer of TIC pointed out during the study interview that one of the problems that hinder village land management is the low capacity of the council in executing its activities. The interviewed members of the village council confirmed that they are illiterate of land laws, this causes them to reach decisions which are contrary to their wish and this creates a loophole for unscrupulous individuals or investors to benefit out of their ignorance. It is often common to see the council agreeing on the deal of transferring of land to an investor or transfer land from one category to another but surprisingly the council itself complains of the transaction.

The study also discovered that the tenure of the land allocated to investors contributes to disputes between investors and local communities. The law shall make it clear that foreign investors enjoy and only entitled to right of occupancy as opposed to citizens who enjoy granted right of occupancy. As the law stands it gives out the room for foreign investors to practise land disposition which may lead to arrangement of applying land as investor and thereafter they dispose of it. The lease also shall not be of long time such as 33 years to 99 years; the right of occupancy to foreign investors shall be given limited number of period but also the nature of product shall be of concern while deciding on the lease duration. TIC shall set criteria for the duration of the derivative right of occupancy instead of the current

lease duration which does not separate for granted right of occupancy to citizen and for foreign investors.

Furthermore, there are complaints from the community that the land transferred to investors shall be caused possible to bring back to the village land. The Tanzania Investment Act is silent, it just provides for the assistance to investors to access land with 'land bank' arrangement. The study through interview and questionnaire observed that there shall be an arrangement that the part of land that has been transferred to general land be brought back to village council for the use villagers immediately after the project terminates. It is surprising to find that there are circumstances where immediately after the transfer of land to general land following the investor's failure for whatever reason to start the project, the land is not transferred back to village land.

Legal pluralism is another thorn to land management and land tenure security in Tanzania. During the study it was discovered that apart from land laws; the LA and VLA or Land Acquisition Act there are several statutes that deal directly with management of land. These statutes put power to other government institutions such as the Ngorongoro conservation area or game reserves under the Wildlife Conservation Act which vests power to directors of these authorities. They are the ones to plan for the land use and allocation of land to investors. This therefore needs intervention as it undermines the village land council powers over land. Communities are therefore disputing the land allocated to investors as it prevents them from enjoying access and using the land.

5.2 RECOMMENDATIONS

The study basing on findings has the following recommendations that are to be taken into account to strengthen land laws for the sake of enhancing land disputes avoidance between investors and local communities as follows;

(i) LAND LAWS

The Land Act shall be amended so as to remove the provisions that make it superior to Village Land Act. The definition of general land is subject to change and the provision of 181 of the Land Act.

The legal pluralism shall not be entertained and therefore abolishment of those provisions; the land administration shall not be from various authorities (statutory bodies) as this will allow inconsistency in land management. The parliament shall remove powers vested to various leaders of government authorities as it causes double stand.

(ii) land shall receive strong protection from the constitution

It is also recommended that there shall be a chapter in the URT Constitution that guides land management in the country just like the proposal made by the Presidential Commission of inquiry into land matters. The role of land to the community and to the economy of the country is of paramount importance and it is not proper to leave the management of land fully to the executive without proper participation of the people.

(iii) Establishment of Land commission

The study also recommends that there should be an independent commission that will be dealing with land matters. This was also recommended by the commission with the reason that the commission will be accountable for the parliament. This will remove the overwhelmingly power vested to the president and the land commissioner. The commission shall be the one stop land authority and other authorities shall not interfere with land administration

BIBLIOGRAPHY

STATUTES

Constitution of the United Republic of Tanzania 1977
Land Acquisition Act Cap 118 R. E 2002
Land Act No.4, 1999
Tanzania Investment Act 1997
The Export Processing Zones (Amendments) Act 2006
Village Land No.5 ,1999
Wildlife Conservation Act Cap 283 R.E 2002

BOOKS

Carbaugh, Robert J, Global Economics 13th Ed, International Edition.
Ghormande, Vijay (2011) Transition of Law and Justice in Tanzania. Review of
Contemporary Changes in Tanzania Law and Justice System.
H Mason, Maliyamkono TL. The Promise (2006) Dar es salaam University Press
Ltd.
Josh, Rakesh Mohan. International Business 2009.
Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola.
Volumes I-VI, Numbers 1-6(2006-2008) (January 2008)National
Organization for Legal Assistance (nola)
Legal and Human Rights Centre, (2005). Globalization and Workers' Rights in
Tanzania.
Matondi,(2011) Prosper B, Havnerik, Kjell and Beyene, Atakilte Bofuels, Land
Grabbing and Food Security in Africa..
Peter, Chris Maina, Foreign Investment in Tanzania. (2004). The Mainland and
Zanzibar. Department of International Law, University of Dar es Salaam.
Rwegasira, Abdorn. Land as Human Right. A history of land law and practice in
Tanzania.
Shivji, G IssaWhere is Uhuru? Reflections on the struggle for Democracy in
Africa. 2009

Shivji, Issa G, (2009), Where is Uhuru? Reflections of the Struggle for
Democracy in Africa.

Swamy, Dr N. Maheshwara, Land laws under the Constitution of India.

REPORTS

Tanzania Human Rights Report (2008) Legal and Human Rights Centre.

Developing Commercial Biofuels through securing local community's livelihood interest. Information Brief (2009). Tanzania Forestry Working Group.

INTEGRITY ENVIRONMENT AND INVESTMENT PROMOTION “The Case of Tanzania”, Paper Presented to the Conference “Alliance for Integrity -Government & Business Roles in Enhancing African Standards of Living.”

Mellissa Makwaramba and Dr Prosper Ngowi. Making Land Investment Work for Tanzania: Scoping Assessment for Multi Stakeholder Dialogue Initiative. Final Report March 2012.

Report of the Presidential Commission of Inquiry into Land Matters, Volumes I, 1994

Report of the Presidential Commission of Inquiry into Land Matters Vol. 1. Land Policy and Land Tenure Structure. Published by the Ministry of Lands, Housing and Urban Development, Government of the United Republic of Tanzania I cooperation with the Scandinavian Institute of African Studies, Uppsalla, Sweden.

Sulle, Emmanuel and Nelson, Fred, 2009, Biofuels, land access and rural livelihoods in Tanzania.

Tanzania Human Rights Report (2010) Legal and Human Rights Centre
Tanzania: Are Land rights upheld? The Citizen on Saturday 16 June 2012, Published and printed by Mwananchi communication.

MANUALS

Accumulation by Land Dispossession and Labor Devaluation in Tanzania. The Case of Biofuel and Forest Investment in Kilwa and Kilolo. (2011) Land Rights Research & Resources Institute.

Gondwe, Zebron Steven, Manual for Transfer of Rights of Occupancy. Rev. Ed 2010.

HAKIARDHI, Land Grabbing in Post Investment Period and Popular Reactions in the Rufiji River Basin.

WEBSITE

<http://tanzania.usembassy.gov/uploads/h0/tG/h0tGU7gVFUPO5zDGETraHw/Country Commercial Guide 2011 Tanzania.pdf>. Visited on 6/may/2012.

http://www.nlupc.org/index.php/highlights/more/tanzanias_experience_with_land_administration_policy_reforms/ visited on 6/June/2012.

http://www.nlupc.org/index.php/highlights/more/tanzanias_experience_with_land_administration_policy_reforms/ visited on 6/5/2012

www.fao.org/DC. Visited on 16th June 2012.

QUESTIONNAIRE FOR LAND STAKEHOLDERS

Annexure A

1. Land grabbing in Tanzania is the growing phenomenon to most local communities.

Do you agree on this?

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.....
.....

If yes why? And if not why?

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.....

.....Do you think the constitution of the United Republic of Tanzania is properly stretching its protection to land rights?

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.....

2. Tanzania has two main pieces of legislations which primarily have a duty to provide legal framework on access to land in the country, but land accessed for investment purposes several times create dispute between investors and indigenous/local communities. Why?

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3. Foreign investors can acquire land through Tanzania Investment Centre. Do you think the land laws of the country properly address the process so as to protect land rights for local land occupant?

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4. Do you think the land institutional framework in Tanzania is good enough to protect land rights in Tanzania at this era of economic liberalization?

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5. Do you think the powers of the President on land matters contribute to challenges that are facing land and land allocated to investors in the country?

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6. Do you think the composition of village land council as provided by the Village Land Act is capable to administer village land?

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7. What are the necessary actions, interventions, strategies to engage to prevent land dispute that occur as the land is accessed for investment purposes?

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-END-

Annexure B

QUESTIONNAIRE FOR LOCAL VILLAGERS.

MASWALI KWA WANANCHI WAZAWA/WANAKIJIJI.

1. Dhana ya unyang'anyi/utaifishaji wa ardhi kutoka kwa wazawa bila kujali haki za wazawa na serikali kuwapa wageni kwa madhumuni ya uwekezaji inakuwa sana Tanzania.Unakubaliana na dhana hii?.....

Kama jibu ni ndio nini inasababisha

.....
.....
.....

.....Tanzania inayo sheria mbili (2) za ardhi zinazosimamia na kulinda haki za wamiliki; sheria ya ardhi namba 4 na shaeria ya ardhi ya kijiji namba 5 zote za mwaka 1999, lakini bado ardhi wanayopewa wageni husababisha ugomvi baina ya wazawa na wawekezaji wa kigeni. Unafikiri ni kwa nini?

.....
.....
.....

.....Unafikiri katiba ya Jamhuri ya Muungano wa Tanzania inatoa ulinzi wa kutosha kwa wamiliki wa ardhi wazawa?

.....
.....
.....

2. Wageni hawaruhusiwi kisheria kumiliki ardhi Tanzania isipokuwa kupitia Kituo cha uwekezaji nchini (TIC) watapata haki ya kutumia ardhi kwa ajili ya uwekezaji. Je unafikiri sheria ya ardhi na sheria ya uwekezaji zinatoa mwongozo mzuri ili kuepusha migogoro baina ya wawekezaji na wazawa/wananchi.

.....
.....

.....
.....
.....Je unafikiri mamlaka aliyonayo Raisi kisheria katika maamuzi ya ardhi yanahitaji kufanyiwa mabadiliko?.....

Kama jibu ni ndio utoe sababu

.....
.....
.....Je unafikiri Halmashauri ya kijiji inayo uwezo wa kusimamia ipasavyo masuala ya ardhi ya kijiji kwa mujibu wa sheria?

3. Unafikiri ni nini kifanyike ili kuzuia matatizo ya ardhi Tanzania hasa kwa ardhi waliyopewa wawekezaji.....

.....
.....