AN ASSESSMENT OF PROMPTNESS AND FAIRNESS OF COMPENSATION AWARDABLE FOR UNEXHAUSTED IMPROVEMENT ON LAND MATTERS IN TANZANIA:

A CASE STUDY OF KIPAWAAND KIGILAGILA

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A CASE STUDY OF KIPAWAAND KIGILAGILA

By

Theodorus Kweyamba

A Dissertation Submitted in Partial Fulfillment of the Requirement for Award of Degree of Master of Laws (LL.M) of Mzumbe University

2015

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled **An Assessment of Promptness and Fairness of Compensation Awardable for unexhausted Improvement on Land Matters In Tanzania: A Case Study of Kipawaand Kigilagila**in partial fulfillment of the requirements for the award of the degree of Master of Laws (LL.M) of the Mzumbe University.

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Major Supervisor

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Internal Examiner

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Dean- Faculty of Law

DECLARATION

I, TheodorusKweyamba, declare that this dissertation is my original work and that it has not been submitted for any other degree award in any other University or Higher Learning Institution for similar award.

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2015

DEDICATION

This dissertation is dedicated to my young brother Arnold Mulashani for his understanding and constant help and encouragement while doing this research were of highest importance towards the completion of this research.

ACKNOWLEDGEMENT

Let me express my gratitude and sincere thanks to the Almighty God for keeping me alive, giving me health and for helping me to accomplish this research. Without Him I could have not done it.

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ABBREVIATIONS AND ACRONYMS

AC	Appeal Case
AIR	All Indian Reports
BIT	Bilateral Investment Treaty
CAP	Chapter
CAT	Court of Appeal of Tanzania
FAO	Food Agricultural Organization
FDI	Foreign Direct Investment
FPIC	Free Prior Informed Consent
GN	Government Notice
HC	High Court
Ibid	Ibidem
IMF	International Monetary Fund
JNIA	Julius Nyerere International Airport
LAA	Land Acquisition Act
LL.M	Latin Legumem Magister (Master of laws)
P	Page
R:	ERevised Edition
SOE State	Owned Enterprise
SWF	Sovereign Wealth Fund
TAA	Tanzania Airports Authority
TIC	Tanzania Investment Center
TLR	Tanzania Law Report
US	United States
V	Versus

LIST OF STATUTES

[A].Principal Legislation

The Constitution of the United Republic of Tanzania, [CAP 2 R.E 2002].

Copyright and Neighboring Rights Act, [CAP 218 R.E 2002].

The Wildlife Conservation Act, [CAP 283 R.E 2009].

The Urban Planning ActNo. 8 2007

The Land Act, 1999, [CAP 113 R.E 2009].

The Village Land Act, 1999[CAP 114 R.E 2009].

The Land Acquisition Act 1967, No. 6 [CAP 118 R.E 2002]

[B].Subsidiary Legislation

Land (Assessment of the Value of Land for Compensation) Regulations, 2001

The Land (Compensation Claims) Regulations, 2001

The Land (Management of the Land Compensation Fund) Regulations, 2001

[C].Foreign Statutes

The Uganda Land Act Chapter 227

The Uganda Land Acquisition Act,CAP 226

The Kenya Land Acquisition Act, chapter 295[RE:2010]

The Constitution of Ghana, Chapter 001 (1992)

The Constitution of the Federal Democratic Republic of Ethiopia, PROCLAMATION No 1 (1995)

The Constitution of Uganda Chapter 4 1995

The Constitution of Mozambique,Chapter 001, 1990

The Land Act of Mozambique,1997

LIST OF CASES

[A]TANZANIAN CASES

Attorney *General v. LohayAkonaay and Joseph Lohay [1995] TLR 80 (CAT)*

Attorney General v Sisi Enterprises Ltd, Civil Appeal no. (30 of 2004)[2004] TZCA39

Agro Industries Ltd versus Attorney General [1994] TLR 43,

G F Kassam v. AmiraliWalji and Another [1997] TLR 14 (CAT)

LalataMsangawale v Henry Mwamlima [1979] LRT

Mulbadaw Village Council and 67 Others v. National Agricultural and Food Corporation [1984]TLR 15(HC)

The National Bank of Commerce v. Suleiman Nassor Ally [1989] TLR 67 (CAT)

[B] ENGLISH CASES

Christopher Kashwa v. KagarukiMashebe (1951) Appeal to the Governor (United Kingdom)No. 13/50

Connell v.Rio Tinto Corp plc (1997) All ER 843 (United Kingdom)

Spiliada Maritime Corporation v. Cansulex Ltd,(1987) AC 460 (United Kindom)

[C]INDIAN CASES

KesavanandaBharati v. State of Kerala (1973) 4 SCC 225

ABSTRACT

The emerging issue is how the land laws especially the expropriation and payment of compensation laws are applied. This dissertation examines intended to assess the law and practice relating to compulsory land acquisition in Tanzania specifically in examination of procedures in the processes of land acquisition, legal challenges of compulsory land acquisition procedure, evaluation processes in the event of land acquisition and compensation processes in the event of land acquisition

This study was carried at Kipawa and Kigilagila where land was acquired in the year 1997for purpose of expansion of Julius Nyerere Airport, though compensation paid was inadequate.

The process of compulsory land acquisition has more often been complained of by the general public for failure to pay fair and prompt compensation to the victims. The dissertation revealed a wide disparity between the means of compensation paid and market value of the acquired property. Moreover, The Land Acquisition Act, Cap 118 [RE 2002] is not fair and just to people holding land under deemed right of occupancy as it restricts compensation to un exhausted improvements on the land excluding the land or such improvements as land clearing and fencing. This latter situation has been rectified by the Land Act.

The dissertation recommends among others that, in order to have a peaceable society devoid of conflict and chaos, adequate payments of adequate compensation that will not make claimants worse off than they were, are essential, both the policy makers and local governments should revise the land laws especially on the expropriation and payment of compensation in such a way that it would define and protect property rights for the vulnerable groups both in urban and rural areas and where and when these rights are acquired “reasonable compensation” must be paid.

Most importantly, mandatory provision of land forresettlement, ensuring proper method of valuation and prompt payment of compensation shall remedy these conflicts.

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

Land in Tanzania constitutes one of the major four natural resources namely land, forest, water and minerals. As the primary resource, land affects other sectors which are of paramountimportance to the existence of the nation-state. For instance, in Tanzania land is still inextricably tied to labour as it provides employment to nearly 67% of the population through agricultural activities which employs about 82% of the total rural population. As such land ensures food security and national security in general. The country has a total area of about 945,000 square kilometres of which approximately 44 million hectares are arable land for agricultural activities. It is estimated that about 88% of this arable land is found in rural areas particularly in villages.[1] It is against this background that the researcher conducted this study on the assessment and fairness of compensation awardable for unexhausted improvements.

1.2Background to the Problem

Compulsory acquisition of land involves expropriation of private rights in the property; it is a restraint on the right of private owners to be able to dispose off property according to their wish. In Tanzania we have the Land Acquisition Act of 1967, which provides for the compulsory acquisition of lands for public purposes and in connection with housing schemes. The Law of Land Acquisition is intended to legalize the taking up, for public purposes, or for a company, of land which is private property of individuals the owners and occupiers, and pay equitable compensation therefore calculated at market value of land acquired, plus an additional sum on account of compulsory character of acquisition Section 3 of the land acquisition Act empower the president to acquire land compulsory.[2]

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[1]Chachage,C (2010), *Land Acquisition and Accumulation in Tanzania,* the case of Morogoro, Iringa and Pwani,research commissioned for PELUM Tanzania.

[2]OnesmoElengulumwa,(NY) *Compulsory Land Acquisition In Tanzania, http://olengurumwaonex.blogspot.com* accessed on 22nd July 2014

In Tanzania land remains in principle an exclusive property of the state[3] despite the adoption of new liberal economic policies which have been steering the country towards a market economy since the mid1980s.[4]The land belonging to the public vested to thepresident as the trustee of land[5] and individuals have only enjoying usufruct rights or titles. The rights to access develop and occupy land is therefore granted by the government under the right of occupancy (either granted or customary) ranging from five to ninety nine years.[6] Therefore, state retains the soleownership of land and is entitled to take it back if it is not developed within the period defined in the letter of offer.[7]

Land acquisition mainly refers to the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.[8] In the United States it is known as condemnation[9] whereas in the United Kingdom it is referred to as expropriation.[10]In other countries it is referred to as eminent domain, compulsory purchase and resumption.[11]

From early days of independence Tanzania adopted policies, principles and put in place administrative structures with the intention of enabling persons from all social groups to benefit from national resources including land. Through the 1967 Arusha Declaration, the blue print for socialist transformation in a Tanzania, all major means of production including land were nationalized.[12] Land was considered as a valueless but a prime resource that ought to be freely available to all. Commensurate with socialist principles, institutions to administratively allocate land were established at all levels starting from the village, city municipality and town levels.[13]

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[3] S.4 (1) (2) of the Land Act, CAP 113 R.E 2002
[4]www.tanzania.go.tz/mining.html. Accessed on July 20 2011, at 10:24 pm.
[5] s.4 (2) of the Land Act, CAP 113 R.E 2002
[6] s.32(1) (2) of the Land Act, CAP 113 R.E 2002
[7] s 45(2)(iii) of the Land Act, CAP 113 R.E 2002
[8] FAO (2009) *Land Tenure Studies:Compulsory Acquisition of Land and Compensation,* http://www.fao.org/docrep. p.5 accessed on July 20 2011at 10:36pm.
[9] http://legal-dictionary.thefreedictionary.com/condemnation+for+public+use">condemnation for public
[10] ibid
[11] FAO (2009), loc cit p. 1
[12] R.W James**,** *LandTenure and Policy in Tanzania*, East African Literature Bureau, 1971 pp 1-3
[13] Ibid p.79

In Tanzania urban growth is witnessed in various towns, townships and cities although the authorities concerned have not planned for such growth. This urban growth accelerates the need of more land for different infrastructure development, for instance land for the construction of public utilities such as water, sewage disposals, electricity, reservoirs or dams and gas. Other government facilities requiring land include communication infrastructures such as telephones lines, irrigation works and drainage systems; availability of land for the construction of public buildings such as schools, hospitals, public library and other public buildings and transportation works such as expanding roads, ports and airports.

"Unavailability of enough land to accommodate the required infrastructures as the result of urban growth becomes most of the fundamental challenges which necessitate the government to use compulsory land acquisition power"[14] Compulsory acquisition of land in most cases is marked by confrontation between the acquiring authority and land occupiers who are not ready to allow the government to exercise compulsory acquisition power over the intended land, despite government efforts to pay compensation or to give land owners alternative. This situation of confrontation between the acquiring authority and land occupiers verify that there is a problem in compulsory land acquisition process.

In early March of 1997, the President of Tanzania on being satisfied with the purpose of the Julius Nyerere International Airport expansion project and as it is required by law, published a declaration in the Government Gazette about the intention to acquire land in Kipawa. Notice to the respective landowners was served by the Minister for Lands and Human Settlements to the District Land officer of Ilala Municipality who thereafter served the same to the respective landowners, in a process which took six weeks as specified under Section 7(i) of the Land Acquisition Act No 47 of 1967.

However, from that time up to 2010 about thirteen years, the intended project has not been completely implemented due to long- time resistance and conflicts from the land owners or occupiers who were not ready to move despite the government"s effort to

[14]Kombe,W (2007).Loc.cit

pay compensation and provide alternative plots. Early in 2010, the final batch of land owners or occupiers who had not previously accepted the compensation amount was paid after a long period of conflict. This conflict not only affected whether the intended project could be implemented on time but also has an impact on the land owners or occupiers who were both socially and economically affected due to a long time of waiting for the compensation sum.

Regarding land acquisition, the most common instruments which the state had is,it can apply to access land required for public purpose are negotiations and persuasions, or legalized force through compulsory acquisition , the letter is normally affected through the power of eminent domain. This gives the state powers to expropriate private landed property for public use without necessarily seeking the owner's consent. This lead to violation of the rights of the owner of land who can be arbitrary forced to abandon his land for public purpose.[15]

1.3 Statement of the Problem

The most common instruments which the state has and can apply to access land are negotiations and persuasion; legalised force; and compulsory acquisition.[16]This gives the state powers to expropriate private property for public use without necessarily seeking the owner's consent. However, this is subject to the payment of fair and prompt compensation. Compensation is provided as a necessary instrument to limit the property rights of the state, especially the abuse of compulsory acquisition powers.[17]

In Tanzania the government is empowered to expropriate land for public interest under the provisions of the Land Acquisition Act.[18] The process of land acquisition has more often resulted into land conflicts between the government and the landowners. For instance, valuation of land and other property at Kipawa, an area proposed for the

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[15] R.W James, Op.cit p. 2

[16]Kombe, W. (2010), *Land Acquisition for Public Use: Emerging Conflicts and their Socio Political implications,* Working Paper No.82 p.5

[17] ibid

[18] ibid

expansion of the Julius Nyerere International Airport in Dar es Salaam, was done in 1997, but payments were made later in 2010.[19]

The major concern of the victims of both Kipawa and Kigilagila is that, the assessment to compensation took excessively long time; hence compensation was neither fair nor prompt as required by the law.

1.4 Objectives

The objectives of the study are;.

1.4.1 General Objective

To assess the law and practice relating to compulsory land acquisition in Tanzania.

1.4.2 Specific Objectives

a) To examine the proceduresin the processes of land acquisition.

b) To examine the legal challengesof compulsory land acquisition procedure.

c) To examine the evaluation processes in the event of land acquisition.

e) To examine compensation processes in the event of land acquisition.

1.5 Significance of the Study

It is expected tooffer insight on the problems emanating from the entire process of compulsory land acquisition on unfair compensation addressing in the entire process of valuation for compensation which has often resulted into grievances between landowners and the government and the problem of delays in payment as far as compensation is concerned.

[19] Moses, M and Sophia, M, (2009) *The Impact of Peripheral Urban Land Acquisition on Indigenous Communities' Livelihood and Environment around Ulugulu Mountains*, Morogoro, Tanzania, p. 8

1.6 Hypotheses

The study seeks to test the following hypotheses that:

a) Tanzania Land Acquisition not cater for the protection of land compensation.
b) Prompt and fair compensation is an equitableremedy for mandatory acquisition of land.
c) The Land Acquisition Act, Cap 118 [RE 2002] is not fair and just to people holding land under deemed right of occupancy.

1.7 Literature Review

This part examines literatures on the area on other studies which discusses similar problem in order to get their views about the concept of Compulsory land acquisition and the promptness of compensation.

Gripps[20]in his work entitled, "*Compulsory Acquisition of Land, Powers, Procedure and Compensation"* portrays the rights of individuals in regards to the question of property ownership as recognized under the Constitution.[21] He noted that the acquiring authorities have no legal rights of entry prior to compensation of the individual whose land has been acquired by the president.[22]The work of this scholar resembles to this study on the ground that in Tanzania the practice shows that the individuals are forced to vacate the premises prior compensation and after the expiration of the notice to quit the premises and that the period of notice is six months.

Nyerere, J.,[23] in his book entitled, "Freedom and Unity" discusses the issue of compensation and states, inter alia that when a person uses energy and talent to clear a piece of land for use; the efforts made by a person in clearing that land enable him to claim ownership over the cleared land. By clearing the land a person adds value so that

[20]Gripps, (1962), *Compulsory Acquisition of Land, Powers, Procedure and Compensation Accessed from*http://articles.economictimes.indiatimes.com p. 17

[21] Articles 24 of the Constitution of the United Republic of Tanzania, [CAP 2 R.E 2002].

[22] Regulation 13 of Government Notice 78/2011 which defines prompt compensation to mean six months if this provision is looked upon strictly no one can ever raise his voice and hand to support that "Six months" period is even prompt.

[23]Nyerere, J.K. (1966), *Freedom and Unity,*Megarrys Manual of the Law of Real Property, Eigth Ed, : Sweet &Maxwell Ltd, London.

it may satisfy a human need. Whoever takes that piece of land must pay the owner for adding value to it.

On the basis of this, it is implied that compensation should base on unexhausted improvements alone it should also encapsulate instances where the victim has wasted his labour in working the land. It can be admitted that this book has in due course examined how compensation should be assessed but it is in the researchers opinion that it did not spell out all the surrounding circumstances to be considered when reaching at a fair and prompt compensation therefrom, there is still a work to be done on this study, so that the same can be achieved.

Arul, M., in*Compensation for Project Displacement: A new approach,* stated that, general argument supporting the issue of compulsory acquisition and compensation made mention of the fact that case where compensation are paid, the time and magnitude of the payment do not commensurate with the lands acquired resulting from resources constraints and the challenges on the use of open market price of property valuation.[24]

In spite of guarding against such disparity, "the consequences of land acquisition can be enormous. The impact on displaces households can be far-reaching and long lasting. Income reduction, loss of means of living support and the breakdown of social network are the most identifiable adverse effects on displaced households." [25] A major controversy however arises when the lay down rules and regulations regarding such acquisition and compensation are flout with ambiguity. In this sense, compulsory acquisition and compensation whether pursue in the lawful manner may tend to be disruptive, disadvantaging the most vulnerable.

Maina C,[26] in his work entitled, "Human Rights in Tanzania: Selected Cases and Materials" shows how the rights of some people as owners of the property are violated

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[24] Arul Menezes (1991), "*Compensation for Project Displacement":* A new approach, Weekly Vol. 26 No.43, p 2267

[25]Chengri Ding (2007), *Policy and Praxis of Land Acquisition in China,* Land Use Policy 24 (2007) P 3 www.sciencedirect.com

[26] Chris M, (1997), *Human Right in Tanzania selected cases and materials*, Kolin, Rudiger, Koppe, Verlag, p.121.

which is contrary to the constitution.[27] This scholar talked about the rights of the people and the general overview of the granted right of occupancy. However, the author overlooked the weakness in regarding to the implementations of the law which gives the government officials over dogmatic powers to serve the interest of the government in case there is a dissatisfaction of the people to whom their land has been acquired by the government. It is crystal clear that his work touches the rights of the people who are complaining to have been humiliated by the law. This humiliation and infringement of their rights is connected with the study at hand on the ground that it is through weakness of the law and its poor implementation people raise their complaints.

However, the scholar's work differs from this study on the ground that he discussed the legal rights of the people but did not show the problem of substantive law and how the law implementation in regarding to land acquisition are effected and the problem emanating therefrom and to suggest of what to be done. This encourages the researcher to see that there is a gap to be dealt with.

For example he discusses that the Ministers may declare an area as a planning area,[28]with that regard the right of the holder of right of occupancy is extinguished to land but subject to prompt and fair compensation.[29]In practice it is required to pay the people timely. Maina does not talk about the time to be paid from the time of evaluation up to the time of compensating. Compensation can be done indefinitely while the market value had already changed.

The question to this study is to what extent prompt compensation is prompt.[30] The victim has no option than adhering to what is subjected to him or her.[31] For example in

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[27] Article 24 of the Constitution of the United Republic of Tanzania [CAP.2 R.E 2002] .

[28] Section 13 of the Country Planning Act [CAP 378 R.E 2002]

[29] Section 3 of the Land Act [CAP 113 R.E 2002]

[30] Regulation 13 of GN 78 /2011 defines prompt compensation to mean "Six months" 1f this provision in looked upon strictly no one can eve raise his voice and hand to support that "six months" period is even prompt.

[31] Regulation 10 of G.N 79/2011 on forms of compensation is very wide as it leaves much discretion to the government to act according to her whims when undertaking the exercise of deciding forms of compensation.

practice a person is required to vacate the land even if compensation is delayed which ultimately results to totally not being compensated as the time goes on.

According to Fekunmo, (2001)[32] "Compensation in cases of compulsoryacquisition of land means the sum of money which is to be paid by a publicbody carrying out some authorized undertaking under statutory powers inrespect of; (i) the compulsory acquisition of land which is required for thepurpose of the undertaking; and (ii) the injury resulting from the executionof the works to land which is not required for the purpose of theundertaking."

Taking land compulsorily for public projects, such as roads andairports, is understood and accepted as a proper use of powers ofacquisition. There is resistance to the use of these powers where a privateundertaking is able to profit from the taking of Land at a price whichdisregards the value of the Land to the project.

Oakley, A.J[33] in his book entitled, "Megarry's Manual of the Law of Real Property" argued that a landowner is subject to what is sometimes called "eminent domain", meaning that the right of the Parliament as part of its legislative omnipotence, to authorize the compulsory acquisition of land. He further denoted that there are many statutes, both general and specific, which authorize the compulsory purchase of land from the owner by various public and other bodies for specified purposes. It was again pointed out that the Act which authorize the compulsory acquisition of land should of course make its own provisions governing the procedures of acquiring and compensation.

The author proposed three steps. Firstly, order; this is when the authority wishes to make a compulsory purchase, it makes a 'purchase order', but this does not take effect until it is confirmed by the appropriate Minister, and he must hear any objections to it, usually at a public local inquiry conducted by an inspector.

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[32]Fekumo, J. F. (2001), *Oil Pollution and the Problems of Compensation in Nigeria* F & F publishers, Port Harcourt, pg 7

[33]Oakley,A.J.,(2002), *Megarrys Manual of the Law of Real Property*, (Eight Edition), : Sweet & Maxwell Ltd, London,pp 577-579.

Secondly, notice to treat which is when the order is confirmed, it enables the acquiring authority to serve a 'notice to treat' on the owner. Also this does not by itself create a contract for sale, though it gives either party to have the compensation assessed by the Lands Tribunal in default of an agreement. Once the compensation has been determined, the sale is specifically enforceable as a contract.

Thirdly, entry which is done once compensation has been determined, the acquiring authority can obtain possession by completing the purchase. The author suggests further that the general basis of compensation on compulsory acquisition has generally been the open market value of land. Apart from open market value, compensation may also be payable for injurious affection (that is, injury to other lands caused by acquisition), and for disturbances as well as home loss payments.

The author suggests that some steps which seem to be of importance to the study, suggests that the Land Tribunal is supposed to be the one to approve the amount of compensation; this is different from our laws which vests this power to government valuer who is not independent either, thus the researcher still has something to learn from this author.

Denyer-Green, andNuhu [34] argue that 'when lands is compulsorily acquired for a justpurpose, there should be prompt and adequate payment of compensationthat will better the lots of the claimant (s) in order to enhance theirlivelihood and contributions to the economic and social activities of hissociety'.

Larbi[35] argue that there is almost universal agreement that in economies where private property ownership is permitted, the State have the power to compulsorily acquire the private property of the individuals in the public interest or for the public goods subject to the payment of prompt, fair and adequate compensations though he fail to mention the lawful aspect which satisfy the conditions for acquisition, this has been the general argument on compulsory acquisition and compensation. With compensation which

[34]Denyer-Green, B., (2005), *Compulsory Purchase and Compensation*, the Eighth Edition, Estate Gazette, London Pp 3, and 110.

[35] Wordsworth OdameLarbi., (2004), *Compulsory land acquisition in Ghana- Policy and Praxis,* Land Use Policy 21 (2004) 115-127, www.sciencedirect.com

always becomes the issue of contention, the legal framework of most countries makes provision for access to court for persons who think their interest are not represented and feel cheated in the demand for compensation. He further posits that payment of compensation is not only just but it is equitable and serves to further efficiency and other goals of the land owning communities. In my view compulsory acquisition power of lands has led to generally unanswered questions especially with respect to compensation.

Ndjovu C,[36] E in his work titled, "Compulsory purchase in Tanzania: Bulldzin, Property Rights" states that, the most important justification for acquisition of land for public interest is for position and enhancement of benefits to the wider community or society. It is therefore argued that the state using its powers or sovereign can and should have authority to acquire or purchase privately held land or property for utility of the general public. According to the author, the economic justification for the deployment of compulsory acquisition is to ensure that public interests or projects such as economic ventures, public infrastructure development (e.g. highways, water pipelines and electricity), or provision of social services such as construction of schools and hospitals which cater for the wider public interest are not frustrated by an individual refusal to sell land to the government at a reasonable price. If the public cannot access land forcefully, individuals could block social projects or demand unreasonable high some which the public can not pay. The author seems to support acquisition of land by the government for public purpose, but, he does not show the outcome of the said acquisition to the victims who are affected by the said acquisition, in terms of compensation and valuation said compose.

In the introductory remarks by ChengryDing[37] he posits that lands has been in the focus of policy debates among scholars, politicians, policymakers, and urban managers in developing countries partly because it is a particular good and partly because there is increasing scarcity in land due to fast population growth and rapid urbanization and also been the most important assets that can be of principal source of wealth and

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[36]Ndjovu, C.E. (2003) "*Compulsorypurchase in Tanzania : Bulldozing, property Rights" public* PhD Thesis, RungiTenishaHengshdau, stochhem pp-50-67
[37] ibid

power. Some are of the view that land acquisition has been used as a policy instruments to correct market failures in urban development, to achieve environmental and social goals or to help to implement land use plans.

Therefore in market economy especially in developed countries where compensation is based on market values of land taken, land acquisition is justified on the basis that mis-pricing of infrastructure and profit-driven private markets often result in urban development patterns that have inadequate provision of public and urban basic services, restrictions on the ways land can be used in terms of type and intensity help to achieve social, environmental and cultural goals and objectives among others.

In my view there seems to be a universal agreement on compulsory acquisition if it's intended to satisfy the conditions of lawfulness, public interest with the major difficulties arising out of compensation. The management of the process is of great consequences to those whose lands are acquired and depending on the legitimate aim of such acquisition and its used can be advantage or disadvantage to the welfare of communities.

Will and Kombe,[38] in their work entitled, "*Land Acquisition for public use: Emerging conflicts and their socio-political implications*" state that, according to the Land acquisition Act, 1967, acquisition of land for public use includes exclusive use by the government or general public uses including improvement of public utilities such trench roads, planning of non commercial / business centers, residential, and other land use requirements for expansion of a city or municipality. It also includes land for development of public facilities such as schools, universities, ports and airports.

The author argues that the community costuming applied by the state in land acquisition is compulsory acquisition which is mostly followed by forceful eviction of the former occupiers. This is effected by suing the power of the eminent domain. This gives the state power to expropriate private property for public use without necessarily sacking the consult of the owner. According to the Author, however this is subject to

[38] Will and Kombe '*Land Acquisition for public use: Emerging conflicts and their socio-political implications"*ensiles states working papers series No.2, Ardhi University, October 2010 pp 3-8

the payment of fair and prompt compensation compression is provided as a necessary instrument to limit the property rights of the state, especially the abuse of compulsory acquisition process.

There were problems of land acquisition for public use in Tanzania due to lack of policy and legal frameworks. Valuation and compensation were not supported by clear institutionalized and inclusive protocols that are transparent and predicable. He recommended that policy and legislative reforms were necessary on the existing land acquisition practices and dialogue as a key strategy to acquire land with reliable mechanisms and payment of fair and prompt compensation for the affected peoples.[39]

However, the author does not show whether the said compensation are fair and whether the victims of acquisition participate in valuation of their property this is the concern of this research paper.

Bashar, M (2008)[40] further affirmed that when land is compulsorily acquired for a just motive there should be prompt and adequate payment of compensation that will better the lots of the concerned parties in question in order to enhance their livelihood and contributions to the economic and social activities of the society.

Ambaye, (2009)[41], noted that payment of adequate compensation is the most vital stage throughout land acquisition process whereby the affected land owners are paid for all loss and damages they face due to the acquisition. The compensation requirement under the law demands that the acquisition authority reimburses the affected land owners for the property interest acquired and place them in a good financial position as if the property had not been taken. An adequate compensation in land acquisition is always being referred to as the open market value of the land taken simultaneously with its consequences including severance, injurious affection and disturbances. Therefore, the fundamental subject matter in the compensation

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[39] ibid

[40] Bashar, M. (2008). *Compulsory Purchase and Payment of Compensation in Nigeria: A case study of Federal Capital Territory (FCT)* Abuja. Nordic Journal of Surveying and Real Estate Research, vol. 3.

[41] Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation

provisions of the land acquisition statutes is to ensure that a dispossessed property-owner is no worse off and no better off as a result of his eviction (Brown, 1991).

Viitanen et al.(2010), identified four common problems related to compensate on of the affected peoples. The first one is ‘on the ability to define the level of compensation caused by price tension, where the law requires the valuation to be based on pre-acquisition land uses.’The main reason behind this problem is that the amount of compensation is not sufficient to replace the original dispossessed property.[42]

The second problem is associated with ‘pricing where governments set values rather than values are set by the market’ (Mahalingam& Vyas, 2011). The third problem is that ‘the land rights claimed by owners and occupants may be unregistered, and may not be entitled legally for compensation as a result of land acquisition. ‘The fourth problem is due to lack of cooperation among land owners in their removal from their businesses and homes.

Mwafupe, D and Briggs, J,[43] in their work entitled, “*The Changing Nature of Peri-Urban Zone in Afrinc: Evidence from Dar es Salaam”* states that delay in compensation for unexhausted improvements, is the cause of land conflicts in Tanzania. According to the author the experience is showing that, most of the victims of land acquisition are not against the whole process of land acquisition, because, the conflicts seem to start when they think that, the compensation is delayed or is inadequate. It is argued by the authors that, if the victims of land acquisition are involved in the whole process of valuation of their landed property before it is taken by the state, and if compensation is not delayed, there would be micro problems caused by only stubborn victims of land acquisition.

Therefore according to the author hand conflicts are caused poor land management and problematic governance institutions, including a lack of transparency especially in

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[42]Viitanen, Kauko, Vo, Dang Hung, Plimmer, Frances, & Wallace, Jude. (2010). *Land Acquisition in Emerging Economies* : Hanoi Declaration (Vol. 51). Copenhagen, Denmark: FIG.

[43]Mwafupe, D and Briggs, T, “*The changing Nature of Per-Urban Zone in Africa : Evidence from Dar es Salaam”* Scot:Geography Journal No.115 (4), Dar es salaam, Tanzania, pp.269-282.

public hand acquisition. This work is the stepping stone of this research paper which is geared to show the effects of land acquisition for public interests in Tanzania.

1.8 Research Methodology.

The main objective of this part is to describe the approachesused for data collection, data processing, and analysisof the results.

This dissertation adopts a quantitative survey method for datacollection. To achieve the objectives, the research explores theattitudes of claimants' onIssuesofclaimant'ssatisfaction towards compensation paidanddisparityin compensation for compulsory land acquisition in the study areas, through a questionnairesurvey. The targeted respondents were the affected claimants' of Kipawa and Kigilagila.

1.8.1 Study Area

This study was conducted in Dar es salaam, Tanzania mainland and particularly in Kipawa and Kigilagilawhereand acquisition took place for the construction of Julius Nyerere International Airport.Kipawa Ward is located near Julius Nyerere International Airport in Ilala Municipality. The area can be accessed through Nyerere road about 17 kilometres from Dar es Salaam city centre. The area covers approximately 560 acres which include 110 acres Kipawa Street, 100 acres Kipunguni East and 350 Kipunguni A with a population of 11059 people13. However, the part where land was acquired compulsory is Kipawa Street and according to TAA report the people who were affected by the project are 1218. The name Kipawa originates from the Zaramo word "Upawawa" which means Wooden Spoon. The historical background of Kipawa can be traced to prior independence where the area was used as farmland. The dominant tribes which lived in the area were the Zaramo, Ndengereko and Makonde who resided in the area in groups according to their tribes.

Administratively, Kipawa falls within Kipawa Ward as one of the five "Mtaa" within the Ilala Municipality, Dar es Salaam. It is bordered by Kiwalani to the East, Kigiragira to the South, Kipunguni to the West, Nyerere Road to the North and Julius

Nyerere International Airport (formerly known as Dar es Salaam International Airport) to the South East.

The purpose of the study, the nature of data required and the availability of resources largely influenced the choice of this research strategy. The nature of the problems, objectives, and the research questions had a bearing on the choices made.

1.8.2 Research Design

Research design is a plan to be followed when collecting and analyzing research data and interpreting observations made as one defines the domain of generalizability.Nachmias, C. F., &Nachmias, D,(1997). This research has used a case study method, which uses several units of inquiry. The purpose of the study, the nature of data required and the availability of resources largely influenced the choice of this research strategy. The nature of the problems, objectives, and the research questions had a bearing on the choices made. This part focuses on the data collection techniques (methods) and procedures to be used in collecting data as well as the data analysis plan.

The typology of the design used in collecting data for the study was "a case study approach" in Dar es Salaam Region, Ilala Municipality, Ministry for Lands, Tanzania Airports Authority (TAA) and the former residents of Kipawa and Kigilagila who are said to have been relocated to Chanika area. The criteria for the choice of a case study approach had been dictated by the fact that such an approach is more exhaustive and reliable than others as it makes deep exploration of a case unit so as to obtain information that can be relied upon.

The first methodological task was thecollect data and information so as to identify representative areas to get to the various targeted groups in the city. Pertinent information was gathered from all concerned parties using appropriate mechanisms taking in to consideration the following factors. First, size of the affected communities and persons; second, accessibility in tracing the households which have displaced and moved away from the areas as a result of the expropriation; and third, size of projects and reasons associated with the expropriation in each area.

1.8.3 Population Sample

The sample size consisted of 50 respondents from Dar es Salaam Region, Ilala Municipality, Ministry for Lands and Human Settlements Development, the respondents were categorized as follows:-

a) Ten respondents were officers from Ilala Municipality especially those in the Land department.

b) Ten respondents were from the Ministry of Lands and Human Settlements Development.

c) Ten respondents were the Tanzania Airports Authority (TAA).

d) Twenty respondents from former landowners of Kipawa and Kigilagila areas.

Data and information was collected at individual and community levels as well as from interviewees in the relevant local government agencies which have relation with the issues of land valuation and compensation practice in Tanzania. At the level of individuals, a household formed a basic unit of inquiry represented by its head who was the property owner and was identified as a potential interviewee.

Officers from Ilala Municipality carried out the process of demolition of the former residents of Kipawa and Kigilagila areas. The officers from the Ministry for Lands and Human Settlements Development provided information on the entire process of evaluation and the amount of compensation paid to the victims in the areas of study. The officers from Tanzania Airport Authority provided information on the entire process of acquisition as they are conversant with the said incidents of compulsory acquisition. Interviews with the former residents of the affected areas of Kipawa and Kigilagila provided the researcher with the complaints arising from the entire process of compensation and relocation.

1.8.4 Sampling Technique

Since it is difficult to cover a wider population due to time and budgetary constraints, sampling was the most suitable technique for obtaining detailed and reliable

information as regard to the research problem since it is a systematic technique of choosing a group of individuals that is small enough to be true representative of the population concerned. The study involved both random and stratified or purposive sampling in gathering data from different sourcesbecause it was found appropriate and applied for expropriates as was applied in various similar research works.

1.8.5 Data Collection Method.

Data collection is the process of gathering and measuring information on variables ofinterest, in an established systematic fashion that enables one to answer statedresearch questions, test hypotheses, and evaluate outcomes (Dodge, 2003). For this study a Case study Research was used. According to Yin R. *Case study Research: Design and Methods*(1994) case study approach in research is not restricted to any specific data collection method. It is for this reason that several sources of data and methods of data collection were used in this research. This strategy is used to minimize the degree of specificity of certain methods to particular bodies of knowledge.

According to Yin,[44] case study approach in research is not restricted to any specific data collection method. It is for this reason that several sources of data and methods of data collection were used in this research. This strategy is used to minimize the degree of specificity of certain methods to particular bodies of knowledge. In this research the following main methods of data collection were used, namely primary data through structured and semi structured questionnaire interviews, key informant interviews.

In addition to that, secondary data analysis, both qualitative and quantitative research methods were also applied. By using a combination of all these methods the deficiencies that flow from employing only one investigator or one method had been reduced.

1.8.5.1Primary Data collection method

Primary data are the data observed or collected directly from first-hand experience(Dodge, 2003). In this study primary data collected included socio-

[44] Yin, R.(1994). *Case study Research: Design and Methods*: SAGE publication accessed from http://www.sagepub.com/

economiccharacteristics of respondents. One of the research instruments used in collecting primary data consisted of structured and semi structured questionnaires which were administered to all categories of participants in a specific expropriation and valuation practice. Primary data was obtained through questionnaires.

Household Data Collection: The main objective of household data collection is to get opinion on the land acquisition practices in the study area. For this research, purposive sampling technique was used since the study was intended to interview only those people who wereliving and working inthe project areas.McNeill & Chapman [45] described "Purposive sampling occurs when a researcher chooses a particular group or place to study because it is known to be of the type that is wanted."

The other justification for the selection of this method is that purposive sampling is considered desirable when the population happens to be small and a known characteristic of it is to be studied intensively (Kothari, 2004), for this case opinion of the affected peoples.

The households'interview was conducted on those residents who lost their land and propertiesas a result of land acquisition. It is difficult tocomplete the whole population of the study area, since this type of inquiry involves a great deal of time, money and energy.

Therefore, a total of 20 affected peoples wereinterviewed.The researcher went to the study area to conduct household interview together with the appointed assistance. The interviewers were asked questions to respondents and filled on the interview questionnaire prepared for this purpose in local language as responded by the interviewee.

One of the research instruments used in collecting primary data consisted of structured and semi structured questionnaires that would be administered to all categories of

[45] McNeill, P., & Chapman, S. (2005). *Research Methods*, Third Edition: Taylor & Francis Group.

participants in a specific expropriation and valuation practice. The main practices exercised on the affected people

1.8.5.2 Interviews

Interviews constituted the major method of data collection for this study because of thenature of the study itself an opinion survey to assess change in certain variables over a certain periodof time and partly because of the low literacy level of the participants, the latter madeit impossible touse self-administered questionnaires.

Theset ofinterview questionsweredesigned to be used as a survey tool to collect data from individual households, (the former landowners of Kipawa and Kigilagila area), the acquiring authorities, that is, (land officers at the Ministry of Lands and Human Settlements Development), property valuers and government higher and local officials, that is (government officers at Ilala Municipality and officers of the Tanzania Airports Authority).The interview questions helpedto collect various types of information such as level of knowledge, experience, opinion, activities and so on. The interview questions wereoriented with respect to the research objectives so as to enableansweringthe mainand specificresearch questions.

Before designing the interview questions, the indicators of assessment for thedifferent aspects of study have been identified.The interview questions were developed based those indicators for the collection of field data.

Household Interview Questions:

The objective of the household interview question as mentionedin the interview questiongeneral backgroundwasintendedto obtain and verify knowledge, experience, activity, and information on different aspects of project planning, public participation, land acquisition and compensation processes and resettlement issuesand project impactsduringproject implementation. It also included interview number, household address, date of household interview, and name of the interviewee; consisted ofbothclosed and open-ended response questions

For the household survey, the interview questions were prepared in local language (Kiswahili) to make clear and understand the questions to be asked during the interviewperiod. Thehouseholds'interview questionswere designed to include the sections of:General introduction about the objective of the interview questions:- Section I-Residents opinion on the land acquisition process and procedures;Section II-Residents opinion on the compensation payment and procedures;and Section III-Residents opinion on resettlement/ relocation and their participation.

The key informants to be interviewed were theIlala municipal staffs.The purpose of this interview questionnairefor these key informants was the same as that of the households (to obtain and verify knowledge, experience, activity, and information)on different aspects of project planning of expansion of Julius Nyerere International Airport and implementation, land acquisition processes and procedures, compensationand resettlement of the affectedpeoples, and project impactsduringand after project implementation.

All interview questions contain interview number, date of interview, name of interviewee, responsibility, organization department, and contact information of interviewees. It includes general introductory, objective of the study, and consisted of both open and closed ended interview questions. The interview questions for the key informants were prepared in English.

In general the questions were framed in such a way as to illicit cognitive, affective and evaluative responses from the diversified categories of the respondents. Specifically, the questions to be asked to the identified government officers were the structured ones and unstructured to the rest of the respondents. For those who were served with unstructured questions, the questions were situational depending on how the previous question had been answered.

1.8.5.3 Field Observation:

The main objective of the field observation was intended to observe the site location of various components of the project implementation such as the constructed roads, the

demolished housing units and the disposed land. In another word, the information collected usingthis method relatesto what is currently happening in the study area[46] Using this method, information on the constructedroads and demolished housing units were collected by taking photographs and marking of the road areas on a printed map showing the study area. The status of project impactswas observed during the field visit.

1.8.6 Documentary Review

Relevant documents and papers, legal concepts and provisions, valuation methods, and matters related to financial sources and their influence on the determination of compensation rate/amount were gathered and used in the study. Documents were also gathered from various published journals, reports, books, research reports, and related materials.

In general, documentary sources were classified in to three major categories: legal documents, academic literature, and documents reflecting international practices. Legal documents including the Land Act and its regulations, etc. dealing with land use administration, expropriation and compensation and the related regulations or directives. Academic literature, which reflects various research work and studies on issues / problems related to land and related matters.

This method solicited and gathered relevant data from libraries found in Tanzaniamainland, this sources contained moderately substantial amount of literature concealedin textbooks, research papers, and law reports, which provided a wealth of data. Thisincluded the Mzumbe University law library, the University of Dar es salaamLibrary and others with relevant materials to the study.

Also access to the different web search engines, which had some relevant sites to the study in question. Thesedocuments provided contemporary events and helped to understand the general aspectof land acquisition and compensation in Tanzania and its impact on the right to own land.From these sources various published journals,reports,

[46] (Kothari, 2004, p. 96).

books, project reports, newspapers and related materials found on the internet were used.

1.9 Limitations of the study

a) It was difficult to get the tenants because the expected area where the researcher thought to carry out the research was impossible because landowners were evicted after their houses being demolished; this necessitated the researcher to go up to the relocation area daily where the victims had been re allocated.

b) Because the project started long time (about 12 years) some respondents were unable to remember some of the information and data. This brought some controversies during interview.

CHAPTER TWO

2.0 LEGAL FRAMEWORK OF LAND ACQUISITION AND COMPENSATION IN TANZANIA

2.1 Introduction

Legal framework as defined by the World Bank (2010) "it is the judicial, statutory and administrative systems such as court decisions, laws, regulations, bylaws, directions and instructions that regulate society and set enforcement processes."

This Chapter attempts to analyse the process of land acquisition and compensation in Tanzania. It shows how land acquisition is currently being effected by the government. In this chapter a brief history of land acquisition by the state is shown. The meaning of land acquisition for public interests has been shown. This meaning is from statutory provisions and case laws. Furthermore specific laws dealing with land acquisition in Tanzania have been briefly analyzed.

2.2 The History of land Acquisition in Tanzania

Land acquisition in Tanzania, (by the government) has very long history. It ranges from the period of German and British colonial rules in Tanganyika to the time of independence of Tanganyika (Tanzania mainland)

German's control in Tanganyika took root in 1884 when large tracts of land were granted "for all times" to the German adventure Dr.Karl Peters.[47] These grants were made by several local chiefs in consideration of a few gifts given to them by Karl Peters.[48] In 1885, because of pressure from Peters and members of the society for German colonization, the Kaiser issued a charter extending his protection to all the territory acquired under the agreements.[49] Peters subsequently formed the German East Africa Company and transferred to it all the rights in the land alienated to him

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[47]J.C.Tailor, (1991),*The Political development of Tanganyika*, Cambridge University Press, Stanford California p.13

[48] ibid

[49]R.Coupland, (1968), *The Exploitation of East Africa,* Cambridge University, Stanford California p.15

under the 1884 grants.[50] During this time there was the scramble for partition of Africa by European states. In this scramble, Tanganyika Rwanda and Burundi were taken by German, which named the territory under its control as German East Africa.[51]

Land acquisition by German Government in German Eat Africa was facilitated by an Imperial Decree of 1895 which had the provision relating to creation, acquisition and conveyance of crown land.[52] The principle of this enactment was that saves for the land already in private ownership or possessed by chiefs or indigenous communities, all land in Tanganyika was declared to be unowned Crown land (HerrenlosKronland).[53] This land was vested to the German Empire, while existing rights of indigenous people were being officially recognized by the Government.

Also the German colonial rule in Tanganyika required all the dwellers of Tanganyika to obtain authenticated certificates or documents to prove their ownership of land. Without a document of title to prove his ownership, a claimant had at best a permissive right of occupation of the land.[54] The result was that in law only settlers who had documentary evidence to prove land ownership or grants from local chiefs or public authority had security of title.[55] In practice alienation was by an adhoc commission set up request of the application. A commission was supposed to inspect the area and decide whether it was to be given to the applicants, after satisfying itself that it was unowned crown land.[56] The commission was required to respect the occupation of Africans on land and to leave them sufficient land for their needs and future expansion, the requisite amount being defined as at least four times the existing cultivated area.[57]

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[50] ibid
[51] ibid
[52] J.IIlife, (1969),*Tanganyika Under German Rule*, Oxford University Press, London. p.27
[53] ibid
[54] R.W.James (1971), *LandTenure and Policy in Tanzania East African, Literature Bureau*, Dar es salaam-
Tanzania p.14
[55] ibid
[56] ibid
[57] ibid

The ad-hoc Land Commission was also required to compensate inhabitants with a sum of money for withdrawing them from land they occupied.[58] With such latitude and in any case by virtue of naked power concentrated in the hands of the German administrators and the settlers population, it is no surprise to hear that despite the establishment of serves upon the four times the cultivated area principle and compensation for unexhausted improvements, the native population was deprived of land necessary for their existence without any compensation. [59]

After the First World War, Tanganyika became mandate Territory under the League of Nations the British had the responsibility to raise it until it was ready for independence. In that case British became the new colonial power in Tanganyika. By the Versailles Peace Treaty, 1919 German renounced all rights over her colonial possessions in favor of the allies, [60] who then agreed that Great Britain should administer German East Africa with the exception of Burundi and Rwanda which came under Belgium's control.[61]

In 1923 the British Colonial rule in Tanganyika enacted the Land Tenure Ordinance, in 1923[62] but has since been renamed the Land Ordinance 1923 Cap.113. This enactment declared the whole of the lands in the territory of Tanganyika, whether occupied or unoccupied, to be public lands. And public lands and all rights over the same were placed under the control of the Governor of the territory to be held, used or disposed of on "rights of occupancy for the benefit of indigenous people of Tanganyika.[63]

The Land Ordinance, 1923 empowered the Governor to dispose of the Africans from their ancestral homes by the administering power in order to make room for the settlers. This was so because customary tenure was not included in the meaning of the "Rights of Occupancy" as it was provided for by the Land Ordinance, 1923. This made it easy for displacing of the natives from their land, under the ground that all native

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[58] ibid
[59]R.W.James op cit p.14-15
[60] See the East Africa Royal Commission Report, Chapter 2, Para. 50 and the preamble to Tanganyika Order in Council 1920
[61]R.W.James ibid P.15
[62] No.3 of 1923
[63]R.W.James Ibid

lands and all rights over the same were under control and subject to disposition of the Governor.[64] Also the Ordinance vested in the Governor the power to make grants of the land on rights of occupancy to natives or non-natives whether it appeared to him to be in general interest of the country.[65] With such latitude, the protection of the indigenous people must depend on the attitude of the Governor at any given time to European settlement and in fact there was indiscriminate alienation of land away from the African occupations.[66]

Extensive alienation of land occupied by Africans led to periods of unrest and questioning as to the nature of their rights in their lands. This unrest was voiced not only in Tanganyika, but even in the 9th sessions of Leagues of Nations.[67] This made the British Colonia rule in Tanganyika to redefine the right of occupancyin 1928 to include the rights of the natives of Tanganyika who were occupied and using land under customary laws (natives laws or deemed rights of occupancy).[68]

The object of redefinition was to safeguard the title of the indigenous people of Tanganyika to their lands. Though the Land Ordinance accepted the principle of protecting native's rights in land, it failed to establish a procedure to safeguard that principle. It therefore failed in its object.[69] But quite apart from the right of occupancy system, the government enacted legislation aimed at controlling transfers of property from a native to a non native.

The provisions were effective to prevent voluntary transfers by indigenous people to the more prosperous immigrants but they could not prevent the compulsory acquisition of the native's land by the government for the benefit of the immigrants. Furthermore it must be noted that though the right of occupancy was redefined in 1928 in the Land Ordinance 1923 to cover for the first time the title of a native or a native community

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[64] S.4. of Land Ordinance, 1923
[65] S.6 Ibid
[66]R.W.James Op cit p.96
[67] ibid
[68] ibid
[69] ibid

lawfully using or occupying land in accordance with native law and customs, it however (customary tenure) retained its original status.

This was revealed by the British colonial rule Courts' decisions made after the said redefinition. These are the case of *Muhena bin Said v Registrar of Titles*,[70]and*Mtoro BinMwamba v Attorney General*,[71] where it was stated that unless a grant be proved; a customary law title gives no more than permissive occupation to the inhabitants of Tanganyika. And because of its permissive nature, the occupants were not holding the said land adversely to the government for purpose of acquiring title under the limitation provisions.

Land alienation by the successive Governors proceeded without regard to native population to pressure. The administration disregarded the fears of the Africans and gave liberalinterpretation of section 4 of the land Ordinance, 1923 which required the Governor to consider at all times the common benefit, direct or indirect of the natives of the territory.[72] In certain instances the government used forces to acquire the land in occupation and use of the natives. One of the incidents showing this was the *Meru land case*, where the British colonial rule used force to evict the occupants from their lands by burning down their huts.[73]

During the time of independence in Tanzania, all the land was declared to be public land vested to head of the state who acts as the trustee of the citizens.[74] The head of the state could acquire any piece of land under occupation and use of any person in Tanzania under two grounds, namely, if it is required for public interests[75] and when there is a breach of conditions.[76] But in this study much concern is acquisition of the land by the government for public interests or purposes.

[70] (1949) 16 E.A.C.A.79
[71](1952)2 L.R.T.327
[72]R.W.Jamesloccit p.97
[73] Ibid pp.97-8
[74] S.4 (2) of the Land Act. Cap 113 R.E.2002
[75] S.4(1) of the Land Acquisition Act Cap 118 R.E.2002
[76] S.45 (1) (2) of the Land Act, CAP 113

Land acquisition is the process governed by multiple legislations with diverse objectives like: public purposes as defined by the Land Acquisition Act No.47 of 1967 and Land Act, No. 4 of 1999, transfers of Categories of Land under Section 4 (7) of the Land Act, 1999, hazardous land under Section 7 (8) of the Land Act, 1999, regularization scheme as per section 60 (1) and 60 (3) (c) of the Land Act, 1999.

The Land acquisition Act[77] gives the president powers to acquire land in any part of the Republic of Tanzania for the so called public interest. Much as this sounds good for national development,the so called public interest historically was by then, vaguely defined as to include alienation of people's land to establish state owned corporations some of which had little link if any with local people's wellbeing and the Act was purposely enacted to empower the president acquire landfrom anybody for the so called public interest which critics have maintained that it amounts tomisuse of presidential powers than serving public interests because the latter finds no legality inthe books of law[78].

Public interests have actuallyexpanded in the 1990's to include almost everything without forgetting pushing away villagers from their land and reallocating the same to a foreign investor even if the latter is given such land for free in addition to five years tax holiday as incentives. In1999 the two pieces of legislations were passed that is the Land Act[79]and The Village Land Act[80]which came to cater for the problems which were not solved through the previous laws.

Therefore during the time of independence, the president of the United Republic of Tanzania can acquire any land for public interests or purpose, after the notice has been served to the occupier in that regard.[81]

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[77] No.47 of 1967
[78] The Land Acquisition Act CAP [118 R.E.2002]
[79] Act No. 4 of 1999
[80] Act No 5 of 1999
[81] Ss 6-8 of the Land Acquisition Act CAP [118 R.E.2002]

2.3. Land Acquisition legislations in Tanzania.

Before colonization within Tanzania, local community leaders controlled occupation and use of land for the benefit of members of that community. In those communities laws and customs evolved which governed occupation and use of land for their benefit. In other words, the resultant land tenure was 'home grown", (Gondwe 1997, Riziki 2003).

Members of a particular tribe could have its unique system of land allocation. In most cases, it was the chief who allocated land to his members and for public use such as building the schools, areas for worships and roads. In rare cases, that chief could acquire it from the occupants. Once the land was allocated to the person, that person held the same and could apportion it to his family members. The land remained in the occupation of the family even after the death of the person who was allocated it by the chief in the first place.

The German and British acquired land from the indigenous people to satisfy their colonial motives, and brought compulsory land acquisition in Tanzania. This was mainly for economic motive and to less extent social and security purpose.

Land acquisition in Tanzania is specifically governed by two major laws, namely; the Land Act[82] and the Land Acquisition Act.[83]

2.3.1The Constitution of the United Republic of Tanzania of 1977

Article 24 (i) of the Constitution of the United Republic of Tanzania specifies that every person is entitled to own property, and has a right to the protection of his property held in accordance with the law. It is unlawful for any person to be deprived of his property for the purpose of nationalization or any other purpose without the authority of law which makes provision for fair and adequate compensation. The constitution is therefore in essence to the law of the land.

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[82] Act No. 4 of 1999
[83] Act No.47 of 1967

2.3.2 The Town and Country Planning Ordinance Cap 378 of 1956

Section 45 empower the President to acquire the land in a planned area for the purpose of securing its use and must ensure it is being developed in accordance to the planning scheme applicable to the area. Section 50 (1) provides that; compensation payable shall be taken to be the value of that land within the planning area plus the value of any development done within the planning area. Section 54 stipulates further the circumstances other than withholding of planning consent under which no compensation is paid. However, Cap 378 does not provide for the formula to find the value for various building affected.

2.3.3The National Land Policy of 1995

The Policy statement under the National Land Policy states that; compensation for the land acquired in public interest will be based on the concept of Opportunity cost and that will include, market value of the real property, disturbanceallowance, loss of accommodation, transportation allowance, cost of acquiring the subject land, any other cost of incurred to the development of the subject land and compensation should be paid promptly and if not paid in time, interest rate will be charged. These principles provide the basis for provisions in Land Act No.4 and 5 of 1999.

2.3.4 The Urban Planning Act, 2007

This is the main urban use planning guide and it provides for specific regulations to address compensation. Section 60 provides that compensation payable shall be equal to the value of that land within the planning areas, plus the value of any development done with the planning consent by the landlord. Compensation will be as referred by the land act of 1999 and its regulations of 2001.

Section 65 elaborates on the factors to be undertaken into account in assessing compensation;

There shall be taken into account any enhancement of the value of the land, or any other land under the same ownership, whether in the same planning area or not, by

reason of any provision contained in any scheme or any work executed in accordance with a scheme.

Section 66 states that, no compensation shall be made;

(i) By reason only of the withholding of planning consent by the planning authority pursuant to the provisions of this Act.

(ii) In respect of any development commenced after the material date unless such development was commenced pursuant to, in accordance with planning consent given in respect thereof.

2.3.5 Land Acquisition Act, 1967

The Land Acquisition Act1967 is the principal legislation governing the compulsory acquisition of landin Tanzania. Sections 3-18[84] empower the President to acquire land, and provide the procedures to be followed when doing so. The President is empowered to acquire land in any locality provided that such land is required for public purposes.

The procedures provided by the Land Acquisition Act include:

a) the investigation of the land to see if it is suitable for the intended purpose;
b) notification to the landowners to inform them of the decision to acquire their land before the President takes possession;

Notification of the government intention to acquire that land is given to the public and all other interested parties through government gazette, written notice delivered by hand or mail, national publications, local newspapers, radio and television. The length of the notice shall not be less than six weeks from the date of publication of the notice is in accordance with section 8(3) of the Land acquisition Act, 1967. However, the President is given the mandate to shorten that period in case the land is urgently needed.

c) and payment of prompt compensation to those who will be adversely affected.

[84] Act No.47 of 1967

After the compensation schedule is verified and signed by the required authority; the next step is to pay compensation to the affected parties.

Section 12 of theLand acquisition Act restricts compensation to un exhausted improvements on the land excluding the land or such improvements as land clearing and fencing. This latter situation has been rectified by the Land Act.[85]

If land is required for public purpose the President is required to give a six weeks notice to those with an interest in the land in question but, if the situation so demands, the notice can be shortened without the need to give explanation. After the expiration of the notice period, the President is entitled to enter the land in question even before compensation is paid.[86]

The person whose land is acquired is entitled to be compensated if they so deserve as provided for under section 11 and 12.[87] The persons entitled to compensation are those interested or claiming to be interested in such land; or persons entitled to sell or convey the same or as the government may find out after reasonable inquiries.

2.3.6 Land Act, 1999.

The Land Act 1999 is the major law dealing with land matters in Tanzania as it is stated that,"on and after the commencement of this Act, notwithstanding any other written law to the control, this Act shall apply to all land in Mainland Tanzania and any provisions of this Act shall to the extent of that conflict or that inconsistency cease to be applicable to land or any matter connected with land in Mainland Tanzania."[88]

From the above quoted provision of the Land Act, 1999, all land matters in Tanzania mainland are supposed to be dealt in accordance with the provision of the Land Act 1999.

[85] Regulation 12 of the Land (Assessment of the Value of Land for Compensation) 2001
[86] Ibid
[87] Act No.47 of 1967
[88] S. 181 of the Land Act CAP 113.R.E.2002

In matters of land acquisitions the land Act 1999 states that;“ the fundamental principles of the National Land policy which it is the objective of this Act, to promote and to which all persons exercising powers, applying or interpreting this Act are to have regard to are to pay full, fair and prompt compensation to any person whose right of occupancy or recognized long standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the state under this Act or acquires under the Land Acquisition Act.[89]

The National Land Policy of 1996, and the Land Laws emanating from it, addresses issues of: Land tenure, promotion of equitable distribution of land access to land by all citizens; improvement of land delivery systems; fair and prompt compensation when land rights are taken over or interfered with by the government; promotion of sound land information management; recognition of rights in unplanned areas; establishment of cost effective mechanisms of land survey and housing for low income families; improvement of efficiency in land management and administration and land disputes resolution, and protection of land resources from de gradation for sustainable development.

Among the fundamentals of land policy which the Land laws seek to implement are the following:-

a) To recognize that all land in Tanzania is public land vested in the President as a trustee on behalf of all citizens;

b) To ensure that existing rights in and recognized long standing occupation or use of land are clarified and secured by the law, and,

c) To pay full, fair and prompt compensation to any person whose right of occupancy or recognized long- standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act, 1967

[89] S.3 (1) (g) of the Land Act, CAP 113 R.E.2002

This quotation is showing that land acquisition undertaking by the government under the provision of Land Acquisition Act, 1967 is derived from section 3(1) (g) of the Land Act, 1999 which is covering all land matters in Tanzania Mainland.[90]

The Land Acquisition Act (s.14) requires the following to be taken into account in assessing compensation:-

a) take into account the value of such land at the time of the publication of notice to acquire the land without regard to any improvement or work made or constructed thereon thereafter or to be made or constructed in the implementation of the purpose for which it is acquired

b) when part only of theland belonging to any person is acquired, take into account any probable enhancement of the value of theresidue of the land by reason of the proximity of any improvementsor works made or constructed or to be made or constructedon the part acquired;

c) take into account the damage. if any. sustained by the personhaving an estate or interest in the land by reason of the severanceof such land from any other land or lands belonging to the same person or other injurious effect upon such other land or lands;

d) not take into account any probable enhancement in the value ofthe land in future;

e) not take into account the value of the land where a grant ofpublic land has been made in lieu of the land acquired

The Land Act does not resolve the problem of land alienation. Instead, it attempts to provide a managerial answer to a structural problem, shifting from the village council and local authorities power of land administration to central control. Ndonde notes that under the Village Land Acts 1999 it is possible to alienate village lands through a number of ways including to foreign investors. It is easier, under the Act for the government to acquire or dispose of land than it is to protect one"s title to land. In

[90] S. 181 Ibid.

particular activists take issue with the provision that allows the president to transfer village land for public interest.[91]

2.4 Meaning of Land Acquisition for Public Interests.

Compulsory acquisition of land is stated to be expropriation of private in the real property; it is restraint on the right of private owners to be able to dispose of property according to their wish.[92]In Tanzania the land Acquisition Act of 1967[93] provides for the compulsory acquisition of lands for public interests or purposes.[94] The Land Acquisition Act 1967 is intended to legalize taking up for public purposes or interests of land which is the private property of individuals the owner and occupiers, and pay equitable compensation therefore calculated at market value of land acquired, plus an additional summon account of compulsory character of acquisition.[95]

The interpretation of section 4 of the Land Acquisition Act, 1967 can be stated to show that, the motives behind acquiring land for public purpose is to mean either of the following:-

(i) To preserve or promote public health, comfort or safety of the public or, a section of it whether or not the individual members of public may make use of the property acquired.

(ii) To serve the public, or section of it, with some necessity or convenience of life, which may required by the public as such provided that ht public may enjoy such service as of right.

(iii) To expand the existing faculties such as airdromes, widening roads, additional pose or water liens and protected areas.

(iv) If the use to which the property (land) is to be put, is one of the widespread general public itself, to use the property.

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[91] Salma Maoulid, Op.cit

[92] http//olengurumwonex.brogspot.com/2010/07/Compulsory Land acquisition in Tanzania.html accessed on 28th July 2011 at 10.00

[93] CAP 118 R.E.2002

[94] CAP 118 R.E.2002

[95] S.3 ibid

(v) If the use is advantageous to the general public, it is not necessarily that the property or the work upon it should be available to the public such, the acquisition may be in favor of individuals, but in furtherance of schemes of public utility, which would result in enhancement of public welfare.

(vi) To enable the department of the government to carry on its governmental purpose.[96]

In the case of *Attorney General v.Sisi Enterprises Ltd*[97] among other issues the Court of Appeal of Tanzania was called in to interpret its number two which stated that,

"Whether the purpose in which the land was purportedly acquired is a public purpose under section 4 of the Land Acquisition Act, 1967"

The starting point by the court of Appeal to define the "public interest" or "public purposes" was the definition in Stroud's Judicial Dictionary, 5th ed.Vol.4.Public interest is that in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected.[98]

Also the court defined that "public interest" or "public purpose" as it is provided in Black's Law Dictionary, 7th Edition, by Bryan A. Garner that "public interest" means.

"The general welfare of the public that warrants recognition and protection, or something in which the public as a whole has a stake, especially an interest that justifies government regulation. Also the public interest is an action by or at the direction of a government for the benefit of the community as a whole"[99]

In the case of *Ellis v.Home Office*,[100] Morris L.J. stated that,"One feature of the public interest is that justice should always be done and should be seen to be done"

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[96] S.4 (1) ibid
[97] Civil Appeal no.30 of 2004 in the Court of Appeal of Tanzania –Dar es Salaam No 39
[98] On pg 6 of the cited case.
[99] Bryan A.,Black's Law Dictionary, 7th Edition, London.
[100] (1953) 2 QB 135

In the case of *Agro Industries Ltd v. Attorney General*,[101]the court stated that it is not sufficient that public interest may benefit indirectly or incidentally, if the primary purpose of the application is to benefit the landlord's interest not that of the public. In the light of the above definitions or meaning of the public interest or public purpose, is to say that, the public purpose is an aim or object in which the general interest of the community is concerned or involved, as opposed to the particular interest of individual institution.

2.5 The Process of Land Acquisition in Tanzania.

The procedure for acquiring of land compulsorily is provided for under the Land Acquisition Act, 1967, where it is stipulated that if the President resolves that any land is required for a public purpose, the Minister is supposed to give notice of the intention to acquire the land to the person interest or claiming to be interested in such land or persons entitled to sell or convey the same, or to such of them, after reasonable inquiry, be known to him.[102] That is there must be notification of the Government's intention to acquire the land, explanation and resettlement rights, assessment of compensation and approval mechanism of assessment.

The Land Acquisitions Act sections 6-8 stipulate that , if the President resolves that any land is required for a public purpose, the Minister shall give notice of intention to acquire the land to the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry, be known to him.[103]

a) Notification of Government's intention to acquire the land
b) Explanation(workshop) to landowners on their compensation and resettlement rights
c) Assessment of compensation(identification and measurement of the affected assets)
d) Resettlement needs analysis

[101] (1994) T.L.R.43
[102] S.6-8 of the Land Acquisition Act, CAP [118 R.E 2002.]
[103]Olengurumwa,O, Compulsory Land Acquisition in Tanzania, http://olengurumwaonex.blogspot.com/

e) Approval mechanism for assessed sums
f) Payment procedures and allocation of new Lands to the affected population.[104]

The court in *Mulbadaw Village Council and 67 Others v. NAFCO*[105] discussed that among the mandatory requirements and procedures when acquiring and for public purpose is to give notice to the affected persons, informing them on the intention of the government to acquire the land in their occupation for public interest. Also the government is supposed to pay compensation for unexhausted improvement to the former occupier.

The courts ruled that Village Councils hold land and could allocate land within its geographical jurisdiction "provided it does so bona fide and pays prompt and adequate compensation for unexhausted improvements," which might exclude pastoralists or foragers from any compensation. Therefore, villages have the right to allocate land, despite rights held by ordinary people if it does so in `good faith' and pays compensation; but compensation will only be paid for "improvements" to the land (e.g. buildings, plowed fields), not for the land itself. The key issue is if a pasture is an `improvement;' if not, pastoralists receive nothing![106]

In Mulbadaw, it suited the courts to say that (and we believe this is the correct view), the Village Council could acquire land only if it were allocated by the District Development Council. Astoundingly, the villagers in Mulbadaw lost the appeal because "none of the villagers who had testified could be said to have held land on customary tenure as none had established, or even averred, that he was a native. They were thus not `occupiers' in terms of Land Ordinance." The Land Ordinance defines a native as "any native of Africa not being of European or Asiatic origin or descent and includes a Swahili but not a Somali." NAFCO had not contested the villagers' claim on the ground that the villagers were not natives. The Court of Appeal was not prepared to take judicial notice of the fact that peasants in a remote village in Hanang in the heart of Tanzania are natives. In the end, those villagers who testified were held to be mere

[104] Ibid
[105] 1984 TLR 15
[106]Dispossession and Land Tenure in Tanzania: What Hope from the Courts?, http://www.culturalsurvival.org/publications/

licensees. They were therefore lawfully evicted by NAFCO and had to find settlement elsewhere.

Compensation must be valued according to the market value of the land acquired. Any person interested in land which is notified to be acquired for public interests can raise an objection, in writing and in person."[107] Where any land is acquired under the Land Acquisition Act, 1967, is in dispute according to section 13 such dispute or disagreement is not settled by the parties concerned within six weeks from the date of the publication of notice, the Minister or any person holding or claiming any interest in the land may institute a suit in the court for determination of the disputes.[108]

2.6 Purpose of compulsory land Acquisition.

The main purpose of compulsory acquisition by President according to section 3 of the Land acquisitionAct is for the Public interest.The President may, subject to the provisions of this Act,[109] acquire any land for any estate or term where such land is required for any public purpose."In a broader construction, public purpose would include a purpose,in which the general interest of the community, as opposed to a particular interest of the individual, in generally and vitally concerned. In a generic sense the expression public purpose would include a purpose in which where even a fraction of the community would be involved. despite the fact that It is not possible to give an exact and all-embracing definition of public purpose, section 4 of The Land Acquisition Act defines public purpose as the expression
4 (1) Land shall be deemed to be required for a public purpose where it is–

a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing;
b) for or in connection with sanitary improvement of any kind, including reclamations;

[107] {1983} TLR 219 (HC)
[108] {1988} TLR 156 (HC).
[109] Land Acquisition Act CAP [118 R.E.2002]

c) for or in connection with the laying out of any new city, municipality, township or minor settlement or the extension or improvement of any existing city, municipality, township or minorsettlement;
d) for or in connection with the development of any airfield, port or harbour;
e) for or in connection with mining for minerals or oil;
f) for use by any person or group of persons who, in the opinion of the President,should be granted such land for agricultural development.[110]

(2)Where the President is satisfied that a corporation requires any land for the purposes of construction of any work which in his opinion would be of public utility or in the public interest or in the interest of the national economy, he may, with the approval, to be signified by resolution, of the National Assembly and by order published in the Gazette, declare the purpose for which such land is required to be a public purpose and upon such order being made such purpose shall be deemed to be a public purpose for the purposes of this Act.

Land in Tanzania is state owned and individuals have only users" right to that land. Land user/occupiers in urban areas are issued with a certificate of occupancy to legalize the ownership on state grants with different terms which may be 33, 66 or 99 years depending on the manner and the use of that land. In those areas which is considered due for development but no approved plan has yet been put in place, it is usual for the land users/occupiers to be given "licenses" to occupy the land. In rural areas the right is recognized through the customary system.[111]

Acquisition of land using compulsory purchase in Tanzania is done through four stages, including planning and decision to acquire, legal preliminaries and getting the requisite statutory authority and serving the notices, field investigation and lastly concluding the transaction. All these activities involve a numbers of steps and actors as elaborated here below.[112]

[110]Olengurumwa,O. Op.cit
[111]Olengurumwa.O. Op.cit
[112]Ndjovu (2003), Op.cit

a) Preliminary investigation and property identification

A piece of land is identified by any party, public or private entity interested before application is sent to the relevant authorities/legal representatives of the President for the approval of an intended project. Here the subject land will be known.

b) Public notification and participation

Notification of the government intention to acquire that land is given to the public and all other interested parties through government gazette, written notice delivered by hand or mail, national publications, local newspapers, radio and television. The length of the notice shall not be less than six weeks from the date of publication of the notice is in accordance with section 8(3) of the Land acquisition Act, 1967.[113] However, the President is given the mandate to shorten that period in case the land is urgently needed.

c) Compensation assessment

Assessment of the value of the land and unexhausted improvement, preparation of compensation schedule by the qualified valuer and the same shall be verified by the Government chief valuer.[114]

d) Paying compensation to the dispossessed owners.

After the compensation schedule is verified and signed by the required authority; the next step is to pay compensation to the affected parties.

e) Taking possession of the acquired property

After paying compensation, the acquiring authority then takes possession of the acquired land and property. It is the responsibility of the acquiring authority to manage acquisition, oversee demolition works, reallocation of the displaced people and give a grace period for the harvesting of the crops in the affected areas.

[113] S 8(3) of the Land acquisition Act, 1967.
[114] The assessment for compensations is done in accordance with section 3(1) paragraph (g) (i) to (vii) of the Land
Act, 1999.

f) **Survey and transfer of property Right**.

After paying of compensation and acquisition, the titles of the acquired plots are automatically surrendered to the state and the new owners take them over. If the properties have to be partitioned then the process of fresh subdivision (surveying) is carried out, as well as issuance of certificate of occupancy and title registration.

g) Lodging and hearing of appeals

The owner of the land rights is allowed to appeal to the court of law if he or she is not satisfied with the acquisition of his/her interest or with the amount of compensation given. Similarly, a public body or the acquiring authorities are also given an opportunity to appeal against compensation which it finds excessive. Dissatisfied individuals have a mandate to challenge the compulsory purchase process, orders and notices in the court of law in accordance to section 13(1) of the Land acquisition Act of 1967. This section provides the procedures to be followed in case of a dispute or disagreement in respect of the amount of compensation, the right to acquire the land and/or the identity of person entitled to compensation.

The provisions under section 14 focus on the key general principles, theories and rules governing compensation which the court should take into consideration during the assessment. These include: the value of the land at the time of publication of the notice for acquisition and not otherwise; betterment[115]; injurious affection[116]; and any loss or damage. Any possible increase in the quality or the value of the land in the future should not be taken into account.

[115]*Betterment* results whereby the proposed scheme results in an enhancement of value of the land that is not acquired. For example constructing a new road in an area which never had any access routes would increase the accessibility and hence the value of surrounding land parcels.

[116]*Injurious affection* is a loss in the value of the part of land that is retained caused by the scheme to be carried out on the land that is acquired. For example constructing a sewerage treatment plant on the land that has been acquired would cause surrounding land parcels to fall in value as sites for residences. Such loss should be reflected in the total compensation amount.

Various authors have given opinions with regards to compensation pertaining on compulsory land acquisition. Geho (2001) argues that, the general principle applied in determining compensation is the principle of equivalence.[117] The author pointed out that Land Acquisition Act No.47 of 1967 does not lie on the balance of probabilities leading to unfair compensation being paid to the claimants. Similarly, Batinamani et al (1992) argue that there is a violation of land laws pertaining to compulsory land acquisition because land occupiers whose land are acquired are not conversant with the laws and regulations governing land acquisition. In Tanzania, the Law pertaining to compensation does not address social, cultural and psychological loss as the result of compulsory land acquisition.

2.7.1 The land compensation in Tanzania.

Compensation is a return for a loss or damage sustained; money paid for the los sustained; Land is a fundamental human right that no man shall be deprived of his property without adequate compensation. That right is inalienable and is recognized by every civilized society including our own. Some societies insist not merely on adequate compensation but adequate and prompt compensation. In theoretical terms the right to compensation may be traced to the concept of ownership.Of all the rights that accrue from the right of occupancy (including any derivative right thereof), the right to compensation in Tanzania appears to be a thorn in land administration. It is, therefore, very unfortunate to note that, despite the global and local standards in respect of this right, the same has been observed more in violation than promotion even in Tanzania, where cases of evicting people from their lands without compensation, or with inadequate and unreasonable compensation have been top on the agenda of our formal and informal discussion about the land administration system

2.7.2Compensation and the Law in Tanzania.

Sometimes it is hard to believe that the right to compensation is part of the Tanzanian land law. We say so because of the prevalence of violations of this fundamental right,

[117] The underlying principle of equivalent states that a person affected by compulsory purchase should be paid for a fair compensation so that he/she is neither better off nor worse off as the result of land acquisition.

the government being the principle perpetrator. There is on record a sad history of evictions or attempted evictions of the land holders from their lands without compensation at all, or without adequate, just and prompt compensation. There are two factors behind this state of affairs: one is the history and nature of the law on compensation which has been developing at different phases and is changing in terms of form and content, and; two, is disregard of the law on the part of actors in the machinery of land administration and control.

2.7.3 Compensation before the Bill of Rights.

Before independence there was no law in Tanzania that spelt the right to compensation in clear and binding terms. The first document in point of time to spell out the right compensation was the Government Circular No. 4 of 1953, which tended to extinguish customary titles in urban areas in urban areas and which, for that reason, empowered the District Commissioners to compensate customary holders of land for the loss of their rights of occupancy in the said urban areas. Towards independence, the philosophical foundation of the right to compensation was then elucidated by MwalimuNyerere in what came to be called the "Nyerere's doctrine of land value" . The post independence period covering the entire of 1960s, 1970s and the early years of 1980s (when there was, finally, the incorporation of the Bill of Rights in the Country constitution)witnessed only few legislative measures in an attempt to recognize the right to compensation. This was reflected, particularly, in the Preamble of the Interim Constitution all of the United Republic of Tanzania, 1965 and the TANU Constitution all of which spelt the right of all men to the "just return of their labour" and the Land Acquisition Act, 1967 Which described a right to compensation to a land holder whole land was compulsorily acquired by the government for public interest. Compensation payable under this Acts is Limited to Unexhausted improvement" only.

The point of emphasis, here, is that in the entire period before the incorporation of the Bill of Rights in the country's in the country's constitution, the right to compensation was hardly considered to form part of the fundamental rights of citizens as long as there was no law in place to recognize it as such. However, the courts turned to the

above named, documents and Nyerere's doctrine of land value as legal tools in the course of adjudicating for the rights of land holders who knocked at the court's door to seek protection against illegal evictions and deliberate denial of their right to compensation. Note that some serious violations of the rights of people in respect of land occurred during the "OperationVijiji", in which people were arbitrarily dispossessed of their land by the government in the move to develop planned villages including Ujamaa Villages. The cases of *LalataMsangawale v Henry Mwamlima*, *BeraberaUjamaa Village v AbubakarBura* and*NtiyahelaBoneka v Kijiji cha UjamaaMutala*[118] are referred to as our case study.

In the LalataMsangawale case, for example, the appellant, who had cleared a virgin land and developed it by planting crops was arbitrarily deprived the same by people who acted on behalf of the NzigaUjamaa village. He instituted and won a case in the Primary Court for the return of his shamba (farmland) or payment of compensation in lieu thereof. The respondents successfully appealed before a District Court of Mbozi, which reversed the judgment and order of the trial court. The appellant won the appeal in the High Court of Tanzania, at Dodoma where the court did not hesitate to rule as it did that:

In the instance case the appellant had successfully proved before the trial Court that he had occupied the land in dispute when the same was virgin and unoccupied. Therefore even if the villagers considered it expedient to grab that piece of land in order to enlarge the adjacent shamba of the wajamaa, the appellant, at the very minimum was entitled to be paid compensation by those wajamaa who wanted to, and who in fact did, take his shamba and crops thereon.

In this country we still respect the law on individual ownership of property and since the appellant had invested his labour on that piece of land those other people who took it over should have paid him compensation as rightly decided by the trial Court.

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[118] 1988 TLR 156 (HC).

2.7.4 Compensation after the Bill of Rights.

The incorporation of the Bill of rights in the Constitution in 1984 brought with it a bundle of rights including the right of owners of property to be paid compensation which is commensurate to the value of the property whenever a property is nationalized or taken for any other purpose. So, it is axiomatic that from the date of the incorporation of the Bill of rights the right to compensation acquired the constitutional status of being a fundamental human right, meaning that the state was then obliged to recognize it, promote it, and protect it. However, despite the constitutional articulation about the right to compensation, there were two notable and practical problems that hindered the proper realization of this right. One; apart from the Land Acquisition Act, 1967 whose application was also limited, there was no law in place that provided for matters affecting compensation including the time of compensation, nature, and amount of compensation payable.

2.7.5 Compensation under the Land Acts.

As can be grasped from the discussion above, the law on compensation was not free from some black spots until the coming of the Land Acts. Problems rose here and there in the overall administration of land law. It means, therefore, the Land Acts came to smooth the platform by addressing the area on compensation more sufficiently and in the clearest terms, covering matters such as: entitlement to compensation; form, time and manner of compensation; and establishment and management of a Compensation Fund. So, in the first place, and as fundamental principle of the National Land Policy, the Acts recognize the right to a full, fair and prompt compensation of any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to his detriment by the State under the Land Act or under the Land Acquisition Act, and call upon all persons exercising powers under, applying or interpreting the Acts to have regard to this principle. In the second place, the Land Act, 1999 provides for the criteria to be used in assessing the compensation payable which include: the market value of the real property; disturbance allowance; transport allowance; loss of profit or accommodation; cost of

acquiring or getting the subject land, and; interest at the market rate. In the third place, the Land Act, 1999 states the nature and mode of compensation payable to the holder of a right of occupancy.

However, the Act strictly limits compensation to unexhausted improvements made in accordance with the terms and conditions of the right of occupancy at the time of revocation, and subject to deductions as the law directs.[119]In the fourth place, the Land Act, 1999 establishes the Land Compensation Fund,[120] whose object and purpose is to provide compensation to any person who suffers any loss or deprivation or diminution of any rights or interest in land at the hands of the Government or any public or local authority.

Part III of the Village Land Regulation 2001provides for compensations. Under Regulation 20 of the Land (Management of the Compensation Fund) a right to compensation is inheritable. Additional protection is afforded to buyers or landowners who loose their interest to land by a sale that is rescinded, through fraud by voiding such transaction or disposition.[121] One can always appeal against an aggrieved decision relating to land occupation and use.

Compensation for compulsory acquisitions may be monetary or may entail relocation or alternative allocation. Items liable for compensation include the value of unexhausted improvement, disturbance allowance, allowance for transport and accommodation; and loss of profits. The Land Regulations do not provide for compensation for unoccupied land.[122] Thus there is a real likelihood that undeveloped plots of land, such as used for grazing, will not be compensated for the acquisition.

[119] Section 173(1) of the Land Act
[120] Section 173(4) of the Land Act
[121] SS 71, 75 of the Land Act 1999
[122] Regulation 12 of the Land (Assessment of the Value of Land for Compensation) 2001

2.7.6 Rationale for payment of compensation.

The Constitution of many countries states that compensation is paid to strike a “just and equitable” balance between the interests of those affected and the public. The justifiable reasons why compensation is paid are:

a) Compensation is paid to protect the citizen from harmful government interference,
b) Compensation is paid to distribute the burden of the government interference.

The first reason implies that since compensation is required upon expropriation, government will only expropriate property once it is cost-effective (and therefore efficient) to do so. The second reason implies that in the case of expropriation, an individual is singled out to carry a burden for the public benefit. This would be an unfair burden if compensation is not paid. Compensation is therefore paid to place individuals in the same position as they were before the expropriation.[123]

2.7.7 Compensation is paid to prevent inefficient expropriation.

A property owner is protected insofar as the requirement of compensation limits the state’s power to expropriate without payment of compensation. The type of interference required before compensation is due will depend on the view of property. In a liberal notion of property, the state can be expected to pay for almost any interference with property that does not fall under its police powers, while, if property is seen as a social relation, only interferences that burdens an individual disproportionally to the gain of society will be compensable.[124] To assure that governments do not obtain through compulsory acquisition or regulation, compensation must be paid and that should relate to the price at which the owner would willingly have parted with the rights foregone.[125]

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[123] Wilson, D., Evans, M., &Murning, I. H. (2001). *Review of Compulsory Purchase and Land Compensation.*Scottish Executive Central Research Unit 2001.

[124]Trefzger, J., W. (1995). "Efficient Compensation for Regulatory Takings: Some Thoughts following the Lucas Ruling". *Real Estate Law Journal*, pp.191-204.

[125] ibid

It is argued that governments must pay for what they acquire because if the rule of no compensation would allow governments to acquire resources at no cost, this could encourage them to make unwise decisions. Such decisionsare likely to be those that are not based on comparison between the benefits of the public good to the amount of compensation they must pay to the owners of the acquired properties.[126]

2.7.8 Compensation is paid to make the expropriatee indifferent to the taking.

Another reason why compensation is paid is that it spreads the burden of public purpose acquisitions of private property by making the expropriatee indifferent to the expropriation; thereby not making the individual feel that he/she is carrying an undue burden.According to Plessis[127]compensation should be paid to make expropriatees subjectively indifferent to the expropriation and to place the expropriatee back at the position he/she was before the expropriation.

2.7.9 Why expropriatees are compensated.

The property taken, severance and injurious affection and other inconvenience of a property owner/ holder due to government interference are used to explain why expropriatees are compensated.

2.7.10 Expropriatees are compensated for the property taken.

Compensation should include all consequential losses suffered by the dispossessed owner as a result of the compulsorily acquisition. Considering the value of the property taken is best commenced with consideration as to whether there is special value to the owner or if reinstatement principles apply. Reinstatement is the method of assessing compensation as the cost to put the dispossessed owner in a similar position to the one enjoyed prior to acquisition.[128]

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[126] ibid

[127] Plessis, E., (2009). *Compensation for Expropriation under the Constitution.* Stellenbosch accessed from www. *Expropriation under the Constitution.com*

[128] Crawford, A. J. (2007). *Compulsory Acquisition of Land in South East Queens Land Australia*. . In K. Viitanen& I. kakulu (Eds.), *Compulsory purchase and compensation in land acquisition and takings.* . Helsinki: MultiprintOyOtamedia.

2.7.11 Expropriatees are compensated for the reduction in value of property.

The basis of compensation is the diminution in the value of the claimant's property, that is, a payment to put the claimant in the same position as he/she would have been in without the works (Wilson et al., 2001). The extent of loss of property rights by owners and occupants may vary considerably, both in terms of the amount of property involved and the types of rights that are affected. This has implications for the extent to which a particular government action is governed by the principles of compulsory acquisition.

2.7.12 Grey Areas in the Realization of the Right to Compensation.

There is no doubt that the right to compensation in Tanzania is now well established under the law, both the Constitution and ordinary laws. Both the Constitution and Land laws state that land shall be expropriated according to the due process of the law, and that fair and prompt compensation should be paid. The compensation package in the case of appropriation has been improved and made clear under the Land laws to include value of land, disturbance, transport assistance and loss of profit. However, there is universal complaint against compulsory acquisition of land because the process of determining the rates used in determining the amount of compensation is not transparent and the affected always complain that they are being underpaid. Complaints against compensation usually do not succeed and the government has proceeded with project implementation even where there are cases pending in courts. Compensation is in most cases had not paid on time, the government, which is the one appropriating land determines the rates to be used, carries out and approves the valuation. The valuation is not sufficiently vetted. There are many disputes relating to dissatisfaction with compensation.[129]

It has been pointed out that, compensation in Tanzania is still a thorny issue for the reason that it is being violated quite often, even by the government, which seems not to learn from the past. The fact that we still witness illegal evictions, sometimes resulting

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[129]Kironde, Lussunga J. M.(2009) *"Improving Land Sector Governance in Africa: The case of Tanzania*," Paper Prepared for the workshop on "Land Governance in Support of the MDGs: Responding to New Challenges," Washington DC.

in stiff resistance and/ or protracted litigation in the courts of law, tells clearly that the road to full realization of the right to compensation, in the proper meaning of the word, is still poorly paved. Despite the clear and sufficient law in the statute book today, there are still some grey areas that cannot go without a comment, if the right to compensation is to be fully enjoyed in practice and as a human right. These include, for example, the issue on entitlement to compensation, time of compensation, and the amount of compensation payable to the right holder.[130]

2.7.13Entitlement to Compensation.

It was earlier noted that the right to compensation is premised on the philosophical doctrine of a "just return for a person's labour". However, since the law on compensation is not there to protect trespassers or to encourage any act of trespassing into another person's land, it follows, therefore, that any person is entitled to compensation if he establishes that he has invested his labour in the form of energy, or talent, or money to improve the land, and if he establishes further that at the time of carrying out such improvements he had apparent justification for doing so.[131] It means that a person is not required to be the owner of the granted right of occupancy in order to qualify for entitlement to compensation. He may as well be a holder of a customary or deemed right of occupancy, an occupier in a recognized long-standing occupation or even an occupier of land under a valid licence. The issue of entitlement to compensation has turned to be the greyest area in respect of the right to compensation and has formed endless causes of action in many of the cut-throat litigations in the courts of law. The case of *MtumwaShahame, Baya Kondo & 111 others v Principal Secretary, Ministry of Works and The Attorney General* is cited in support of the point. In this case, the first respondent formed an opinion that the plaintiffs, the residents of Mivinjeni, MtoniMtongani and Mtoni Kwa Azizi Ally along Kilwa road area in Dar es Salaam, were trespassers in the Kilwa Road Reserve and in 2002 issued a notice under the provisions of the Highway act, Cap. 167, ordering the plaintiffs and hundreds others not in court, to demolish their houses and vacate the area. The said

[130] ibid

[131] *AlliMangosongo v ChrispinaMagenje* (1977) LRT No. 18.

residents resisted the order as they claimed for their right to compensation. The first defendant took the extra measures of employing a bull dozer to demolish the houses, forcing the residents to go to a court of law to claim their right to compensation.[132]

In the court, it was argued for the residents that they were lawful and long time occupiers of the area and, therefore, were entitled to be compensated by the government before the move to evict them. On the part of the defendants, it was argued that the 1967 Highway Roads Act specified the Kilwa Road to have a width of 75 feet on either side, that the widening of the road was done in 1967 to the extent of 45 feet,As regards "fair compensation" there are two questions which may be posed: what constitutes fair compensation? And, what is the standard measure of a fair compensation? Before the adoption of the Land Acts, it seems fair compensation was determined in the light of the "unexhausted improvements" found in the land at the time of deprivation or acquisition. However, a progressive departure from this position was plausibly articulated by the Court of Appeal of Tanzania when it stated that:

What is fair compensation depends on the circumstances of each case. In some cases a re-allocation of land may be fair compensation. Fair compensation, however, is not confined in what is known in law as unexhausted improvements. Obviously where there are unexhausted improvements, the Constitution as well as the ordinary law requires fair compensation to be paid for its deprivation.

The Land Act, 1999, for its part, limits compensation to be equal to the value of unexhausted improvements made in accordance with the terms and conditions of the right of occupancy, in the event of land being revoked for breach.[133] It means that in any other cases determination of a fair compensation may consider other matters including the market value the real property; disturbance allowance; transport allowance; loss of profit or accommodation; cost of acquiring or getting the subject the land, the subject matter; any other cost, loss or capital expenditure incurred to the development of the land, and; interest at the market rate.

[132]Kironde, Lussunga, Op.cit

[133] Section 49 (3) of the Land Act.

Yet, another acceptable method of determining a fair compensation has been the replacement method. By employing this method, one takes into account the type and age of the structures on the land and decides to pay compensation which is sufficient enough to facilitate the materials for putting up a similar structures elsewhere, including costs for getting another plot of land, transportation, inconvenience and loss of profit and accommodation for specified period.[134]

That which is discussed above in relation to fair compensation leads to one general conclusion: that fair compensation is a matter to be decided by the circumstance of each case. It may take the form of money or re-allocation to an alternative land or both. To be accepted as fair, compensation must not be something to be unilaterally decided by a strong hand and arbitrarily imposed on the part of the weaker, but it must be evaluated with the most possible transparency and must, at the end of the day, be reasonable in the mind of any right thinking member of the community. Reflecting about the TabataDampo Demolition Saga for example, it is debatable as to whether the flat compensation at a rate of 20million (Tanzanian shillings.) for every demolished house, in addition to reallocation of the residents in Mbuyuni, was fair compensation or not. One thing is certain about this case: that the residents of the TabataDampo area had developed their respective pieces of lands differently depending on the economicCapacity of each occupier, meaning that some had temporary structures, others semi-permanent structures and still others permanent and well-furnished structures. So to have a flat compensation at the stated rate meant healthy and unexpected harvest, hence more than fair compensation to some of the occupiers, while to others this meant nothing but unfair compensation, which did not answer to the value of the capital invested in the demolished houses.

Sections 11of theLand Acquisition Act Stipulates "Subject to the provisions of this Act, where any land is acquired by the President under section 3, the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the

[134] The replacement method was affirmed as correct in the circumstance by the High Court of Tanzania in *MtumbwaShahame, Baya Kondo & 111 Others v Principal Secretary, Ministry of Works and Attorney General* (supra)

purpose by Parliament, such compensation as may be agreed upon or determined in accordance with the provisions of thisAct"

Under Section 13 any person interested in land which is notified under section 4 (who is entitled to claim an interest in compensation) can raise an objection, in writing and in person. Where any land is acquired under this Act is in dispute according to section 13 such dispute or disagreement is not settled by the parties concerned within six weeks from the date of the publication of notice, the Minister or any person holding or claiming any interest in the land may institute a suit in the Court for the determination of the dispute.

The Land Acquisition Act jeopardizes private interest for public interest and hence it denies an individual his right to property as provided by the Constitution of Tanzania. It overrides the right of a person to own a property, so the law in general should be strictly construed. The strict construction of the Law of Land Acquisition has been emphasized by the court for the last 60 years as it does not hold the person whose property is being taken and state at par.Experience from the practice reveals that most of the time objections have been directed to compensations and not to acquisitions.[135] For instance the recent case of Kipawaresidents , their main objection focused on miscalculations of compensations.

[135]Olengurumwa. O. Op.citt

CHAPTER THREE

3.0 EXPERIENCES FROM OTHER COUNTRIES ON LAND ACQUISITION ANDCOMPENSATION.

3.1. Introduction.

This chapter briefly examines the experience of land acquisition and compensation awarded in selected countries with purpose of drawing some lessons from such experiences.This chapter begins with examining the administrative process of the land acquisition,transparency and civil society engagement, participation of local rights holders and land users, community consultation in land acquisition, nature of land transfer,security of local land tenure,compensation and remedies for affected people.

3.2 Ethiopia

Ethiopia lays a legal foundation of expropriation; it enacted laws and regulations that deal with expropriation valuation and compensation. The Federal Constitution of 1995, Article 40, the Federal expropriation and payment of compensation laws, Proclamation No. 455/2005, the Rural Land Administration and Land Use Proclamation, Proclamation No. 456 /2005 (Article 7(3)), and the Council of Ministries regulation No.135/2007 are enacted to justify and undertake expropriation for public purpose.[136]

In Ethiopia, property[137] valuation is carried out for payment of compensation for both rural and urban development activities; private and government development projects (dam construction for drinking water and irrigation purposes, social and economic infrastructures (schools, health institutions, roads, etc)). As proclamation No.455/2005, Article 7, that the government may expropriate private property for public purposes where it believes that it should be used for a better development project to be carried

[136]Belachewyirsaw A, (2013),*Expropriation, Valuation and Compensation in Ethiopia*, Doctoral Thesis in Real Estate Planning, Real Estate Planning and Land Law, Department of Real Estate and Construction Management, School of Architecture and the Built Environment, Royal Institute of Technology (KTH) Stockholm, Sweden.

[137] Private property is defined as "any tangible or, intangible product which have value and is produced by the labor, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common" obviously this does not include such naturally existing items as land which cannot be created by the labor, creativity enterprise, etc.of man.

out by public entities, private investors, cooperatives, societies or other organs with payment of compensation.

The major binding document for all other derivative national and regional laws and regulations is the1995 Constitution of Ethiopia. It has several provisions about expropriation and related issues. Article 44(2) of the same constitution indicates that interventions for public purposes that cause the displacement of people or adversely affect the livelihood of the local population shall give the right to "commensurate" monetary or other means of compensation including relocation (resettlement) with adequate state assistance. The provisions in the constitution clearly states government's obligation not only to compensate for the works on land created by the labor and capital of land users but also to compensate for the lost land through resettling the affected individuals/communities by the state programs with adequate assistance.

A land holder whose holding has been expropriated shall be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land shall be equal to the value of capital and labor expended to the land. But in the constitution and proclamation, nothing is said about the significance of the benefit and the number of the people that benefit from the acquisition or expropriation of the property.[138]

Expropriation of land from its initial owners and users has everlasting effects on their lives especially if these people depend on the land for their livelihood. In the peripheral areas of many African cities, public land acquisitions deny these land owners their means of livelihood and hence change their lives forever. This is why there is a general reluctance and hostility when an attempt is made to interfere with established land rights because land is a peculiar institution, which occupies a central position in the social organization of the community.[139]

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[138]Belachewyirsaw, A (2013),Op.cit p 51
[139] ibid

Although the Federal Regulation No. 135/2007 includes provisions for theassessment of compensation which specifies the basis of determination of thevalue of different compensable items and formulas for calculating the amountof compensation, valuation methods and compensation practices vary greatlydepending on the purpose for which land is expropriated and the financialcapacity of institutions involved in the expropriation.

Both in the Ethiopian constitution of 1995 and proclamation No. 455/2005, itis not provided expressly that compulsory acquisition may take place for the benefitof both private persons and the society. Merely it is stated that if the government agent believes that if the land directly or indirectlybenefits the public more than it benefits the individual holder of the land, it canexpropriate the property subject to payment in advance of compensation.[140]

From thiswe can understand that it creates loopholes for corruption and mismanagement ofland since there is not any mechanism to control whether the compulsorily takenland is transferred to an individual who directly or indirectly used to benefit thepublic.

Thus, numerous problems have surfaced during the implementation of the expropriation, valuation and compensation. Some of these problems are similar to this study to include the inadequacy of compensation amount/rate, inordinate delays, arbitrary compensation and lack of certified and professional valuers etc. It is also noted that sometimes the government expropriate land without paying compensation or by giving very little compensation. For instance, valuation of land and other property at Kipawa, an area proposed for the expansion of the Julius Nyerere International Airport in Dar es Salaam, was done in 1997, but payments were made later in 2010.[141]

But this is mostly in theory. In practice only those city administrations/municipalities which may have relatively better revenue collection pay compensation. For the most part towns have been encroaching to rural land with little or no compensation. In the

[140]Belachewyirsaw A, (2013),Op.cit p 51

[141] Moses, M and Sophia, M (2009) *The Impact of Peripheral Urban Land Acquisition on Indigenous Communities' Livelihood and Environment around Ulugulu Mountains,*Morogoro, Tanzania, p. 8

early days of urban expansion most farmers were not compensated. The problem is both legal and financial capacity. Due to the absence of alternative property valuation methods and qualified and professional valuers, absence of valuation provisions both in urban and rural areas of the country, lack of reliable and up to date valuation data, compensation is not assessed based on market value. As a result of all these reasons, compensation payment does not satisfy the interest of both parties in general and the land holders and right users in particular. In return it has a long run negative impact on tenure security and economic development.[142]

3.2.1Transparency and civil society engagement

Transparency is central to ensuring that condemned property is properly valued and that compensation payments are fair and adequate. As the case in Ethiopia,still, few citizens whose land has been expropriated through compulsory land acquisition are aware of the rates government values used in the valuation process.[143]

Land deals in Ethiopia are framed by high levels of public concern over landrights and food security, both within country and internationally. Commentators and insiders recognize the need to weigh the ambitions andpotential of large-scale land-based developments against the concerns of hostcountry citizens about sovereignty over local resources, as well as the vigorouscriticism of some civil society organizations. Land issues are emotive: largescaletransfers to foreign interests raise the specter of the "bad old days" ofcolonialism and exploitative plantations.[144]

In Ethiopia, lack of transparency is a major challenge in the negotiations of a land deal aswell as of the broader government-to-government arrangement in whichindividual deals may fit. In Ethiopia, there is a general sense among observers thatnegotiations and agreements occur behind closed doors. Actual contractsbetween host governments and incoming or domestic investors are notpublic. Some data sources may be publicly

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[142]BelachewyirsawA (2013),*Expropriation, Valuation and Compensation in Ethiopia*,Doctoral Thesis in Real Estate Planning, Real Estate Planning and Land Law, Department of Real Estate and Construction Management, School of Architecture and the Built Environment, Royal Institute of Technology (KTH) Stockholm, Sweden

[143] ibid

[144] ibid

accessible (e.g., in somejurisdictions, the national land registry), but usually only for limited data oncompleted deals and even access to the land registry for this research provedproblematic in some countries.[145]

However in most African countries (with the partial exceptions of Ethiopia, basic data onthe size, nature and location of land investments were not accessible throughthe national land registry or other notionally public sources. Even in countries where there are official "land banks"available for investment, records may be incomplete, contradictory or notcommunicated to the relevant district administrations themselves.

While details about individual land deals may need to be sheltered toprotect commercial confidentiality, lack of transparency seems particularlyproblematic in Ethiopia. Private sectorinterests are actively involved in such diplomacy from the start, but civilsociety has been largely absent. There is little evidence in Ethiopia civil society being invited to contribute constructively to emerging intergovernmentalarrangements. It is difficult for the public to gain access toinformation on inter-governmental discussions and negotiations. Evenwithin government, flows of information are incomplete, with a perceptionof a lack of coordination among ministries and agencies[146]

Lack of checks and balances and of transparency in negotiations creates thebreeding ground for corruption and for deals not in the best public interest.Some recently reported land deals were associated with allegations thatinvestors had paid cash or in-kind contributions to business or otheractivities run by high government officials or even the president in apersonal capacity.[147] It must also be noted, however, that although excluded from negotiationprocesses, civil society is increasingly making its voice heard with regard tothe strategic policy choices underpinning those processes.[148]

As regards to time and manner of payment of compensation, in Ethiopia,Compensation must be prompt or paid within a reasonable time and the expropriatee should have the

[145] ibid
[146] http;//www.tz/landgrab (accessed 12/11/2012)
[147] Op.cit
[148] ibid

possibility of rejecting it. Articles 3 (1) and 4 (3) of Proclamation 455 of 2005 make it clear that compensation in cases of expropriation should be made in advance of evicting the landholder. According to Article 4(3) of the same proclamation, any holder who has been served with an expropriation order should handover the land to the Woreda or urban administration within ninety days from the date of payment of compensation or, if the expropriatee refuses to receive the payment, from the date of deposit of the compensation in a blocked bank account in the name of the Woreda or urban administration as may be appropriate, the land holder should handover to the land without considering the type of asset situated on the land.[149]

A lesson a researcher has learned is that, in Ethiopia, like in Tanzania, particularly in remote rural areas, property markets are not sufficiently active to provide reliable information about prices. Even when markets do provide reliable information about the value of the expropriated property, it may not be possible to identify comparable property for purchase. Furthermore, in countries like Ethiopia where property market is very weak, the easiest method used to value the expropriated property is the replacement cost method.

The expropriation and payment of compensation laws of Ethiopia stipulates that prompt compensation should be paid in the event of compulsory acquisition of private holding properties; however, the acquiring authorities did not pay for all affected people uniformly before the taking of the expropriated property.Articles 3 (1) and 4 (3) of Proclamation No. 455 of 2005 make it clear that compensation in cases of expropriation is to be made in advance of evicting the landholder, some of the authorities argue that there are cases of non-payment or delayed payment of compensation.

3.2.1 The Use of Market Value as Measure of Compensation

In Ethiopia, the Constitution mandates that the state make “compensation commensurate to the value of the property” for taking possession of private property

[149]Belachewyirsaw A, (2013),Op.cit p 51

for public purpose.[150]The use of market value as measure of compensation that is "just, adequate, full, fair" etc raises questions because it seems to contradict the basic logic. When the government acquires the land compulsorily and pays compensation, the transacted price cannot be market value because of the coercive conditions attached to the sale.[151]

This equation defeats the very basic rule of a free market i.e. "free operation" of the transitions. In a free market, market value can only be produced in a situation where willing buyers and sellers of commodities meet and transact freely under market conditions and the price arrived at is supposed to be fair assuming that negotiations were not interfered with.

In countries like Ethiopia, where the property market is thin and inactive, andwhere there are no independent professional property valuers, valuation using thefair market value standard is unthinkable. The valuation of land and its attachedproperties for compensation purpose have been undertaken by a committee whosemembers are assigned by the local woreda and urban administration, which is apolitical organ. Thus, expropriatees do not have any opportunity to participateeither in the process of expropriation or in the valuation of land and attachedproperty to be compensated fairly.[152]

3.2.2Participation of local rights holders andlandusers.

Perhaps the most important area of concern is the extent and depth ofengagement with directly affected people in the planning, approval of land acquisition. In Ethiopia the weakness of provisions within national law forlocal people to steer development options and defends their own landrights. In other countries such rights are in theory substantially moresecure, but concerns remain around implementation of the law andvoluntary good practice on the part of investor companies.[153]

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[150] Ethiopian Constitution 1995, article 40 (8)
[151]Belachewyirsaw A, (2013),Op.cit p 51
[152]Belachewyirsaw A, (2013),Op.cit p 51
[153] ibid

At the international level, the strongest guidance on consultation andconsent is the principle of free, prior informed consent (FPIC) and the methodologies and policies that are emerging around this principle. FPIC is formalized through article 32 of the 2007 UN Declaration on the Rights ofIndigenous Peoples. The basic principle of FPIC is that indigenous peoplehave the right to say “yes” or “no” to proposed developments on theirlands. The consent needs to respect people’s cultures, customary systemsand practices and be secured through iterative negotiation with people’sown representative institutions. Also, governments are responsible formaking sure that effective system for grievance, redress and mitigation are in place.[154]

Several countries are incorporating the principle of FPIC into national orsub-national legislation early adopters include the Philippines andAustralia. Companies are also beginning to adopt FPIC to guide engagement with local communities over issues of land and resource access. The pulp and paper company, APRIL, for example, is piloting methodology based on FPIC in Indonesia.[155]Several methodological issues still need to be sorted out within the FPIC framework(e.g. what breadth of consultation is required among affected communities and over time) and there remain some legal questions (e.g. extension to“non-indigenous” local residents and whether rights are substantive or merely procedural).[156]

Nonetheless, commentators suggest that FPIC is likely to become increasingly important as a principle and methodology for engagement between large-scale land investors and those whose land access is affected by such investments. For example, the Roundtable onSustainable Palm Oils considering whether and how to incorporate FPIC into its system of certification .[157]

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[154] Colchester, M., and Ferrari, M., (2007), Making FPIC Work: Challenges and Prospects for *Indigenous Peoples*, Forest Peoples Programme, accessed from http://www.forestpeoples.org/documents/law_hr/fpic_synthesis_jun07_eng.pdf

[155] Wilson, E., (2009), Company-led approaches to conflict resolution in the forest sector, The Forests Dialogue. Also available htt://www.afr.landgrab.com (accessed 13/11/2012)

[156]Belachewyirsaw A, (2013),Op.cit p 51

[157] ibid

While FPIC emerged in its original sense in relation to indigenous peoples as defined through the UN process, its key tenets can in principle beapplied to any local rights holders and resource users.[158]And although FPIC isnot yet a framework for policies and procedures on consultation andconsent in Ethiopia but, several countries have nonetheless enacted legislation or policy requiring consultation with local and affected communities a part of the land transfer process. Ghana, Mozambique,Kenya,Uganda andTanzania, for example, require that all land transfers must be approved bythe communities that have rights over the land in question, with further requirements for protection of access rights, fair compensation and opportunities for review of the agreements.[159]

Nevertheless, even where policy frameworks are well developed, practice may be unsatisfactory. Example experience on the ground in two countries where policies and law on community rights to consultation and consent are on paper exemplary: Mozambique andTanzania. In both countries, however, enabling national laws areimplemented partially rather than fully. What is defined as communityconsultation may be confined to village elders, officials and elites.[160]

Indeed, in Ethiopia,Compensation for land acquired for development can be paid in-kind and may include items such as land, houses and other buildings, building materials, seedlings, agricultural inputs, and financial credits for equipment. In practice, many citizens have claimed that their compensation payments were below the market value of their condemned land, buildings and other condemned properties.[161]

3.3 Kenya

In Kenya the sanctity of private property is protected by law and no private land can be acquired by the government compulsorily except in accordance with the law. Such

[158] ibid
[159] Htt://www.tz.landgrab/ and at htt://www.mozambique/landgrab.(accessed 23/11/2012)
[160] ibid
[161] Available at htt://www.tz.landacquisition (accessed 23/11/2012)

land is private property and has to first be acquired by the state under the powers of eminent domain under the Land Acquisition Act.[162]

In Kenya, Compulsory acquisitions arise when the State or Government decides to take over a property without private negotiations, thus the term "compulsorily" acquire property for public use without the consent of the owner but with a just compensation. The acquisition is done under statutory legislation and the act of acquiring aims at general benefit of the community as a whole. It thus interferes with the owner's property rights.[163]

The Kenyan principles of compensation are contained in the Land Acquisition Act,[164] and Land Acquisition (Amendment) Act, 1990, where the compensation is based on Market value of the land taken; Any damage sustained or likely to be sustained by reason of severing such land from his other land;Any damage from loss of profits over the land; and Additional 15per cent of market value of land for disturbance.

In Kenya the principle on which compensation is based is that the value to the owner of land taken would be greater than its market value. According to Leach (1963)[165], the only reasonable compensation to a dispossessed owner would be to put him into a position to reinstate him on "other land" so as to be able to carry on his activities substantially unaltered and undiminished.

The entire basis above is contrary to the provision of the LUA, Section 22 of the Kenyan Land Acquisition Act states that where land is needed for accessibility (Road, way leaves, and easements) compensation will be limited to the damage done to trees, plants, crops and permanent improvements on the land, together with a periodical diminution in the profits of the land and of adjoining land by reason of such use.

[162] Cap 295 Laws of Kenya.

[163]Wafula L.Compulsory Purchase and Land Acquisition Msc. Republic of Kenya, www.fig.net/pub/vietnam/papers/

[164] chapter 295

[165] Leach, W. A. (1963), Disturbance on Compulsory Purchase. London: the Estate Gazette Limited

Unfortunately, the Land Acquisition Act remains vague on the methodology to be used in arriving at the various values that form the basis of compensation. The valuer is therefore left with a choice of valuation methods.

This gives the Kenyan Government to decide to take over a property without private negotiation. The state has power to compulsorily acquire property for public use without consent of the owner, with a just compensation. Numerous cases exist where the power to acquire Land compulsorily is conferred by an Act of parliament to the government or its Agencies for the benefit of the public. The legislations include; the water Act, and the Electric Power Act, while the Land Acquisition Act (LAA) cap 295 (1968) section 6 empowers the minister for lands settlement to acquire land compulsorily for the following purposes;

a) Land in the interest of defence purpose,
b) public safety, public order,
c) public morality,
d) public health,
e) town and country planning,
f) promotion of public benefit;
g) and the necessity, such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land.

In Kenya, the obligation of the government to pay compensate for land it acquires compulsorily under the powers of eminent domain is expressly stipulated in the Constitution[166] and the Land Acquisition Act.[167] The Constitution expressly states that no private property shall be compulsorily acquired by the government unless, among other conditions, provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.[168] Section 8 of the Land

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[166] *S* 75 (1) thereof which provides that even where the requirements as to the public interest have been satisfied no property shall be compulsorily acquired without payment of compensation. The compensation required under this section is "prompt and full compensation', whatever that means.
[167] ibid
[168] ibid.

Acquisition Act provides as follows:"Where land is acquired compulsorily under this part, full compensation shall be paid promptly to all persons interested in the land".

However the land acquisition statutes in Kenya remain in specific and the valuer is left with a wide range of alternative valuation methods to choose from.

How is the amount of compensation determined?

The formula for determining the amount of compensation is stipulated in the Land Acquisition Act. In assessing the 'full compensation' the Act requires the Commissioner to appoint a date for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land. Toarrive at the appropriate amount he is required[169] to apply the principles set out in the schedule to the Act. These are summarized below.[170]

a) The market value of the land

b) Damage sustained or likely to be sustained by persons interested at the time of the commissioner taking possession of the land by reason of severing the land from his other land

c) Damage sustained or likely to be sustained by persons interested at the time of the commissioner taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable or in any other manner or his actual earnings

d) If In consequence of the acquisition, any of the persons interested is or will be compelled to change his residence or place of business, reasonable expenses incidental to the change

[169] Sect. 8 Cap 295 laws of Kenya.
[170] Principle 2.

e) damage genuinely resulting from diminution of the profit of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the commissioner takes possession of the land.[171]

How is it paid?

Under the Land Acquisition Act, compensation can be either in kind in the form of land or money. Section 12 makes provision for the grant of land in lieu of an award, provided the value of such land shall not exceed the value of the compensation that would have been allowable.

3.4 Mozambique.

Mozambique's laws and policies on management of land and natural resources include provisions for participation of local stakeholders. There is special recognition of the rights and interests of local communities, including mandatory requirements for community consultations and hearings when land is transferred to new uses and users. However, implementation of these positive legal and institutional frameworks is often incomplete or unsatisfactory. National economic priorities may mean that district authorities have more incentive to promote the interests of investors over local communities. Local interests are also undermined by the fact that policy does not include terms for benefit-sharing. In addition, the actual legal weight of community consultation processes is unclear.[172]

As a result of this combination of factors, community consultations during land acquisition by investors are in practice fairly limited. The following findings from three case studies on commercial biofuel projects illustrate the shortcomings of practice on the ground.

a) Communities do not receive relevant information in advance of consultation meetings.

[171] Nixon S, Direct Compensation For Land Lost To Protected Area Management In Kenya: The Law and Practice, Moi University Kenya.
[172] Op.cit

b) Most consultations are performed in one meeting only. When there is morethan one meeting, the first is normally limited to organizational aspects, such as the indication of date and time of meeting, without passing any relevant information on the project at stake to the communities.

c) Consultation meetings are generally attended by community leaders(traditional chiefs, local party leaders), whose opinions are usually dominant.Preliminary meetings are held with the traditional leaders to ensure that the consultations meeting will produce an outcome favorable to the investor.

d) Despite being the majority of the workforce in rural lands, women are rarelyinvolved in the consultation processes and they almost never sign their respective reports.

e) Most consultation records present incomplete or even conflicting data. While, on one hand, they may describe cultivated agricultural fields and other forms of evidence of human occupation, on the other hand they include a declaration stating that the land is not occupied for the purpose of the request at stake.

f) Consultation records often do not accurately reflect community opinions and viewpoints.

g) The provisions of consultation records concerning benefit-sharing are generallyvague. There are seldom time-bound targets or measurable indicators of progress.[173]

3.4.1 Nature of Land Transfers.

A key aspect in international land deals concerns the nature of the land rights being transferred, and between whom. From the investor's perspective, several factors are likely to matter when assessing options. These include the economic rationale of the investment project (e.g. whether driven by short or long-term concerns), and options provided by national law in the host state (which may restrict ownership rights).

Investors and their government backers are likely to favor longer-term land rights where these are required by the economic nature of the investment. This may include

[173] Op.cit

ownership or long leases, and legal availability of these options may influence the choice of recipient countries.[174]

In several African countries, land is nationalized or otherwise mainly controlled by the state. For instance, land is nationalized in Ethiopia (under Proclamation No. 31 of 1975 and the 1995 Constitution), Mozambique (at independence in 1975, and more recently under the 1990 Constitution and the Land Act 1997) and Tanzania (after independence and more recently under the Land Act 1999 and the Village Land Act 1999).

In these cases,outright purchases are outlawed – although some African countries haveintroduced private ownership where this was previously ruled out (e.g.Burkina Faso in the 1990's), or enabled transfers of "underdeveloped" statelands even if radical title ultimately remains vested with the state (e.g. inTanzania, under article 6 of the Land (Amendment) Act 2004).[175]

Other countries do allow private land ownership, which may be acquired through land registration procedures (in Kenya, Uganda,Madagascar and Mali, for example). In Ghana, part of the land is owned by the state but most of it belongs to private entities such as customary chiefdoms, extended families and individuals.[176]But with some exceptions (e.g. Kenya), private landownership tends not to be widespread even where it is formally recognized –particularly in rural areas .[177]

The World Bank estimates that, across Africa, only between 2 and 10% of the land is held under formal land tenure; this mainly concerns urban land.[178] Thus, in Cameroon, only about 3% of the land has beenformally registered and is held under private

[174]Nhantumbo and Salomao (2009)

[175]Sulle, E., (2009), *"Biofuels, Land Access and Tenure, and Rural Livelihoods inTanzania*", Arusha, Tanzania Natural Resources Forum, and London,International Institute for Environment and Development, unpublished report.

[176]Kasanga, K., and Kotey, N. A., (2001), *Land Management in Ghana: Building onTradition and Modernity*, London, IIED, http://www.iied.org/pubs/display.php?n=4&l=5&a=N%20Kotey&x=Y. estimate that 80 to 90% of all undeveloped land in Ghana is held under customary tenure.

[177] ibid

[178]Deininger, K., (2003), *Land Policies for Growth and Poverty Reduction*, Washington DC, World Bank.

ownership[179]mainly by urban elites such as politicians, civil servants and businessmen (Firming-Sellers and Sellers, 1999). And in Sudan, although private land ownership is formallyrecognized, about 95% of all the land is state owned[180]

In Mozambique, the limited spread of private ownership is partly due to the long and cumbersome procedures required to acquire it, particularly land registration.[181] In addition, where "customary" tenure systems are functioning and perceived as legitimate, local resource users may feel they have sufficient tenure security under these systems. The implication is that, even where private ownership is formallyrecognized, most of the land is controlled by the state.[182]

Specific restrictions on the acquisition of certain land rights by non-nationals may also exist. In some countries, non-nationals face restrictions on landownership (e.g. in Ghana, under article 266 of the 1992 constitution) and on resource use (for example, in Tanzania foreigners may acquire land rights only for the purpose of an investment project under the Tanzania Investment Act.[183] But under certain circumstances incorporation of local subsidiaries may enable foreign investors to overcome these barriers. In Mozambique, foreign and domestic investors alike may acquire renewable 50-year land use right, which for the first two years (five for nationals) is conditional upon the implementation of an agreed investment plan (articles 17 and 18 of the Land Act 1997).[184]

3.4.2 Security of local Land Tenure.

The extent to which national legal frameworks protect local land claims varies among countries, but is often limited. Land is most commonly owned or otherwise held by the state, with important country exceptions like Ghana. In Mozambique Local people may enjoy use rights over state land. Land titles, whether individual or collective, are

[179]Egbe, S.E., (2001), "*The Concept of Community Forestry under Cameroonian Law*", 45 Journal of African Law 25-50.
[180] ibid
[181] ibid
[182] ibid
[183] Section 19 and 20 of the Land Act,1999.
[184] Op.cit

extremely rare in rural areas. Overall, the current wave of FDI flows and land acquisitions is taking place in contexts where many people have only insecure land rights –which makes them vulnerable to dispossession.[185]

Some African countries have recently taken steps to strengthen the protectionof local land rights, including customary rights – even where land is stateownedor vested with the state in trust for the nation.[186]Mozambique's Land Act 1997,[187]Tanzania's Land Act and Village Land Act1999,[188] and Uganda's Land Act 1998.[189] But even here legal protection may be conditioned to "productive use" forExample it is under similar requirements elsewhere (in Tanzania, for instance.[190]

Lacking a clear definition of what constitutes "productive use" and given the ensuing broad administrative discretion, these requirements may open the door to abuse, and undermine the security of local land rights.

This is particularly so for those groups whose resource use is often not considered as "productive enough" due to widespread misconceptions particularly pastoral production systems .[191] More fundamentally, legal provisions may not alter entrenched perceptions among key decision-makers about the value of local land rights.

As it is in many African countries, in Mozambique,compensation can be paid in-kind and may include items such as land, houses and other buildings, building materials, seedlings, agricultural inputs, and financial credits for equipment. In practice, many

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[185] Op.cit
[186] Articles 43-48.
[187] Articles 12 (a) and (b), 13(2) and 14(2) protect use rights based on customary law or good-faith occupation for more than ten years.
[188] For example, Tanzania's Village Land Act 1999 states that customary rights of occupancy have "equal status and effects" to statutory rights (section 18(1)).
[189] Article 9
[190] Under Tanzania's Village Land Act 1999, section 29. On the other hand, legal protection of customary rights under Mozambique's Land Act 1997 is not conditioned to productive use.
[191]Hesse, C., and Thébaud, B., (2006), "*Will Pastoral Legislation Disempower Pastoralists in the Sahel?",*2006(1) *Indigenous Affairs* 14-23.

citizens have claimed that their compensation payments were below the market value of their condemned land, buildings and other condemned properties.[192]

The study on land acquisition in Mozambique has shown that 'the state can acquire land from its lessees and can demolish the structures as per the Urban Construction Legislation they adopted for the development of projects of public interest. Individuals and entities have the right to equitable compensation and new plot of land for the expropriated assets. The compensation fee for resettlement was determined by the local authority standards; rates were negotiated according to ground conditions and were based on the agreement reached between the district government and the affected people after public consultation. The infrastructure development projects followed land-for-land compensation principles for all rural households; cash compensation paid to collectives of community-wide mitigation measures with limited or no follow-up of individual rehabilitation measures.[193]

3.5Uganda

Compulsory land acquisition in Uganda, as in many other countries, is principally an administrative (i.e., executive branch) matter. In functioning democracies, the exercise of this authority is limited and checked by various institutionalized accountability mechanisms, such as citizen advocacy, civil society monitoring and legislative oversight. Checks-and-balances on government power help guard against the abuse and misuse of this authority, limit arbitrary acquisitions, and ensure that this authority is only used for valid and genuine public purposes.[194]

Uganda's Constitution empowers the government to acquire private land ina compulsory manner for specific public interest purposes. Frequent use of theauthority (or the threat of its use) can weaken tenure and reduce incentivesto invest in land. Yet, excessive restrictions on this authority can jeopardizepublic interests.

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[192] ibid

[193]Debnath, B., &Choudhary, T. (2009). Land *Administration in Countries with State Ownership of Land* ,India Infrastructure Report 2009 (pp. 260). YMCA Library Building, Jai Singh Road, New Delhi, 110001: Oxford University Press

[194] Http://pdf.wri.org/protected areas and property right.pdf

The Ugandan Constitution (Section 237(1)) states that

"Land in Uganda belongs to the citizens of Uganda…in accordance with the land tenure systems provided for in this Constitution", which are customary, freehold, mailoand leasehold.

This principle that land belongs to the people of Uganda significantly diminishes the government's authority to acquire land for agricultural investment. The Land Act of 1998 Cap 227 confirms that land belongs to the Ugandan people Uganda's.[195]

Article 26(2) of Uganda's Constitution of 1995empowers the government to acquire private landin a compulsory manner, provided that the followingthree conditions are satisfied:

a) the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and
b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for

(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
(ii) a right of access to a court of law by any person who has an interest or right over the property."

Land Act[196]establishes a land fund that could help pay some expenses of exercising compulsory land acquisition, including compensation. Section 41(4) of the Act outlines how the fund should be utilized, including "to resettle persons who have been rendered landless by Government action, natural disaster or any other cause." The fund, however, is undercapitalized and, as a result, has been unable to service compensation payments. In some cases, compensation for private land acquired by the state in a compulsory manner has been paid by the private company that will use the

[195] Section 2, Ugandan Constitution 1995
[196] CAP 227, 1998

land (e.g., construct a dam, extract oil or mine minerals). The bank or donor agency that is financing the development often mandates that the compensation payments be fair and adequate.[197]

Advocates argue that compensation should improve or at least restore in real terms the living conditions of displaced people to pre-resettlement levels.[198] In Uganda, condemned property is valued at open market rates. The Land Act, Section 77 requires that, "(1)(a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land; (b) the value of the buildings on the land, which shall be taken at open market value for urban areas and depreciated replacement cost for the rural areas; (c) the value of standing crops on the land, excluding annual crops which could be harvested during the period of notice given to the tenant." In addition, the government must pay a disturbance allowance of 15% of the compensation or, if less than a six-month notice is given, a 30% disturbance allowance.

The compulsory acquisition of private land forpublic purposes or public benefits has emergedas a significant threat to the security of landtenure in many parts of Uganda. The involuntaryextinguishing of private land rights by governmenthas received insufficient attention by governmentand development agencies involved in land tenureand natural resource property rights. While attentionand resources have focused on documentingproperty rights (e.g., cadastral surveys, mapping customary land claims), registration and titling,and strengthening the capacity of critical landadministration and adjudication institutions, littleattention has been paid to limiting the authority of the state to extinguish land rights.[199]

In Uganda, the valuation of property and the determination of compensation payable are carried out by government valuers. Under the Land Act, Section 59, District Land Boards must, "(1)(e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed." Rates are reviewed annually and are to be used to determine

[197] Htt://www.pdf.wri.org.protected areas
[198] Op.cit
[199] Land resource Institute,(2012), *the compulsory acquisition of privately held land by the Government*, focus on Land in Africa Brief.

compensation payments. Compensation can be paid inkind and may include items such as land, houses and other buildings, building materials, seedlings, agricultural inputs, and financial credits for equipment. In practice, many citizens have claimed that their compensation payments were below the market value of their condemned land, buildings and other condemned properties.[200]

However, the terms and conditions for superseding local land rights vary among countries and even among projects within the same country. Where land is owned by the state, legal requirements are commonly limited to compensation for loss of harvests and improvements. This is the case in Ethiopia and Tanzania .Cash compensation for these may not be enough to provide access to alternative land, however, particularly where demographic pressures are growing and land markets not fully developed. Shortcomings in implementation may also undermine the ability of compensation rates to restore affected livelihoods.[201]

Compensation in kind is possible in several covered countries. This may be advantageous in contexts where cash compensation is unlikely to restore local livelihoods, for instance due to limited local land markets, banking services and experience with handling relatively large amounts of cash.

As multiple and overlapping land rights are often held through diverse blends of individual to collective rights, a key issue needing to be addressed is who should receive compensation payments with regard to relations within households (as illustrated by women's "secondary" rights on familyland) and groups (in Tanzania, for instance, compensation must be paid tothe village as a whole for loss of communal land, and to villagers for loss oftheir rights of occupancy , as well as between groups (see the "secondary"land rights of "incomers" and non-resident pastoral groups).

Compensation costs may be borne by the governments or by the investor directly in which case they become part of project costs [202] In Ethiopia, for example, compensation is supposed to be paid by the government.However, due to budget

[200] Ibid.
[201] Op.cit
[202] Interview with a lawyer from an international law firm, 22nd November 2012.

constraints, it is paid by investors but considered aspart of the cost of land lease. A similar situation exists in Tanzania, where informal terms compensation is payable by the government when land is transferred from Village Land status to General Land status for purposes of leasing to large-scale investors; but in practice it is the investor that negotiates and pays compensation directly to local land rights holders and users.[203]

Involvement of international lenders may raise compensation standards –for instance where the project must comply with IFC or "Equator Principles "banks.[204]

3.5.1 Transparency and civil society engagement.

Article 41 of Uganda's Constitution grants every citizen the right of access to information held by the government, provided the information does not compromise national security or sovereignty, or infringes on personal privacy. Uganda is also one of only six countries in Africa with a comprehensive freedom of information act. Uganda's Access to Information Act was approved in 2005 and went into effect in 2006. Enabling regulations are currently being prepared for this law.These legal instruments apply to the exercise of compulsory land acquisition.

Still, few citizens whose land has been expropriated through compulsory land acquisition are aware of the rates government values used in the valuation process. For example, people who lost their land in 2001 and 2002 for the Bujagali Hydropower Dama 250-megawatt power-generating facility on the Nile River outside Jinjaclaim that market values were not paid and that they were not given copies of the valuation reports, survey forms and other related documents. Others claim that the amount of compensation they received was less than the value established by the government assessors. Some people who preferred to be relocated claim that the new land they

[203]Cotula, L., Dyer, N., and Vermeulen, S., (2008), *Fuelling Exclusion? The Biofuels Boom* and Poor People's Access to Land, Rome/London, FAO/IIED, http://www.iied.org/pubs/display.php?o=12551IIED&n=8&l=252&c=land.

[204]"The Equator Principles – A Financial Industry Benchmark for Determining, Assessing and Managing Social& Environmental Risk in Project Financing". Adopted in 2003 and revised in 2006, the Equator Principles are voluntary guidelines adopted by a number of commercial lenders (www.equator-principles.com).

were given was insufficient and inferior (of lower value that their land that was condemned).[205]

3.5.2 Remedies for Affected People.

In Uganda, under the Constitution, any person aggrieved by compulsory land acquisition may petition the court of law for redress. A hierarchy of courts is available, from the Local Council II Courts which settle disputes at parish and village levels, and the sub-county Court Committees which handle light civil matters, to the High Court, Court of Appeal and Supreme Court. Land Tribunals were created by the Constitution at the district, sub-county, and gazetted urban area levels. In 2007, however, they were suspended by the Judiciary, citing limited resources and duplication with Magistrates Courts.All pending cases were handed over to the Magistrates Courts.[206]

Where local people feel wronged by a land acquisition, legal remedies against the government or the investor are mainly determined by the national legislation of the host state, example in Kenya, Uganda, Tanzania, Mozambique and Ghana. A key issue is whether remedies are only available to owners (i.e. the few with registered land title), or whether they also benefit resource users not having full ownership rights. Whether communities can sue jointly for losses suffered by large numbers of community members is also key, as it would enable people to join efforts and pool resources.[207]

Beyond legal issues, other factors may constrain local capacity to seek redress:lack of resources (with legal aid rarely being available for this type of litigation); low levels of legal and basic literacy; geographical, economic and linguistic inaccessibility of courts; and lack of independence of and trust in the judiciary.

With regard to litigation against investors, there have been rare suits brought against parent companies in their home country, rather than local subsidiaries in the host state (“transnational litigation”). The effectiveness of this strategy depends on the law in

[205] Op.cit
[206]Op.cit
[207] ibid

force in the home country. In the UK and the US, this strategy has led to some positive results. In the UK, courts may be prepared tohear a case if they are satisfied that "substantial justice (would) not be done in the alternative forum" ,[208] including due to lack of legal aid in thehost country.[209] In the US, transnational lawsuits have been brought under the Alien Tort Claims Act of 1789, which gives US court jurisdiction over civil tort actions is brought by foreigners for acts "committed in violation of the law of nations" even if these acts occurred abroad.

Apart from major limits in access to these types of proceedings for most local people affected by land acquisitions, the extent to which similar legal principles would apply in some of the home countries involved in the recent wave of land acquisitions (East African countries in particular) remains to be seen.[210]

In those government-backed investments where land is acquired by a foreign state agency (central ministries, SWF, SOE), a particularly important issue is the extent to which that agency enjoys sovereign immunity from legal proceedings in the host state. Sovereign immunity does not remove liability. The state agency may still be held responsible, for instance through international law channels or where it waives its immunity. But it would make it more difficult for local people to seek redress against the investor.[211]

The 2004 UN Convention on Jurisdictional Immunities of States and theirProperty regulates these matters but is not yet in force. As a result, rules vary across states depending on national legislation. Despite this diversity, a key principle emerging under customary international law and in most jurisdictions is the distinction between acts in the exercise of state sovereignty and commercial transactions, with immunity

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[208]*Spiliada Maritime Corporation v Cansulex Ltd*, 1987 AC 460 (United Kingdom).
[209]*Connelly v Rio Tinto Corp plc,* [1997] All ER 843 (United Kingdom)
[210] Op.cit
[211] Interview with a lawyer from an international law firm, 21st November 2012.

only covering the former. In other words, an entity controlled by a foreign state is still likely to be subject to challenges before courts in the host country.[212]

3.6 Conclusion.

This chapter examined the experience of land acquisition in different countries namely Uganda, Kenya Mozambique, several lessons have been learnt from these experiences. The first and foremost lesson is that allthese countries share almost the same problems on promptness and fairness of compensation.But there are significant different on security of local land tenure in Ethiopia where local people may enjoy use of rights over state land in comparing with the rest countries.[213] Compulsory land acquisition by the government has become a significant threat to land tenure and private property rights in many African countries.[214] From various cooperative experiences we learnt that there is an urgent need for reform to ensure that:

a) This authority is used only for legitimate public purposes and not for ordinarygovernment business;
b) The procedure for exercising compulsory land acquisition is democratized and protectedfrom politics and politicians;
c) Affected people are fairly and promptly compensated for their expropriated land and Otherproperty;
d) All persons aggrieved by compulsory land acquisition have access to an independentCourt of law.

As for compensation to customary rights holders for landalienated from the customary or village domain, only in Tanzaniais compensation a legal requirement for acquisitions byboth private investors and the state where the "type,amount, method, and timing of the payment" and "fulland fair compensation" are required by law. In Ghana,Mozambique, and Zambia, compensation is only mandatoryin cases of forced

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[212] Clifford Chance, (2008), "*State Immunity and State-Owned Enterprises",* report prepared for the Special Representative of the UN Secretary-General on business and human rights, available at www.business- humanrights.org/ Documents/Clifford-Chance-State-immunity-state-owned-enterprises-Dec 2008.PDF.
[213] Op.cit
[214] Op.cit

expropriation by the State where compensationis provided in the form of cash payment for “unexhaustedimprovements,” replacement land, or “an amountcorresponding to the value of the harm resulting from thenon-utilization of the affected area,” respectively.[215]

Thus, withthe exception of any compensation emanating from environmentalimpact assessment and mitigation processes, any compensation paid to affected personsin these countries is discretionary. This leaves the ultimatedecision up to the investor or government agency negotiatingwith affected persons, and dependent upon the community’slegal awareness and savvy in evoking their customary landrights to extract meaningful levels and forms of compensation.[216]

In none of the case study countries is full compensationfor the loss of all natural and physical assets (including land,economic improvements to land, and foregone rights to commonpool resources such as forests and grazing land) required.In countries where compensation is not mandated,practices were found to be highly variable, depending onthe good will of investors and local leaders alike.[217]

In Tanzania, where the legislation is the most detailed onthe nature of compensation to be paid and to whom, widevariation in practice was observed.

[215] Laura German, George Schoneveld ,and Esther Mwangi, (2003*), Contemporary Processes of Large-Scale Land Acquisition in Sub-Saharan Africa: Legal Deficiency or Elite Capture of the Rule of Law?* World Development Vol. 48, www.elsevier.com/locate/worlddev
[216] ibid
[217] ibid

CHAPTER FOUR

4.0 DATA PRESENTATION, ANALYSIS,FINDINGS AND DISCUSSION

4.1 Introduction.

The chapter stipulates the compulsory Land Procedures Rationale for compulsory land acquisition in relation to land grabbing, methods of compensation, assessment of land acquired manner and time for payment of compensation, public participation and transparency, dispute resolution and grievance mechanisms. The study attempts to find out the fairness and promptness of compensation under the Land acquisition Act.

4.2 Compulsory Land Acquisition Procedure.

Compensation, whether in financial form or as replacement land or structures is at the heart of expropriation. To meet the need of public services and other economic and social needs of the society, the government use expropriation (compulsory acquisition) as an alternative tool to secure land for development. The process, however, brings tension for people who are threatened with dispossession.

The compulsory acquisition of land for development purpose may ultimately bring benefits to society but it is disruptive to people whose property is acquired. In countries like Tanzania where the level of economic and social development is extremely low, the government, for redevelopment purpose and undertaking public facilities, displaced people both in the inner cities and peripheral urban areas. As a direct result of these government actions, people especially the poor ones are displaced from their homes, farmers are dislocated from their fields, and businesses are disconnected from their neighboring hoods. Obviously displacement of people from their possession may bring separation of families, deprive communities of important religious or cultural sites, destroy net works of social relations and leave people without access to necessary public facilities and resources. Generally compulsory

acquisition is usually done for public purposes, for public uses and/or in the public interest.[218]

The acquisition of the land at Kipawa involved several steps more or less the same as those provided under section 5 of the Land Acquisition Act No.47 of 1967 and those described in the theoretical model. The only difference is the level and manner of implementation. These stages of land acquisition form the rationale for this research. Therefore the researcher was careful to study how the steps were implemented during the process in order to find out what the conflict originated. Those seven steps include the following;

a) Preliminary investigation (planning stage)
b) Publicity and notification
c) Valuation and submission of claims
d) Payment of compensation
e) Possession
f) Appeals
g) Restitution

4.3.1. Preliminary Investigation

The responsible authority i.e. the Tanzania Airport Authority (TAA) made investigation and identified Kipawa, Kipunguni and Kigilagila areas before sending an application to acquire land to the Ministry of Lands, Housing and Human Settlements Development (MLHHSD). The Ministry has the responsibility to investigate and assess whether the proposal is for public purposes and if satisfied, accept the request. The process of investigation at the Ministerial level was done in a participatory manner involving local authorities such as Ward Executive officers, Local leaders, including the grass root leaders and individuals. The purpose of this investigation was to know the boundaries of the identified area and existing conditions. In addition it involves determining how many people would be affected by the development include the preliminary compensation estimates.

[218] FAO, (2009) Opcit, p.9

Section 5(1) of Land Acquisition Act provides that three days notice should be given to the occupiers prior to investigation and in case damage is done at this stage compensation should paid. However, according to the interviews and questionnaires made with the affected landowners complained that in the process of preliminary investigation they were not given notice and nor involved at this stage. Commenting further on the above they said that, not being involved at this stage is inhuman and they were deprived off their rights. The reason given by the government officials for not involving landowners were that, the involvement of people at this stage would not provide any changes because the project was for the public interest. They also claimed that since the entire area was acquired there was no need for the involvement of people at the grassroots because the boundaries were marked and the conditions of the acquired area were clearly known. The area to be acquired had to affect the entire area and no any detailed investigation wascarried out. The focus group discussion with the Ward Development Committee agree that they received information from the Municipal level but also agree that it would be reasonable for the individuals at the grassroots level to be involved at this stage and their involvement could have resulted in changes.

The finding result shows that affected land owners did not participate in planning. This can be seen from the fact that there was poor planning of this project which results in the delay in the paying compensation. Preliminary cost estimates such as compensation and impact assessment was not carried out. The government officials pointed out that because the entire area was acquired no need for people's participation. This make a clear understanding that the acquiring authority were not prepared enough for this project the situation that necessitated the government to enter into unnecessary conflict with the original land owners because of delay to start the project including compensation payment.

In practice these terms are often not clearly distinguished and they tend to be used interchangeably. Public purpose or public interest is defined to mean, "a matter of

public interest in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."[219]

Unfair procedures for the compulsory acquisition of land and inequitable compensation for its loss reduced land tenure security, increase tensions between the government and citizens, and reduce public confidence in the rule of law. Unclear, unpredictable and unenforceable procedures created opportunities for corruption.

A broad survey of both developed and developing countries reveals the following among the commonly accepted purposes for compulsory acquisition including transportation uses including roads, canals, highways, railways, bridges, wharves and airports; Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs; Public parks, playgrounds, gardens, sports facilities and cemeteries; and Defence purposes.[220]

An exercise in compulsory acquisition in Kipawa and Kigilagila was more likely to be regarded as legitimate because land was taken for a purpose clearly identified in legislation. An exclusive list of purposes reduced ambiguity by providing a comprehensive, non-negotiable inventory beyond which the government was not to compulsorily acquire land,[221]this is due to the fact that a list of purposes which qualify for the land to be deemed to have been acquired for public purpose is well outlined under the Land Acquisition Act.[222]

More controversial are cases where private land is acquired by government and then transferred to private developers and large businesses on the justification that the change in ownership and use would benefit the public.[223] The Court of Appeal of Tanzania expressly ruled out that the acquisition of land for purpose of granting the same to the United States Embassy did not fall within the meaning of public purpose[224]

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[219]*Attorney General v. Sisi Enterprises Ltd, Civil Appeal no. (30 of 2004)[2004] TZCA 39*
[220] FAO, (2009), ibid p.11
[221] Ibid
[222] Section 4 of the Land Acquisition Act, [CAP 118 R.E 2002]
[223] FAO, (2009), ibid p.12
[224]*Attorney General v. Sisi Enterprises Ltd, Civil Appeal no. (30 of 2004)[2004] TZCA 39*

Proposals to use compulsory acquisition of land for private development should undergo a public scrutiny that ensures that the balance between the public need for land and the protection of private property rights is properly considered, and that the compensation reflects the profit potential of the land to be acquired.[225]

In countries where policies of redistributive land reform have been adopted, these are usually considered as being in the public interest, even if the reform transfers land from one private owner to another.[226] Such land reforms are often part of government programs to address social injustices and to promote agricultural and rural development. In challenges to a land reform, the government may have to prove that the redistribution of land from one citizen to another is for a purpose that is beneficial to the community. Clear intent in legislation can help to diminish the potential for conflicting court decisions in such challenges. Where such redistributive land reforms are addressed using powers of compulsory acquisition, governments have sometimes adopted a policy where full compensation is not provided for land that is compulsorily acquired.[227]

4.2.1 The Principle of Free, Prior and Informed Consent.

The provision of notice of the intention to compulsorily acquire land protects the rights of affected people.[228] Notice should be given as early as possible to allow people to object to the acquisition of their land, to submit compensation claims, or to appeal against incorrect implementation of procedures. The timing of notice varies: a period of three to six months is common in many countries; some countries require that owners and occupants are given at least one year's notice. Legislation should ensure that the timing is not so short that it erodes the effectiveness of safeguards for due process. However, the notice given to the former residents of Kipawa and Kigilagila was not sufficient.

[225] FAO, (2009), ibid p.12
[226] Ibid p. 11
[227] ibid
[228] FAO, (2009), *Land Tenure Studies; Compulsory Acquisition of Land and Compensation*; p. 20

Under the Land Acquisition Act the notice seems to be of duo-function.[229] On the one hand the notice is to deliver information to the occupier of the intention of the president to acquire the land;[230] and on the other hand to require the occupier to yield up possession of the land. Notice is one of the procedural requirements to be observed in compulsory acquisition of land.[231] The minimum period for the notice before acquisition is six weeks but where the land is urgently needed it can be of a shorter period. Once the period of the notice has expired the President can enter and take possession of the land.[232]

Notice was not served to all owners, occupants and other affected people. Though it was difficult to identify and contact all those who held rights to the land to be acquired. For example, the owner of a land parcel who died and his heirs did not register the transfer of ownership. Difficulties existeddue to the fact thatrights were not clearly defined, because informal settlements or land were held under customary tenure.

To ensure that all affected people are aware of the project, notice should be publicized as widely as possible. Printed information should be sent or delivered to affected households and displayed in public areas and prominently on the land to be acquired. Information should be disseminated through popular publications, and radio and television programs. The information should be comprehensible legal notice does not mean genuine notice if people cannot understand what is being said. The information and the communication process should be sensitive to gender differences. Information should be presented in local languages. Oral communication had been important in areas of high rates of illiteracy.[233]

The information should have explained the purpose of the acquisition, identify the land to be acquired, and provide a clear description of the procedures.[234] It should have

[229] Tenga&Sist,(2008), *Manual on Land Law and Conveyance in Tanzania,* Dar es Salaam University Press, Dar es Salaam.p134
[230] Section 6 of the Land Acquisition Act,[CAP. 118 R.E 2002]
[231] Ibid section 7(1)
[232] Ibid section 7(2)
[233] FAO, (2009) ibid p. 18
[234] FAO, (2009) ibid p.19

described the rights of owners and occupants, including the rights of appeal, and should have reassured people of their rights, including in respect of compensation and when it is payable. The dates, times and venues of public meetings should be stated, along with the dates on which the project's valuers entered the land to determine its value, and the final date on which the land had been acquired. Information should be provided on where people can get help with the process.[235]

After preliminary investigation and approval of the project, the declaration was effected in the Government Gazette where the intention to acquire the specified land at Kipawa and its boundaries were specified as it is stipulated in the law. Notice to the respective landowners was served by the Ministry of Lands, Housing and Human Settlement through the Ilala Municipal land officer who thereafter served the information to the respective land owners via the Ward executive officer. The aim of the notice is to inform people that his/her land is to be compulsory acquired by the President to be used for public purposes. This notice should be served after the investigation which was done in the first stage and should provide detailed information on what other procedures will follow including the information about the meeting. From the interview made and questionnaires, the interviewees stated that they were not served with hand written notice personally and instead they received information about their land to be acquired from the Ward offices notice board and from the meeting which was carried out (see table below).

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[235] FAO, (2009) ibid p.19

Table 1: Notification to landowners

Notice to the land owners	Number of respondents	Percentages (%)
Were not served with notice	46	77
Were served with notice	9	15
Were not aware about the notice	5	6
Total	**60**	**100**

Source: Field work, July, 2012

The table above shows that the majority of the interviewees were not served with the notice. The main reason provided by interviewees was due to the lack of the involvement of the local leaders

The authority did not issued reasonable notice to the victims of kipawa and kigilagila. In some incidences the process of demolition took take place ten years after the issuance of notice. This put the victims into hard condition as they failed to do anything on their land waiting for relocation and compensation which takes long after being served with a notice of acquisition. Out of twenty respondents interviewed; seventeen (85%) complained of lack of sufficient notice before demolition of their houses.

4.2.2 Rationale for Compulsory land acquisition in Relation to land grabbing.

The rationale for acquisition may be straightforward when land is acquired by the government for use by a public entity, for example for a public school or hospital, or

for a new public road or airport[236] The rationale for acquiring land for a public purpose or in the public interest may be also clear where the land was held by a private entity but used for a public purpose. It is therefore argued that the state, using the powers of eminent domain can and should have the authority to acquire or purchase privately held land or property for the utility of the general public.[237]

According to the United Nations comprehensive Human Rights Guidelines on Development Based Displacement, adopted in June 1997, expropriation should only occur as a last resort. That states should refrain, to the maximum possible extent, from compulsorily acquiring housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through,for instance, measures of land reform or redistribution. As a last resort, states consider themselves compelled to undertake proceedings of expropriation or compulsory acquisition.[238]

Many developing countries suffer from badly outdated expropriation legislation, Tanzania being among them which made expropriation so costly and time-consuming that it is, for many purposes, almost useless. Without reasonable expropriation legislation, it would have been difficult to maintain the interests of both the expropriator and the exproptriatees in the process of compulsory acquisition. Even when most public acquisitions were in fact negotiated, an effective expropriation law was necessary as a "back-up" possibility to prevent owners from demanding excessive prices. In Kipawa and Kigilagilacoercive power was used in the acquiring property for the "gainers" and compensating losses for the "losers" which became legally difficult and economically almost impracticable to transact."

The economic justification for the deployment of compulsory acquisition was to ensure that public interests or projects such as economic ventures, public infrastructure development (MwlJuliasNyerere International Airport), which catered for the wider

[236] FAO, (2009) ibid p.18
[237]Kombe W, Opcit
[238]Plimmer, F. (2008). *Compulsory Purchase and Compensation: an overview of the system in England and Wales.*Nordic Journal of Surveying and Real Estate Research, vol.3.

public interest and not frustrated by an individual refusal to sell land to the government at a reasonable price.

Land grabbing is the contentious issue of large-scale land acquisitions: the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments, and individuals[239]While used broadly throughout history, land grabbing as used today primarily refers to large-scale land acquisitions following the 2007-2008 world food price crisis.[240]

4.3 Fair, Prompt Compensation and Market Value.

The long time taken, especially between property assessment and the payment of compensation, and the overall long period that is spent in order to have the expropriation process accomplished pose serious problems, to the extent of jeopardizing the success of substituting similar properties. Although the expropriation and compensation laws recommend prompt payment of compensation, the practice in the case studies did not show so. Without timely compensation, affected landholders faced great difficulty in making a living during the transition period and beyond. Delays in the assessment and payment of compensation have other undesirable effects of making life difficult for the affected people as construction costs escalate and inflation erodes the value of the intended compensation. Both the constitution and expropriation and compensation laws do not say anything about possible penalty that could be undertaken due to delays of payment.

The amount of compensation paid depended on the place, the circumstances (the understanding of the law, the valuation method applied, the kinds of property deemed compensable, the rates that are applied, and the skill of the valuers) and the availability of financial resources etc. The variation of these factors from place to place results in inequitable application of the concept of fair compensation and becomes a source of dissatisfaction among affected people.One of the key displaced woman informants in Kipawawho had been expropriated about 1711 square meters of land, for instance, had

[239] http://en.wikipedia.org/wiki/Land_grabbing
[240] Ibid

been offered only 450 square meters of land as compensation, while a man living in the same area and lost 46 square meters of land had been offered 75 square meters of land as compensation. This shows that the affected people who are displaced due to public development projects were not treated uniformly.

Table 2: Paired Samples of the Mean of Property Market Value and Compensation Paid

Pairedvariables	Mean	N	Standard Deviation	T	Sig.(2tail d)
Compensation Paid	1,505,761.2554	82	1,233,585.34911	-11.092	.000
Worth of property	1,771,914.2451	82	1,450,840.38601		
	266,152.98976	82	217,284.37954		

Source: Field survey 2012

From the table above, paired samples t-test indicates a wide disparity between the mean of compensation paid and market value of the acquired property. The analysis further indicates that the t-value is -11.097 signifying a statistically significant difference between the means of the 2 variables value at 99.0% confidence level. Since the resulting P-value of .000 is less than 0.01, it implies that there is a significant difference between compensation paid and the market value of the acquired property.

4.3.1 Methods of Compensation

The common methods of compensation are as follows:

a) Market value compensation based on Market value paid in private ownership and when there is relatively high volume of market transactions on land or assets. Market

value is normally defined as the priced the interest in land or of assets would command in the open market assuming a willing-buyer-willing seller situation.

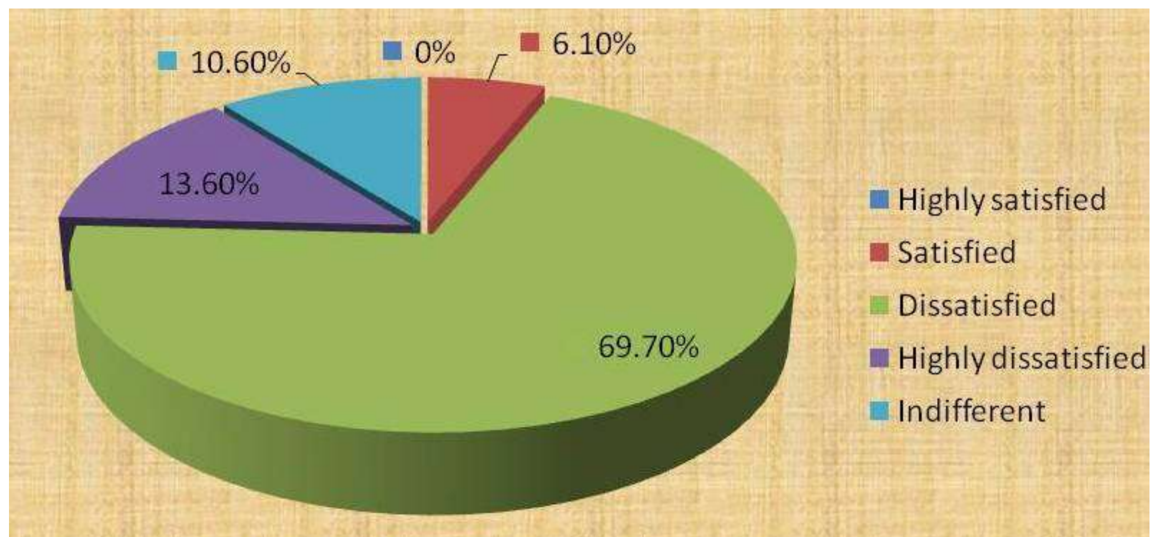
b) Compensation is based on value of improvements where land belongs to the State. Here compensation is normally based on the value of unexhausted improvements whose utility has not expired.

c) Frozen values method of compensation and amount of compensation may be pegged to the market price at a particular historical date

d) Existing value based on the market value of asset on its existing use and discounting any potential value attributable to development possibilities or changes in the market.

e) compensation is tangible and understandable. The affected people have to see that they have received something substantive in return for their assets and the manner in which the amount was arrived is comprehensible.

Figure 1:Levels of respondents' satisfaction on compensation paid.



Source: Field survey (2012)

The idea that State can take away any property for public good, that is, the doctrine of eminent domain, is itself contested, as it raises the classic debate of power of state

versus individual rights. Let us, however, assume the idea of Eminent Domain as a fact.[241] The existence of Eminent Domain means that the exclusivity of the rights owned in a property is at least diluted against the government acquisition of such property. Now, why would the government need to take over an individual's property? Typically, government is thought to be representative of the collective, the voice of the public, as compared to the individual.

According to the conventional justification, the government as well as private parties need the power of eminent domain to overcome the holdout problem among strategically-acting sellers. This insight regarding the holdout problem was widely recognized even prior to the modern law-and-economics movement. The undertaking of some large-scale projects like highways and ring roads, irrigation dams etc., require the assembly of several contiguous parcels of land whose ownership is dispersed. The problem facing providers in these cases is that, once the assembly becomes public knowledge, each landowner realizes that he or she can impose substantial costs on the developer by refusing to sell.[242]

Based on constitutional requirements, many countries have developed standards for determining "just compensation." Most high- and middle-income countries with well-functioning legal systems and real estate markets have adopted "fair market value" of the expropriated asset as the standard for determining compensation for state expropriations. The fair market value is commonly defined as "the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.The underlying reason for adopting the fair market value standard is that the market is an objective gauge for assessing the valueof the land.[243]

Market value[244] has been the most popular suggestion for calculating compensation payable. The use of market value as measure of compensation that is "just, adequate,

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[241] Kelly A Dhru, (2010),*Acquisition of land for 'development' projects in India,The Road Ahead, Research Foundation for Governance, India*

[242]BelachewyirsawAlemuOpcit, P 16

[243] ADB. (2007)., *Compensation and Valuation in Resettlement*: Cambodia, People's republic of China and India

[244] The concept "market value "is not necessarily the equivalent of "just compensation" but rather a useful and generally sufficient tool for arriving at this value.

full, fair," etc raises questions because it seems to contradict the basic logic. When the government acquires the land compulsorily and pays compensation, the transacted price cannot be equal to the market value because of the coercive conditions attached to the sale. This equation defeats the very basic rule of a free market, i.e. "free operation" of the transitions. In a free market, market value can only be produced in a situation where willing buyers and sellers of commodities meet and transact freely under market conditions and the price arrived at is supposed to be fair assuming that negotiations were not interfered.[245]

It is argued therefore, since there is no freedom of transaction, there is no market as such for the compulsorily acquired property and any attempts to equate "just compensation" to "market value" is incorrect.

Under section 14 of the Land Acquisition Act[246] in assessing compensation for any acquired land the Minister or Court must consider the following:-

a) the value of the land at the time of the publication of the notice of acquisition. In this case the value of the land should be taken or considered separate to that of any improvement/work constructed but not improvement to be made of the purpose for which the land is acquired.
b) Assessment for compensation for land acquired must base on: Market value of the real property; disturbance allowance; transport allowance; loss of profits or accommodation, cost of acquiring or getting the land; any other loss or capital expenditure incurred to the development of the land.[247]

Presently in assessing the value of land and un-exhausted improvements for compensation purposes, the law emphasizes that value should be determined by the price which the un-exhausted improvements can fetch if sold in the open market. To reduce these problems, compensation for land acquired in the public interest is now based on the concept of opportunity cost and includes among other things the market value of the real property The Land (Assessment of Value of Land for Compensation)

[245]E.ndjovu, (2003), Opcit
[246]Section 14(a-c) Land Acquisition Act chapter, [118,RE 2002]
[247]Section 3(1)g of the Land Act, [CAP 113 R.E 2002]

Regulations 2001[248] provides more categorically on the aspects that must be careful observed in conducting the assessment.

The basis for assessment of the value of land and unexhausted improvement for purposes of compensation, under the Act shall be the market value of such land.[249] The market value of land and unexhausted improvement is arrived at by use of comparative methods evidenced by actual, recent sales of similar properties or by using income approach or replacement cost method where the property is of special nature and not saleable.[250] Every assessment of the value of land and unexhausted improvement for the purposes of the Act has to be prepared by a qualified valuer.[251]

Where there is business carried on the land the net monthly profit of the business shall be evidenced by audited counts where necessary and applicable, and multiplied by 36 months in order to arrive at the loss of profits payable.[252]

Emphasis on the considering market value of the land in determining the amount of compensation payable has also put by the Court of Appeal of Tanzania in some of its decisions[253] The concept of market value of the land was described in this case as, 'willing buyer willing selller' basis. It is argued that if compensation is based on the real market value of the property there would be a reduction of the complaints on unfair compensation.

Averaging over all types of plots acquired, offeredcompensations were quite close to market valuations reported by their owners. Nevertheless, market values of land are not the right benchmarks to judge adequacy ofcompensation for many owners who have held on to their properties consistently owing togreater than average emphasis on financial security, complementarity with farming skills, orlocational preferences. These concerns are not reflected in market values and need to beadditionally compensated.

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[248]GN 78/2001
[249]Regulation 3 of GN 78/2001
[250] IbidRegulation 4
[251] Ibid Regulation 5
[252] Ibid Regulation 9
[253]*Attorney General v. Sisi Enterprises Ltd, Civil Appeal no. (30 of 2004)[2004] TZCA 39* pg 49

It is argued that since there is no freedom of transactions in compulsory acquisition, there is no market as such for the compulsorily acquired property and that just compensation cannot be the same as market value. The market value is the amount a property would bring if offered for sale in the open market. Market value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in arms' length transaction after proper marketing wherein the parties had each acted knowledgeably and without compulsion.[254]

As such, compulsory acquisition, where the transaction is not based on willingness from the seller in a freely exchange, the market value cannot be said to have been attained but rather the seller was compelled to sale. In this respect, what the laws are terming as "market value"[255] for compulsorily acquired properties is not realistic because sellers have been compelled to sell against their will. This is what prompted one respondent HamisAlli, the former resident of Kipawa who currently lives at Chanika to his relocated land to fail to finish up his house by a meager compensation of 5million which enabled him to erect only one room where he had to reside with his entire family of eight people.

The respondent was inadequately compensated and relocated to a remote area where he could no longer carry on his business as opposed to his former residence. Similarly, different newspapers have reported on this unfair compensation; for example, "Most former residents of Kipawa area were relocated 36kilometres to the West. More than 480 families protested against a proposed compensation package that they said undervalued their homes by 50% and was based on an obsolete Land acquisition Act dating from 1967.Nevertheless, in February 2010, the eviction was carried out suddenly. Teargas was used and more than 300 buildings were demolished within two days.[256]

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[254]Msangi, E.D. (2005), *Land Acquisition for Urban Expansion: Process and Impacts on Livelihoods of Peri-Urban Households, Dar es Salaam,* Tanzania, p.20

[255] ibid

[256] http://www.guardian.co.uk/global-development/2012/mar/02/chinese-investment-tanzania-airport-eviction?newsfeed=true

Table 3: Types of losses Frequency Percentage

Loss of accommodation	55	55%
Loss of business	35	35%
Disturbed social life and network	75	75%
Psychological distress	32	32%
Other	5	5%

Source: Field survey (2012)

Table above shows types of losses due to expropriation identified by therespondents. From the point of view of respondents, among the losses due toexpropriation, disturbed social life and network and loss of accommodation arethe most problems they have faced due to expropriation. Loss of business andpsychological distress are also the other main losses due to expropriation. Mostof the respondents strictly comment that the expropriator did not inform them inadvance when they plan to undertake expropriation and they did not give muchemphasis on the problem that they encountered due to the expropriation process.

The problem is that psychological feelings or damage to the relative of the replaced and victims are not considered in compensation upon acquisition. This is vindicated in the circumstance where the tombs are replaced to the relocated area by the government. The incidence of replacing these tombs makes the victims to remember the former pains which they got during the burial of the relatives and the law does not provide compensation on this. The aim of compensation is to restore the victims to their former position as if nothing was done.

The process of compensation did not consider the age of the victims when it came to issue of acquisition and compensation. An interview with one misplaced old man who currently resides at Chanika revealed that he was not at all put into consideration in the process of acquisition and compensation. His outcry is casted on the house which he is required to build after being relocated.

4.3.1Assessment of land acquired and compensation.

The process of compensation payment to the affected land owners began in October 2009 until February, 2010 and a total number of 1218 landowners who were affected by the project received compensation. However, not all of the affected landowners received the compensation payment at their will. One group of 343 refused to accept the payments which the others received, and the last group had problems with probate had to wait until their matter is settled. Affected land owners who were interviewed showed dissatisfaction with the manner and mode of the payment exercise. They argued that they were forced to sign a certain document which required them to move after they have received the compensation sum. The chairman of the affected landowners group had this to say;

"Those who accepted the money were not shown the amount at the initial stage and were Required to sign some documents, before accepting payments," (Daily news,6,11,2009)

According to the Tanzania Airport Authority officer, 343 affected land owners refused to accept compensation and consequently filed a case in the High Court (Land Division). The main reason given for the case was that the compensation paid was not fair and adequate because the government used the Land Acquisition Act of 1967 instead of Land Act no 4 of 1999. In that course, 375 landowners received compensation and relocated themselves to the designated areas at PuguMwakanga and Mgeule17. 500 affected land owners died before the compensation payment was made and therefore the compensation sum was received by the family members after fulfilling the information requirements. However, as it was revealed from the interview made in the relocation area, even the majority of those people who received

compensation were not satisfied with the amount given to them, the arguments given was that they could not quarrel with the government.

*"You know the Government is like a sword.....this influenced me to receive compensation though in my heart was not enough......The government can decide to vacate without doing any thing.Afterall I saw it is a wise decision to receive what was given then complaints will follow"***ZainaKibanilo**

According to the Land Act, assessment for compensation for land acquired shall bases on Market value of the real property; disturbance allowance; transport allowance; loss of profits or accommodation, cost of acquiring or getting the land; any other loss or capital expenditure incurred to the development of the land. [257] The Land (Assessment of Value of Land for Compensation) Regulations 2001 provides more categorically on the aspects that must be careful observed in conducting the assessment. The basis for assessment of the value of land and unexhausted improvement for purposes of compensation, under the Act shall be the market value of such land.[258]

The market value of any land and unexhausted improvement is arrived at by the use of the comparative method evidenced by actual recent sales of similar properties, or by the use of the income approach or replacement cost method, where the property is of special nature and is not readily transacted in, in the market. Assessment can only be carried out by a qualified valuer and where the government (national and local) is involved; such assessment must be verified by the Chief Valuer in the government.

Tanzania laws indicate that the current market values should be used as basis for valuation of land and properties. Regulation 3[259] and Part I -III[260] provide for practical guidelines on assessment of compensation. The full and fair compensation is only assessed by including all components of land quality. Presently in assessing the value of the unexhausted improvements for compensation purposes, the law emphasizes that the value should be the price that which said improvements can fetch if sold in the

[257] Section 3(g) of the Land Act
[258]GN 78/2001
[259] Land Policy (Assessment of the Value of Land for Compensation) Regulations, 2001
[260] Village Land Regulations, 2002

open market. But this in normal circumstances is lower than the replacement value but higher than the initial construction cost of the said improvements.

The principal of paying compensation for land that is compulsorily acquired exists in both the constitution and in the relevantland laws.Article 24 sub-article (2) of the Constitutionstates as follows:……"it shall be unlawful for any person to be deprived of property for the purposes of nationalization or any other purposes without the authority of the law which makes provision for fair and adequate compensation.

Under the land Acquisition Act,1967, the government is required to pay compensation for the land taken. The compensation may be as agreed upon, or as determined under the Act. The government may in addition to compensation and with agreement of the person entitled to compensation pay compensation as well as give alternative land. There are situation where the government is compelled to give alternative land (eg in cases where land was used as a cemetery) in lieu or in addition to compensation. The land granted must be of the same value and held under the same terms as the land acquired, and must be in the same local government authority area unless the person whose land is being acquired consents to be given land elsewhere.

The Land Acquisition Actdoes not provide for compensation where land is vacant. Besides, where land is inadequately developed, compensation is to be limited to the value of unexhausted improvements of the land.However, provisions in the Land Act1999 over-ride or clarify those in the Land Acquisition Act.

In the case of compulsory acquisition, the government is requiredto pay full, fair, and prompt compensation to any person whose right of occupancy or recognized long-standing occupation or customary use of landis revoked or otherwise interfered with to their detriment by the state under this Act or is acquired under the Land Acquisition Act;provided that in assessing compensation for the land acquired in the manner provided for under this Act, the concept of opportunity cost shall be based on the following:

a) Market value of the real property

b) Transport allowance
c) Loss of profits or accommodation
d) Cost of acquiring or getting the subject land
e) Disturbance allowance
f) Any other cost, loss or capitalexpenditure incurred to the development of the subject land; and,
g) Interest at market rate to be charged in case of delays in payment of compensation and any other costs incurred in relation to the acquisition.

The question of documented legality is not okey considerationin entitlement to compensation. In practice at least in recent days,compensation has been paid in all cases of people who claim to be landowners and who are adversely affected by the contemplated scheme.However, the definition of beneficiaries has been taken not to include tenants.

The Land (Assessment of the Value of Land forCompensation) Regulations, 2001and the Village Land Regulations,2001, providefor the amount of compensation to include the value of unexhausted improvements, disturbance allowance, transport allowance, accommodation allowance and loss of profits.[261]

Disturbance allowanceis calculated by multiplying the value of the land by an average percentage rate of interest offered by commercial banks on fixed deposits for twelve months at the time of loss of interest in land.[262]Disturbance is regarded as part and parcel of the purchase price value of the land.

According to Land (Assessment of the value of the land for compensation) Regulation, 2001 under section 10, affected people are entitled to be given disturbance allowance. This allowance represents the value of the land multiplied by an average percentage rate of interest offered by commercial bank on a fixed deposit for twelve months at the time of loss of interest in land". In the interview made with the affected land owners they argued that they were not paid any disturbance allowances while they incurred

[261] Village Land Regulations, 2001
[262] ibid

costs and other disturbance.Commonly-stated disturbances included re-locating school children to new school, separation of families, friends and the new environment and getting familiar with the environment, loss of business and good will. Personal discomfort like expenditures in time, air time, postage and travel during relocation to the new places also included the change of transport routes and cost of working place.

Transport allowanceis the actual cost of transporting twelve tons of luggage by road or rail whichever is cheaper within twenty kilometers from the point of displacement.[263]

Accommodation allowanceis calculated by multiplying the monthly market rent for the acquired property by thirty six months.[264]

Loss of profitin the case of business carried out on the acquired property will be assessed by calculating the net monthly profit evidenced by audited accounts where necessary and applicable, and multiplied by thirty six months.[265]

Section 9 of the Land (assessment of the value of land for compensation) Regulation, 2001 provides for loss of profit whereby;

"The net monthly profit of the business carried on the land, evidenced by the audited account where necessary and applicable, multiplied by thirty six months in order to arrive at the loss of profit payable" and this applied only for an occupied land at the date of loss of interest in land (Makupa, 2009:88).

Based on the above explanation the respondents argued that the compensation sum they got did not represent the actual loss of the profit suffered. They identified losses such as the cost to move to the new place, and further noted that it is difficult to get customers, and that the cost of transporting goods and materials from town to the new area is high. Other identified losses which to them were not covered in compensation sum included tenant vacancy. For those people who used to rent their houses, the impeding compulsory acquisition meant that most of the tenants decided to vacate. The

[263] ibid
[264] ibid
[265] ibid

area could no longer preferred by the new tenants, and significant income was lost during the long period waiting for compensation. These losses were seen as substantial by the affected land owners but were not included in compensation sum.

Transport allowance, accommodation allowance and loss of profit do not apply where the land acquired is unoccupied at the date of loss of interest.[266]

Compensation is to be paid promptly but if it is not paid within six months it will attract an interest equal to the average percentage rate of interest offered by commercial banks on fixed deposits.[267]

The Land Act establishes a Land Compensation Fund to provide compensation to any person should they suffer any loss, deprivation or diminution of any rights or interests in land or injurious affection in respect of any occupation of land or its use.[268] Part III of the Village Land Regulation 2001[269]provides for compensations. Under Regulation 20 of the Land (Management of the Compensation Fund) a right to compensation is inheritable. Additional protection is afforded to buyers or landowners who loose their interest to land by a sale that is rescinded, through fraud by voiding such transaction or disposition.[270] One can always appeal against an aggrieved decision relating to land occupation and use.

Generally compensation takes the form of monetary compensation. It may however, at the option of the government, take the form of all or a combination of or any of the following: a plot of land of comparable quality, extent and productive potential to the land lost; a building or buildings of comparable quality extent and use comparable to the building or buildings lost; plants and seedlings; regular supplies of grain and other basic foodstuffs for a specified time.[271]

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[266] ibid
[267] ibid
[268]Regulation 3
[269]A person can apply for relief from court against any act of the Village Council or authorities under section46
[270] Section 71, 75 of the Land Act
[271]Regulation 10

The market value of land and unexhausted improvement is arrived at by use of comparative methods evidenced by actual, recent sales of similar properties or by using income approach or replacement cost method where the property is of special nature and not saleable.[272] Every assessment of the value of land and unexhausted improvement for the purposes of the Act has to be prepared by a qualified valuer.[273] Every assessment of the value of land and unexhausted improvement for the purposes of payment of compensation by Government or Local Government Authority must be verified by the Chief Valuer of the Government or his representative.[274]In assessing compensation for loss of any interest in land the value of unexhausted improvement, disturbance allowance, transport allowance, accommodation allowance and loss of profits must be included.[275] In the assessment involves a building the market rent for the building shall be assessed and multiplied by 36 months in order to arrive at the accommodation allowance payable.

Compensation first aims to protect socially and legally recognized rights, second, the spirit is to ensure that the dispossessed are restored to the position they were in before the acquisition of land by thestate. In other words, an individual ought not to gain or lose from the decision by the state toacquire his or her land for public interest. In democratic states, governments have evolvedprotocols for participation and negotiation between sitting land occupiers and the state, thusthe use of the powers of eminent domain or forceful acquisition is seen as a last resort.[276]

Despite elaborate protocols and statutory provisions, acquisition of land for public use is oneof the most contentious undertakings primarily because of the intractable problems to which it often gives rise. These include excessive bureaucracy and delays in compulsory land acquisition projects, weak coordination between actors, alienation of local communities(including land occupiers) and disregard of social costs such as

[272]Regulation 4, see also Reg 10 GN 86/2001 which provides a similar modality for Village Land.
[273]Regulation 5 see also Reg 11 GN 86/2001
[274]Regulation 6 see also Reg 12 GN 86/2001
[275]Regulation 7, see also Reg 13 GN 86/2001
[276]Kombe W, Opcit

disruption of social networks and the livelihoods of the dispossessed land occupiers[277] This apart, often decisions taken by bureaucrats on behalf of the government seem to ignore the democratic rights of the wider community of land occupiers.[278]

Section 11 of the Land (Assessment of the value of Land for Compensation) Regulation of 2001, provides that, *"Transport allowances is paid by considering the actual cost of transporting twelve (12) tons of luggage by rail or road (whichever is cheaper) within twenty (20) kilometres from the point of displacement"*. However, transport allowance shall not be paid for unoccupied land. Most of the respondents argued that transportation allowance which is an essential item was not considered in compensation sum as most of them were required to transport luggage and construction materials from the original sites to the new area at PuguMwakanga and Mgeule.

It was also observed that the affected land owners who were relocated at PuguMwakanga (which is approximately 25 kilometres away from the site of expropriation) incur additional transport costs to travel from where they live to the work place. One of the respondents who identified herself as a Primary teacher at Chai Primary school (located near Kipawa) said that,

*"My monthly salary is low and now I have to incur additional cost to transport expenses in such a way that if at the end of the month I find myself as if I am working for the drivers and conductors"*Rahel,31 years old.

4.3.2 Manner and time for payment of compensation.

The Constitution, [279] the Land Act 1999, [280] the Land Acquisition [281] and the UrbanPlanning Act 2007 are explicit on the issue of payment of fair and prompt compensationbefore land or property can be acquired for public use. In practice,

[277]Olima, W. and Syagga, P. (1996), '*The Impact of Compulsory Land Acquisition on Displaced Households: The Case of the Third Nairobi Water Supply Project, Kenya*', Habitat International, Vol. 20, No. 1 pp. 61-75
[278] ibid
[279] 1977 as amended
[280] Act No.4, 1999
[281] Act No.47, 1967

however, these provisionsare often not observed. Delays of up to five years or more are not unusual after valuationshave been done.[282]There are also problems associated with clandestine selling aftercompensation is paid to land occupiers.

International law requires that compensation be "appropriate", also with regard to the manner and time of compensation. It should thus be paid within a "reasonable" time and in such a manner that the recipient of compensation is able to make use of the compensation.[283]

Many constitutions state that compensation should be paid promptly. However, the period in which payment is to be made is often left undefined in relevant legislation. When the acquiring agency takes possession before full compensation is paid, there may be little incentive for it to make the final payment. Legislation should ensure that people receive full payment of the agreed-upon compensation sum in a timely manner. Any departure from a standard compensation rule should be based on clearly stated grounds set out in the law, and should be approved by a judicial body or administrative officer superior to the acquiring agency. Legislation should require that possession takes place only after a substantial percentage of the compensation offer has been paid.[284]

The government should endeavor that interest on current bank rate is beingpaid for all delayed payment of Compensation as provided by the Land acquisition Act[285],especially in a country with fluctuating inflation period. There are also problems associated with clandestine selling aftercompensation is paid to land occupiers.[286]

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[282] For instance, valuation of land and other property at Kipawa, an area proposed for the expansion of the MwalimuNyerere International Airport in Dar es Salaam, was done in 1997, but payments were made only in 2010. Recent discussions with displaces revealed that some of them have yet to collect their payments, primarily because of disputes over the amount of compensation.

[283]Treeger, C., (2004).,*Legal analysis of farmland expropriation in Namibia*. Konrad-Adenauer Stiftung/Namibia Institute for Democracy, Namibia.

[284] Jonathan M,(2012),Compulsory Acquisition of Land and Compensation in Infrastructure Projects, An explanatory note on issues relevant to public-private partnerships,www.worldbank.org/ppp

[285] Chapter, [118,RE 2002]

[286]Shivji, I. (1999): '*The Land Acts 1999, A Cause of Celebration or Celebration of Cause'*.Keynote Address to Workshop on Land held at Morogoro, 19th – 20th February 1999.

The researcher in interviewing the former residents of Kipawa and Kigilagila was informed that the assessment for purposes of compensation of their land was done way back in 1996. However the government paid their compensation February, 2010. This act was highly complained of and one of the respondents informed the researcher of his dissatisfaction on the delayed compensation,[287] as in their case the amount of compensation did not commensurate with the then prevailing economic conditions as evaluation was done five years back.

Jonathan Mills,[288] argued that, the timing of the payment of monetary compensation, or the provision of other types of compensation (such as land) is of critical importance. In many parts of the world, failure of governments to provide compensation in a timely fashion has left dispossessed people in limbo, and without even the leverage that comes from still occupying the property that was the subject of the expropriation.[289]

This outcome is facilitated by some national laws that vest ownership of land in the government from the moment an expropriation decree is issued, leaving compensation as a post taking obligation of government only. A sounder approach found in a number of countries is to require full provision of compensation as a prerequisite for government taking possession of the land in question, and a showing by the acquiring entity that the funds for compensation have been set aside before the taking is approved by government decision makers.[290]

To prevent the possibility of development being stalled indefinitely by affected people challenging the compensation in court, a number of laws (as well as the World Bank's Involuntary Resettlement Policy) provide for the possibility of establishing an escrow account for the payment of compensation when disputes have been finally adjudicated.[291]

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[287] Alli Suleiman Kibona, former resident of Kipawa interviewed by the researcher on 7th of August, 2012

[288] Senior Counsel, Environmental and International Law, Legal Vice-Presidency, World Bank..

[289] Jonathan Mills,(2012),*Compulsory Acquisition of Land and Compensation in Infrastructure Projects,* vol 1, Issue 3,www.worldbank.org/ppp

[290] ibid

[291] ibid

The Land Act of 1999 has recognized and assigned value to bare land. This in turn, hasaccentuated commodification of land and enhanced the perceived value of land. An elderly respondent in Kipawa, who complained about the attempts to evict them without consensuson the amount of compensation payable noted:

"Had we not known the value that our land has we would not have settled herealready in the 1970s when the area was infested by wild beasts including dangeroussnakes. We have survived the growing economic hardships in the city because we havethis land were we grow food for our families. You see, I had plans to subdivide andallocate to my elder son, now I cannot do this. We know they want to evict us, but notwithout taking these realities into account".

Another respondent added:

"This land is invaluable to us, to our lives and the lives of our children, without it wecannot survive, in the city where there is no employment where the rich are gettingricher and the poor poorer".

A settler from Kipawa echoed the foregoing noting:

"Government wants to take our land more or less freely and allocate to aliens. If we donot win the case in the court, we will fight whoever tries to evict us forcefully".

These quotes are but snapshots of the multi-faceted significance and value that land has in thelives of the land occupiers. Landowners attach more than just monetary significance to theirland, including invaluable social sentiments or assets, many of which are scarcely appreciatedby the valuers. The views given by the municipal planner at Kinondoni who was respondingto the question: 'What options are there to solve the Kipawa and Kigilagila land conflicts?'further illustrate this:

"*There is a rapidly growing culture of disobedience on the part of city residents. Inrecent years we have seen people simply refusing to abide by lawful governmentdirectives. We have to act (stop) on this, otherwise lawlessness will prevail".*

Judged by the public handling of the cases, the quality of governance has been put to question, especially by the tendency among bureaucrats to ignore statutory provisions including constitutional rights of the sitting land occupiers to be involved in decision making. One of the possible undesirable outcomes includes loss of public confidence in state machinery for land administration.

4.3.3 Public participation and transparency

Creighton[292] defined public participation as "the process by which public concerns, needs, and values are incorporated in to governmental and corporate decision making.According to Creighton (2005),'the process of public participation has to be managed in a two way communication and interaction with the overall goals for better decisions supported by the public, but not be just provided with information inany decision making processes.'[293]

In Deininger et al. (2011), it is argued that 'public participation, particularly on land acquisition is guaranteed by law, but it often is unclear how this input is incorporated into actual decisions.'[294]

The protection of private land use rights and the establishment of fair, transparent, and efficient expropriation and compensation procedures are fundamental to the objectives of expropriation and payment of compensation laws. However, the findings of this study revealed that these objectives were not met. One of the common problems experienced in all the case studies was the lack of full public participation and the secrecy involved in the determination of property values for compensation purposes. Property owners /holders, especially those living in rural areas under condemnation are usually powerless, with inadequate sources of information, and without access to unbiased valuation organizations. Most often, upon approval of the expropriation, the government assigns property valuers to assess the value of the structure under

[292] Creighton, J.L. (2005).: *Making Better Decisions Through Citizen Involvement*: The Public Participation Handbook, Jossey -Bass Inc Pub

[293] Ibid

[294] Deininger, K., Selod, H., & Burns, A. (2011). *The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector:* World Bank.

condemnation and to come up with a certain value.Valuation workings and property values are all kept secret from property owners. This contradicts the right of property owners to know how the values were derived and what rates had been used. If the expropriatees object or disagree, the expropriator often threatens them for obstructing public development and for acting against “public purpose”. It is based on these arguments that the claimants believed that “confidentiality” of the valuation working increases the chances of inconsistencies, and arbitrary use of valuation rates and methodology.

It is hereby suggested that communicative and participatory approaches that are to be used in expropriation ought to be encouraged throughout the process and in particular at an early stage. Full dissemination of information should take place so that those affected are fully aware of their rights and the procedures that are available to them. The acquisition project itself should be open to public challenge, and objections should be properly considered by an independent body before confirming or modifying the draft proposal [for expropriation]. It must be borne in mind that despite the use of communicative and participatory approaches, at the end of the day the exercise is still “expropriation” in which legalized compulsion in the acquisition of land rights from these individuals is permissible.

Public participation and transparency eases the process of expropriation and hence it should be encouraged throughout the process. So that those affected are fully aware of their rights and the procedures that are available to them. It is therefore, recommended that expropriation and compensation measures and procedures should be participatory, transparent, and accountable and should, as a rule; involve affected persons in order to reach a negotiated settlement as deemed necessary.

It has been observed in the field survey that many expropriatees were not quite clear what an expropriation and payment of compensation laws actually were and that rights to land were also governed by specific land laws. In other words, landholders do not yet have a good knowledge of expropriation and payment of compensation laws and how they are dealt with. In some instances, property valuers too do not have sufficient

knowledge about expropriation and payment of compensation laws. Although, the expropriation and payment of compensation laws aim to establish fair and equitable process which protects landholders from unfair and inconsistent actions by limiting agencies, it is not implemented consistently and uniformly across all areas.

To exercise and protect the rights of landholders, the affected landholders, property valuers and any other concerned parties engaged in land and related matters should be aware about the laws. Free or low-cost legal aid services have proven exceedingly useful in educating poor people about their rights and helping them enforce these rights in various settings. Lawyers or paralegals of legal aid centers can employ a variety of methods to disseminate legal information, including publication in the local media, distribution of written materials, group education meetings with villagers, and individual consultations with farmers. If circumstances warrant, the lawyers may offer representation at formal proceedings. The lawyers should educate farmers and local officials,meet with potential clients, and represent clients in negotiation or adjudication proceedings. The operation of legal aid offices should also be free from the government's direction or interference. This is vital because governments themselves are parties to cases involving expropriations.

4.3.4 Supplementary support for affected people

The fate of expropriatees should not end at the time they receive the payment. They should be supported in order to be able to continue having some sort of sustainable livelihood, albeit in a different way of working life outside their accustomed environment. The study findings indicate that some of those whose landholdings have been wholly expropriated and were even compensated handsomely failed to manage a new way of life in an alien environment. Such expropriatees must be helped to manage the money they received to put it to productive use, beneficial to themselves and their family. The condition of those who have not been paid compensation or have been given inadequate compensation could be disastrous they could go deeper into poverty, or be forced to leave their residence area, and some also, could face incalculable damage, both themselves and their families.

There seems to be a debate around the official circles whether economic growth is acceptable while at the same time unemployment and poverty of those expropriated are increasing. While the debate could continue, rehabilitation programs and programs that could lead those evicted to a sustainable livelihood should be studied and launched as soon as possible. For agricultural families that cannot cope with new urban life, arrangements could be made to compensate them in terms of alternative agricultural land in the outer districts or regions, so that they can continue with the life they accustomed.

According to the good practice criteria, any development project is supposed to seek the involvement of all affected peoples in resettlement action planning processto define feasible resettlement options. In addition, it is also expected to avoid forced or involuntary relocation of residents and take mitigation and rehabilitation assistance to avoid adverse impacts caused by the projectson the residents. In this respect,it is foundthat there is no forced and involuntary resettlement in Kipawa and Kigilagila.

Another problem observed in the process of expropriation was the non uniformity of compensation for untitled property holders. Both Federal and Regional expropriation and payment of compensation laws decline to compensate for the condemned properties that are unlawful which contradicts the World Bank's operational statement that untitled should not bar affected people from receiving compensation, however, the law is not applied uniformly and consistently to all affected people. All affected people should be treated uniformly regardless of the institutions involved, the source of finance and the location of expropriatees to ensure adequacy and fairness in the payment of compensation.

Finally, the problems of compensation are more than just a matter of law and valuation; they are a matter of justice between society and individual person. This study tried to assess how the expropriation and compensation laws were implemented and what gaps prevailed when privately held land and attached real properties were taken for public and private investment activities. However, further research should be undertaken nation-wide to explore the problems throughout the country.

4.4 Dispute resolution and grievance mechanisms

Where there is a dispute, the government tries to reach an amicable solution through persuasion. If a solution is not found within six weeks, the Land Acquisition Act, 1967, application can be made to the High Court of Tanzania for the determination of the dispute Every suit instituted shall be governed insofar as the same may be applicable by the Civil Procedure Code and the decree of the High Court of Tanzania may be appealed against to the Court of Appeal. Since the coming into operation of the Courts (Land Disputes Settlements) Act, 2002, disputes concerning land acquisition and compensation are dealt with by the Land Division of the High Court.[295]

In the case of a dispute as to the amount to be paid, either the Minister or the person claiming compensation may refer such dispute to the Regional Commissioner for the region in which the land is situated and the decision of the Regional Commissioner shall be final.

The Minister should give notice of intention to acquire the land to the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same.

The FAO guidelines, (2008:55) provides that people should have prompt, unrestricted rights to an independent body for appeal, including for delay of payment without good cause. In Tanzania Land Disputes Settlement Machinery was established under the section 167 of the Land Act No 4 of 1999 to hear and determine all matter of disputes, actions and proceedings with regards to land. From the land acquisition and compensation perspectives any person who is dissatisfied with the amount of compensation should file his/her claims to the court.

During this process, 343 affected land owners who were dissatisfied with the compensation sum and process decided to file their claims at the High Court of

[295] Tanzania National Roads Agency, (2012), Ministry of works, Tanzania National Roads Agency (TANROADS),Southern Africa Trade and Transportation Facilitation Project (SATTFP) Resettlement Policy Frame work. p 52

Tanzania(Land division). According to the interview made with the affected land owners‟ chairman, they decided to file a case in the High Court. The chairman listed a number of objections to the compensation given.

TABLE 4:BASIS FOR THE APPEALS

Cause of Objections	Priority
Delay in payment	1
The use of Land acquisition Act	2
Low of compensation of the amount assessed	3
Low interest rate for delayed compensation	4
Failure to the use of Land form No.70	5
Conflict over land ownership in the relocation area	6

Source: From interview with the chairman for the affected land owners, (2010)

The affected people claimed that the respondent (TAA) had denied them what was regarded as unfair and adequate compensation because of the use of the data recorded during the valuation carried out in 1997 through the use of Land Acquisition Act of 1967 instead of Land Act No.4 of 1999. According to the Ex-Kipawa affected land Owners chairman, they decided to hire a private lawyer who helped them to file the case in the Court and other court proceedings matters and were required to pay him based on the contributions made from the 343 affected land owners. However, they

lost the court application because the court found in favour of the government arguments. Following the decision of the court, the affected land owners decided to appeal at the Court of appeal but before the courtof appeal had given out its decisions, TAA without issuing a well defined notice.[296]

[296] The Guardian,10th March,2010

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1Introduction

Chapter five is the last section of the dissertation, it concludes and recommends on the findings of the results based on the research objectives and the research questions.

5.2 Conclusion.

The hypotheses of this dissertation were:-Tanzania Land Acquisition Act does not cater for the protection of land compensation., Prompt and fair compensation is an equitable remedy for mandatory acquisition of land and, The Land Acquisition Act, Cap 118 [RE 2002] is not fair and just to people holding land under deemed right of occupancy.

From the results of the study, amongtheassessed aspects:-Compulsory acquisition is no doubt a critical policy instrument necessary to facilitate andprotect public interests in land development. However, its application especially in areasoccupied by the urban poor, without providing an alternative resettlement area or paying faircompensation is likely to make the livelihoods of many households more precarious.

The Land Acquisition Act, Cap 118 [RE 2002] is not fair and just to people holding land under deemed right of occupancy as it restricts compensation to un exhausted improvements on the land excluding the land or such improvements as land clearing and fencing. This latter situation has been rectified by the Land Act.[297]

5.3 Recommendations.

This part of the study focused on what was required to be done in order to have proper acquisition of land, fair, prompt and adequate compensation to the people whose land had been acquired by the president according to the law.[298] The following

[297] Act No. 4 of 1999
[298] Section 13 of the Land acquisition Act chapter, [118,RE 2002]

recommendations are planned to be the remedy if not the cure of the problems identified in the whole process of land acquisition in Tanzania.

The government must make sure that before acquisition of land for public purpose, the victims of acquisition, are given other alternative land and be assisted to attain their former status before the land acquired.

The victims of land acquisition must be given the chance of participating in valuation of their land, before compensation is affected. This valuation can be done by involving the victims themselves or private values. This can reduce if not totally eliminate the complaints of unfairness in compensation for unexhausted improvements. Compensation for unexhausted improvements must be done without delay, because the experience shows that, if it takes a very long time to effect compensation, the victims of land acquisition, suffer a lot.

Laws and regulation governing compulsory land acquisition in Tanzania should be clear and known to the people. This can be implemented through revisiting some of the old provisions into the new one in order to reflect the real current situation and should not be rigid. It is therefore recommended that the interest rate of 6% charged for delay on compensation should be at least based on the borrowing rates charged by lending institutions which will reflect the opportunity cost of capital and probable future improvement of capital. Furthermore, the interest rate should be increased and be adjusted to reflect inflation based on the nature of the prevailing country‟s economy; these adjustments will compel the acquiring authorities to pay compensation promptly and on time and will minimize the objections and conflict in the land acquisition process. Secondly, there should be a specific time limit that should specify an expiry period for any of notice of intention served to acquire land. A vivid example is the experience from Finland whereby the intention to acquire the land ceases to have effect after three years unless there is an agreement with the affected land occupiers or the question of compensation has been referred to the Lands tribunal of Finland. Thirdly, there is a need for the establishment of independent land use tribunal to deals with compulsory land acquisition and compensation as is the case in Kenya where

there is independent Land Acquisition Tribunal to determine appeals against compensation awards. People should be assisted with a lawyer without cost or thecost should be low and the appeal should not take long time.

Land administration and control must be vested to parliament or it must be administered by parliament and the cabinet, in order to reduce the powers vested to the president which are mostly misused. In other words the members of parliament must be given the chance of debating on the merits and demerits of acquisition of land for public purpose.

Through consultation with the victims of land acquisition must be made in order to make them to understand the purposes for which their land is acquired. This will help to reduce the conflicts between the community and their government. This can be effected by holding general meetings with the victims of land acquisition in order to make them to be aware of the purposes for which their land is acquired.

The government must stop using force, especially military forces to evict people from their land. The eviction can be peaceful if the victims are educated not the purpose of acquisition of land by the government, and if the government makes sure compensation are effected before eviction has taken place and that compensation must be fair and without favour.

Governance is necessary to provide a balance between the need of the government to acquire land rapidly, and the need to protect the rights of people whose land is to be acquired. Conflict is reduced when there are clear policies that define the specific purposes for which the government may acquire land, and when there are transparent, fair procedures for acquiring land and for providing equitable compensation. Effective and fair compulsory acquisition cannot exist without good governance and adherence to the rule of law.

Enhancing public awareness on land acquisition and titling process through public education;The Ministry of Lands and Natural Resources in conjunction with all the land sector agencies should design and implement appropriate public awareness

creation programs to educate existing and prospective land owners on the procedures for acquiring and duly registering lands in the country.

The procedures for acquiring land should be simplified and translated into local languages. This would contribute to bridging the wide communication gap between the land sector agencies, traditional authorities, communities and the general public. Public awareness of the laws and the due procedures for acquiring and using land could reduce land litigation and enhance access to land for urban work.

Stakeholders' participation in compulsory Land Acquisition process where as compulsory land acquisition should be implemented through participatory approach between the land occupiers and the acquiring authority. Even though it is known that compulsory land acquisition is carried out without the will of the occupier, this should not neglect the fundamental right of airing views concerning the landowner's right to the land to be acquired. For example the case of Colombia during the construction of Metrocable station where the affected people participated in negotiation can be taken as one example of participation. This right is in accordance as is provided under article 24(1) of the constitution of United Republic of Tanzania. Through participation stakeholders become aware of the public intention to acquire their land, and they will come to recognize that by releasing their land for the public interest their nation will be in a better condition. However the stakeholders‟ participation should not be a means for persuading the intended beneficiaries to take part in a programme whose contents have already been decided. People whose land is to be compulsorily acquired should respect the power of President and the rationale of the project for the public interest instead of individual interest and therefore, stakeholders‟ participation should not be based on prejudice.

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APPENDIX

Appendix 1:

Interview Questions for Local Government Official

Interview Number: ________________________ Date: ___________________________

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Name:

_____________________________________Responsibility: _____________________________

Organization Department: _______________________Contact information: _______________________

This research interview question is part of my LL.M Program that I am studying at Mzumbe University Morogoro.

This research seeks to study the land acquisition process for the implementation of Julius Nyerere International Airport in a participatory manner. The information given will be treated with confidentiality and serve to help me the completion of the study. In the meantime, it creates an opportunity to discuss and learn on issues to be considered during land acquisition and projects implementation. Any assistance provided is highly appreciated.

Objective:

•To obtain and verify knowledge, experience, activity, and information on different aspects of land acquisition processes and procedures for project implementation;

A. Public Participation Process

1.In which phase of the project planning and implementation the key stakeholders view Considered? ☐

•Project prioritization ☐

- Environmental Impact Assessment ☐
- Social impact assessment ☐
- Land acquisition planning and decision making ☐
- Resettlement action planning ☐
- Feasibility study ☐
- None ☐
- Others (specify) ☐

2.How the public awareness mechanism organized?

3.Do you have assigned staff or committee who will handle the public opinion? Explain how it is organized.

B.Land Acquisition Process and Resettlement of Affected peoples

4.How does the public participate during land acquisition for Urban Local Government

Development Project (ULGDP) implementation?

5.Is there any independent land acquisition committee formed?

6. Who is responsible for the approval of the projects and matters of land acquisition and compensation?

7. Is there any local resettlement as a result of land acquisition due to the project?

8. How has the community and the affected peoples participatedin the resettlement action plan?

Thank you!