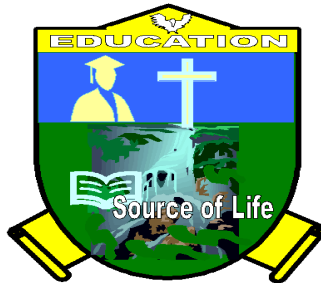


RUAHA CATHOLIC UNIVERSITY



FACULTY OF LAW

**COMPULSORY LAND ACQUISITION AND RIGHT TO
COMPENSATION: A COMPERATIVE STUDY BETWEEN TANZANIA
AND GHANA**

A Research Paper Submitted in Partial Fulfillment of the Requirements of the
Award of Bachelor of Laws Degree of Ruaha Catholic University

By

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072/ML/T/2011

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At the Faculty of Law

June 2016

CERTIFICATION

I certify that, I have read and recommend for acceptance of Ruaha Catholic University a research paper entitled; “Compulsory Land Acquisition and Right to Compensation: A comparative study between Tanzania and Ghana”, in partial fulfillment of the required of Bachelor Degree of Law at Ruaha Catholic University.

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Mr. Prosper Malangalila

(Supervisor)

Date.....

DECLARATION

I Hassani, Mohamed, do hereby solemnly, declare that this research paper is my own original work and it has not been presented for a degree in any other university for similar purpose or any other degree award.

Signature.....

Date.....

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DEDICATION

This work is dedicated to my parents Mr. Kibonge Majoka and Mrs. Halima Hassan for their support and forward, with gratitude, special thanks to them for being an opening of my success in preparation and completion of my studies. My dedications also extend to my love Mwanahamis William for all her support, prayers and courage over all the journal of my studies.

LIST OF ABBREVIATION

AC	Appeal Court
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AD	Anno Domini, After Christ
AIR	All Indian Reports
ART/Art	Article
CA	Court of Appeal
Cap	Chapter
CEPIL	Centre for Public Interest Law
DCs	District Commissioners/Area Commissioners
DISEC	District Security Council
DSM	Dar es Salaam
EA	East Africa
EACA	East Africa Court of Appeal
ECPHRF	European Convention for Protection of Human Right and Fundamental Freedoms
<i>et al</i>	Many Authors/and others
FAO	Food and Agriculture Organization
GAG	Ghana Australia Gold Field
GH¢	Ghana Shillings
HC	High Court
Ibid	Same author same page like immediately above
ILO	International Labour Organisation
<i>Inter alia</i>	Among other things
IVS	International Valuation Standard

JA	Justice of Appeal
JALA	Judicature and Application of Laws Act
LL.B	Bachelor of Law Degree
Ltd	Limited
MDG	Millennium Development Goals
Misc	Miscellaneous
Mwl	Mwalimu
NAFCO	National Agricultural and Food Corporation
NBC	National Bank of Commerce
QB	Queens Bench
RCs	Regional Commissioners
RE	Revised Edition
<i>Supra</i>	As shown somewhere in the paper
TAA	Tanzania Airport Authority
TLR	Tanzania Law Report
UDHR	Universal Declaration of Human Right
USA	United State of America
UN	United Nation
<i>v.</i>	<i>Versus</i>

LIST OF LEGISLATION

International Instruments

The United Nations Universal Declaration of Human Rights of 1948, adopted and proclaimed by the General Assembly resolution 217 A (III) of 10 December 1948,

The Vienna Declaration of the World Conference on Human Rights, 1993

Regional Instrument

The African Charter on Human and peoples' Right of 1981

The American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Right, San Jose, Costa Rica, 1969.

The first Protocol, European Convention for Protection of Human Rights and Fundamental Freedom, 1950,

Tanzanian Statutes

The Constitution of the United Republic of Tanzania, 1977 as amended from time to time

The Government Proceedings Act, No 16 of 1975(Cap 5, RE 2002)

The Judicature and Application of the Laws Act, No. 7 of 1920 as amended by Acts No. 8 of 1962 made use of the inherited laws from Indian Laws,

The Judicature and Application of Laws Ordinance as per Order No. 1 of 1961,

The Land (Amendment) Act, 2004(Act No. 4 of 2004)

The Land Acquisition Act, Act No. 47 of 1967, (Cap 118 RE 2002)

The Land Act, Act No. 4 of 1999, (Cap 113 RE 2002)

The National Investment Act (Promotion and Protection) Act of 1990 as amended in 1992,

The Village Land Act, No. 5 of 1999, (Cap 114 RE 2002)

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The Mining and Mineral Act 2006 (Act 703)

LIST OF CASES

Nana Kofi Karikari and 44 others vs. Ghana Australia Goldfields (GAG) Limited (2007) with

Suit NO. LS. 34/97 in the High Court Tarkwa in the Western Region of Ghana

Ohimen V. Adje and Author (1957)2WALR 275

Mansou V. Abboye and Author (1983) GR 1313

Mulbadow Village Council and 67 Others V. NAFCO (184) TLR 15 H.C

Coffee Board V. Commissioner for Commercial Taxes AIR (1988) SC 1487.

ABSTRACT

Land plays a crucial role in every countries development. The need of the government in attempt to provide infrastructure, road construction, hospitals, and among others in cities lead the government to acquire individual lands compulsorily resulting in the displacement of people for public interest. In most parts of Africa example Ghana and Tanzania, the standard and process for implementing compulsory acquisition has been undermined because sometimes little or no compensation is paid to land owners. Also the rapid growth of land use and development process with in Tanzania and Ghana has made Compulsory Land Acquisition and Right to Compensation to be a delicate issue and increasingly now days. This appears that citizens' right are violated when the government acquire the land for public purpose. Thus one of the objectives of this research paper is to find out how the state laws have tried to protect the landowners against compulsory acquisition.

This research paper has four chapters, Chapter one deals with General Introduction, Chapter two deals with Conceptual Legal Framework of Compulsory Land Acquisition and Compensation, Chapter three deals with Right to Citizen on Compulsory Land Acquisition, Chapter four deals with Conclusion and Recommendation.

TABLE OF CONTENTS

CERTIFICATION.....	i
DECLARATION.....	ii
COPYRIGHT.....	iii
ACKNOWLEDGEMENT.....	iv
DEDICATION.....	v
LIST OF ABBREVIATION.....	vi
LIST OF LEGISLATION.....	viii
LIST OF CASES.....	x
ABSTRACT.....	xi
CHAPTER ONE.....	1
GENERAL INTRODUCTION.....	1
1.1 Introduction	1
1.2 Background of the Problem	1
1.3 Statement of the Problem	7
1.4 Literature Review	9
1.5 Hypothesis.....	12
1.6 Objectives.....	12
1.8 Research Methodology	13
This research has used library research in which primary source and secondary source were used to obtain data as well as answering the research objectives.....	13
1.8.1 Primary Source	13
The primary source collection tools used includes reviewing various statutes namely	13
International Instrument, Regional Instrument, Statutes such as Land Act No 4 of 1999, Land Acquisition Act No 47 of 1967 and Case law.....	13

1.8.2	Secondary Source.....	13
1.9	Scope and Limitation	14
CHAPTER TWO		15
THE CONCEPTUAL LEGAL FRAMEWORK OF COMPULSORY LAND		
ACQUISITION AND COMPENSATION		15
2.1	Introduction	15
2.2	International Legal Instrument	15
2.2.1	Universal Declaration of Human Right of 1948.	15
2.2.2	International Covenant on Civil and Political Right (ICCPR).....	15
2.3	Regional Instrument.....	16
2.3.1	African Charter on Human and Peoples Rights 1981	16
2.4	Domestic Instrument.....	16
2.4.1	Constitution.....	16
2.4.2	The Land Acquisition Act.....	18
2.4.3	Land Act.....	20
2.4.5	The town and Country Planning Act Cap 355 RE 2002	21
2.4.6	Minerals and Mining Act, 2006(Act 703).....	22
2.4.8	The Urban Planning Act 2007	22
2.4.9	Land tenure system	22
CHAPTER THREE		28
RIGHT OF CITIZEN ON COMPULSORY LAND ACQUISITION		28
3.1	Introduction	28
3.3	Right of Citizen towards Compensation	42
CHAPTER FOUR.....		45
CONCLUSION AND RECOMMENDATIONS.....		45

4.1	Conclusion.....	45
4.2	Recommendation.....	46
BIBLIOGRAPHY		48

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The Economic and Development growth activities and the growth of population have made the government to deliver public service under pressure.¹ Land being the major factor of development through realization of economic and social right it would not be possible to perform public utilities without compulsory acquiring the land which sometime may be executed without the will of the owner.²

Under such circumstance the state is normally empowered compulsory acquisition of land through enacted legislation. However the nature these powers used are invariably sensitive and their use had wide violates human right principles under International instrument in which countries like Ghana and Tanzania are party of such instrument.³ In principle the persons who are affected by compulsory land acquisition are entitled to compensation for loss.⁴

1.2 Background of the Problem

Compulsory acquisition can be defined as the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.⁵

¹ FAO., *Compulsory acquisition of land and Compensation, Land Tenure Studies*, Food and Agriculture Organization of the United Nations (FAO), Rome 2008

² M. Langford, and U. Halim., Path of least resistance: a Human Rights perspective on expropriation, In *Land Reform*, 2008/1, FAO, Roma 2008. 33-45.

www.trafford.gov.uk/atoz/email.asp?emailalias=wally.partington@trafford.gov.uk (accessed on 2/4/2016)

³ FAO, *Supra*, note, 1.

⁴ Loss including the land, any improvements thereon and for any inconveniences or disturbances they face as a result of the acquisition.

⁵ *Idem*

Deininger refers Compulsory acquisition as “Eminent domain” which means the power possessed by the state over all property within the state specifically its power to appropriate private property for public use.⁶

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',⁷

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.

Tanzania is a relatively large country located in East Africa, with a total of area of about 9,500,000 square kilometres. Its current population is estimated at 44 million,⁸ with a growth rate

⁶ K.. Deininger., *Land policies for growth and poverty reduction*, Washington DC. The World Bank/Oxford University Press 2003.

⁷ Z.S.Gondwe, Z.S. *Control of Occupation and Use of Tanzania Land*, Paper Presented in the International Conference on Planning Legislation, Housing and Environment (ICPLA) on 6th October, Sheraton Hotel Dar es Salaam 1979.

D.T.Riziki, *Managing Land Acquisition Process: The Need for the Negotiation Approach*, Unpublished Dissertation, Department of Land Management and Valuation, UCLAS, Dar es Salaam 2003

⁸ The United Republic of Tanzania, *2012 Population and Housing Census; Population Distribution by Administrative Areas; National Bureau of Statics*, Ministry of Finance Dar es Salaam and office of chief Government President's office, Finance, Economy and Development Planning Zanzibar 2013.

of roughly 2.4 per cent per annum. Despite the adoption of neo-liberal economic policies which have been steering the country towards a market economy since the mid-1980s, land remains the exclusive property of the state. The President is the custodian of land and every land occupier in that sense is a tenant of the state.⁹ The Land Act¹⁰ Sections 19 and 23, recognises the existence of three land tenure regimes. The statutory or granted rights of occupancy, the customary right and other informal rights.¹¹ Under the statutory system, the rights to access, develop and occupy land are granted by the government under leaseholds of up to a maximum of 99 years.¹²

Therefore, the state retains the right to own the land and is entitled to take it back at the end of the lease, or if leaseholders do not abide by the conditions of the grant. The Land Act,¹³ the Land Acquisition Act,¹⁴ and the Urban Planning Act,¹⁵ give the President overwhelming powers to acquire land needed for public use or interest. Compulsory acquisition laws stipulate that persons whose land is expropriated for public interest have to be fairly and promptly compensated.¹⁶ The compensation payable to dispossessed persons is based on the market value

⁹“Report of the presidential commission of inquiry into Land Matters”volume 01, Land Policy and Tenure Structure, Published by; The Ministry of Land, Housing and Tribunal Development, Government of the United Republic of Tanzania 1994.

<http://www.meac.go.tz/sites/default/files/Statistics/Tanzania%20Population%20Census%202012.pdf>(accessed on 1 May 2016)

¹⁰ Act No. 4 of 1999 (Cap 113 RE 2002)

¹¹ Informal rights includes *quasi-customary* tenure or what Durand-Lasserve termed *neo-customary* tenure. This is the tenure system through which most settlers in informal settlements occupy land. Customary rights are rights held by natives under various traditional customs and cultural norms. These are mainly dominant in rural and some peri-urban areas.,

A. Durand-Lasserve., ‘Land for Housing the Poor in African Cities: Are Neo-Customary Processes Effective Alternatives for Formal System?’ *Urban research Symposium*, World Bank, Washington 2003,

W. J. Kombe, ‘*Informal Land Management Systems* in Dar es Salaam’ *SPRING Series No. 13*; Dortmund 1995.

¹² Section 22(1) of the Land Act No. 4 of 1999, (Cap 133 RE 2002)

¹³ *Idem*.

¹⁴ Land Acquisition Act, No. 47 of 1967,(Cap 118 RE 2002).

¹⁵ Act No. 8 of 2007.

¹⁶ Land Acquisition Act, Section 3.

of the property or land. The spirit of the compensation is to ensure that affected households neither lose nor gain as a result of their land or property being appropriated for public interests.¹⁷

Ghana is one of the countries in Africa that is sited along the northern coastline of the Gulf of Guinea with a total land area of 238,533 square kilometres. The country is surrounded by extreme rivers and streams in addition to both natural and man-made lakes including Lake Bosomtwe and Lake Volta. The first population census conducted after the independence in 1961 recorded 6.7 million citizens and this figure rose quickly to 8.5 million inhabitants following the 1970 national census and this figure is marked as about 27% increase in the period 1961-1970. However, the current official population of the country is 25 million inhabitants. Considering the provisional results of the 2011 census estimates by the Ghana Statistical Service, the sector that recorded the highest growth was the service segment (8.8%).¹⁸ The country is well endowed with natural resources and has roughly twice the per capita output of the poorest countries in West Africa. It is predominantly an agricultural country. The domestic economy revolves around subsistence agriculture (mainly small land holders) which accounts for 37.3% of GDP and employs 60% of the work force. Agriculture accounts for 75% of export earnings and contributes over 90% of food needs. Though the figure recorded from the agricultural sector indicates an improvement, it can also be said that its contribution over the years have kept declining with its share reducing to 23.1 percent from 25.6 percent.¹⁹

¹⁷ W. Kombe., *Land Acquisition for Public Use: Emerging Conflicts and their Socio-political Implications*, Ardhi University 2010.

¹⁸ http://www.statsghana.gov.gh/docfiles/2010phc/Census2010_Summary_report_of_final_results.pdf(accessed on 1 May 2016)

¹⁹ FAO. Compulsory acquisition of land and compensation, Land tenure studies electronic publishing policy and support branch, Rome Italy 2008.

In Ghana majority of the land (greater than 80%) is owned by customary tenure with state lands less than twenty percent (<20%).²⁰ The state can access land principally through the invocation of the powers of eminent domain. Such powers have been used extensively with many undesirable outcomes including massive encroachments, unpaid compensation, change of use acquired lands as against the purpose of acquisition, divestiture of state enterprises to private entities and among others. There is now a search for new policy options for addressing these issues under the Ghana Land Administration Project (LAP)

In Tanzania, according to the Land Acquisition Act acquisition of land for public use includes exclusive use by the government, or general public uses including improvement of public utilities such as trunk roads, planning of new commercial/business centres, 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 most common instruments which the state has and can apply to access land are: negotiations and persuasion; legalised force; and compulsory acquisition. The latter is normally effected through the 'power of eminent domain'. This gives the state powers to expropriate private property for public use without necessarily seeking the owner's consent²¹.

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. It also helps to check over-regulation on the part of the state. The Constitution of the United Republic of Tanzania²² Articles 24(1) and (2) explicitly provides

²⁰ Usaid Country Profile: *Property Right and Resource Governance*; <http://usaidlandtenure.net/ghana> (accessed 13 February 2016)

²¹ C.E. Ndjovu, '*Compulsory Purchase in Tanzania: Bulldozing Property Rights*', Published PhD Thesis, Kungl Tekniska Hogskolan, Stockholm 2003.

²² Constitution of the United Republic of Tanzania of 1977(as amended from time to time)

for the right to own property and to enjoy state protection and fair and adequate compensation in the event of compulsory purchase:

“Subject to the provision of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.

Subject to the provision of sub article (1) it shall be unlawful for any person to be deprived of property for the purposes of nationalisation or any other purposes without the authority of the law which enables provision for fair and adequate compensation.”²³

Likewise in Ghana, the Constitution of Ghana,²⁴ guarantees private property ownership. Article 18(1) provides that ‘every person has the right to own property either alone or in association with other.’ Article 20(1) provides that ‘No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit’ and the compulsory acquisition is made under a law which makes provision for the prompt payment of fair and adequate compensation.

Article 20(3) provides that where a compulsory acquisition or possession of land effected by the State in accordance with Article 20(1) involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values. The Constitution further provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired. Where the property is not used in the public interest or for the purpose for which it was

²³ Article 24(1) and (2) of the Constitution of United Republic of Tanzania of 1977(as amended from time to time)

²⁴ The Constitution of Ghana

acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition²⁵.

1.3 Statement of the Problem

The law provide general theories and rules and guideline governing compensation which the valuer should take into consideration in assessing compensation, this include taking account the values of the land at the time of publication of the notice for acquisition and not otherwise.

If the acquiring authority entered into possession of the land before compensation is paid to the claimant, in addition to the compensation payable, addition interest on the same at rate 6% per annum from the date of possession tool to time the compensation is also be paid.

The violation of human right originates from the first step when the land is compulsory acquired by the authority. The right violated include, the right to compensation, incase where compensation is paid, time and magnitude of the payment do not commensurate with the land acquired, The right of tenant and vulnerable group that have direct or indirect right to subject matter to the Land. The right and freedom of expression is also violated this occur when the affected parties are not given right to express their view with regard to implement project.

Another legal problem is that the Land Act provide for reallocation and resettlement in case when the land is acquired but it does not provide for rehabilitation of affected people or scheme detailing infrastructure amenities to be provided to the project affected people like school, medical centers, road, safe drinking water and among others.

²⁵ The Constitution of Ghana, Article 20 clauses 5 & 6

The Land Act does not hold the valuation board and the authority responsible for misuse of compensation fund.

The Village Land Regulation states that where the amount of compensation remains unpaid for six months after acquisition or revocation, interest at the average percentage rate of interest offered by commercial banks on fixed deposit shall be recoverable until such compensation is paid.²⁶ However, the regulation does not state fixed period of time when will interest cease to apply.

This research also demonstrates how the gaps in existing legal framework have been abused to the detriment of the land holders.

On the other hand in Ghana, the right of citizen is largely violated with regard to compensation and the seven principle governing the compulsory land acquisition,²⁷ are not properly observed for instance the land owner are not represented in the acquisition process, up to the point where an executive instrument is signed, decision making lies entirely with the political authority.

Thus the approach of this research is to examine how fundamental human right principles have been violated by comparing two jurisdictions (Tanzania and Ghana) on law and practice with respect to compulsory land acquisition and right to compensation. And show how the international standard principles are not observed by the two jurisdictions.

²⁶ Regulation 19(3) Village Land Regulation of 2001

²⁷ As provided under FAO, that whenever the government exercise its power of eminent domain(compulsory land acquisition) it must adhere to seven international principles governing compulsory land acquisition which are provided by various international instrument that state parties have signed and ratified.

1.4 Literature Review

There have been various studies who have write on the concept on the powers of the state to compulsory acquire private real state assets in the context of public interest, and how the state can compensate citizen when the land is acquired.

According to Ketch²⁸ cited in the article of Larb et al argued that there is almost universal agreement in the economies where private property ownership is permitted, the state have the power to compulsorily acquire the private property of the individual in the public interest of for the public goods subject to the payment of prompt fair and adequate compensation though he failed to mention the lawful aspect which satisfy the conditions for acquisition, this has been the general argument on compulsory acquisition and 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.

Also there are other studies conforming the powers of the state to compulsory acquire private real state asset in the public interest. The rational for this action by state has largely been documented in the studies such as Wilfred Anim Odame.²⁹

Wilfred Anim³⁰ said that this is not to say that compulsory acquisition is the only means for outright purchase of landed assets for national development. Most public institution in the country (like Ghana) such as the State Housing Company, Ghana water Company and Electricity corporation of Ghana are inherently empowered by the statutes establishing them to purchase lands buildings and other landed interest by private treaty negotiations.

²⁸ L. Knetsch Jack. *Property Rights and Compensation Compulsory Acquisition and other losses*. Butterworth, London 1983, In W.O. Larbi et al Land Used Policy 21. 2004 pages 115-127

²⁹ K.A.O., Wilfred, *Compusory Acquisition and Compensation in Ghana: Principle and Practice*, Paper Presented at America Real Estate Society Conference in Seattle-Washington, Washington 2011.

³⁰ *Idem*

He also went on by saying the president is vested with the widest powers to acquire any landed asset for public purpose or in the public interest. A limited number of studies not only in Tanzania but also in Ghana have narrowly dealt with the subject of compulsory land acquisition and right to compensation and nonetheless, provided for comparative study between two jurisdictions.

Syamales Data;³¹ Said, value of commodity is often mentioned in a market context. He defined real property as the land, buildings, fixtures which all belong to a person. This author outlines various rights in three categories; one is freehold interests that include right to use and enjoy the property, right to income from that property and the right to transfer the property. The second right is of leasehold interest and category is the life interest.

This author went further by writing on determination of compensation on compulsory acquisition³². He said, “the market value is to be estimated on the value of the seller of the property in its actual condition at the time of exploration with all its possibilities and all its advantages. The market value should take into consideration such potentialities as are not based on feats of imagination.”³³

He is also of the view that full and prompt compensation should be paid when compulsory acquisition occurs.

James, Said, in compensation distinction on how land is occupied should be made. He further said, on assessing the compensation, it is impossible to lay down principles which the court would follow in effecting the just compensation for the rules are adverse and conflicting.³⁴

³¹ S. Data, *Valuation of Real Property, Principle and Practice*, Eastern Law House Private Ltd, Calcutta, 2004², 301.

³² *Idem*.

³³ *Ibid*, 301-313

³⁴ R.W. James., *Land Tenure and Policy in Tanzania*, East Africa Literature Bureau, Dar es Salaam, 1972, 247-299.

He was of the view that laying principles for the court to follow was impossible. It is from this gap the researcher thinks that there is need for this research.

James, and Fimbo,³⁵ said that after independence compensation was not only for improvement but also for market value of the property with the improvement thereon. This meant that the occupier of land was put in position as if his property had not been acquired.

Wilfred Anim-Odame³⁶ in his paper; said, the greatest challenge confronting the Government of Ghana in the use of its powers of compulsory acquisition to expropriate private interest in real estate is the ability to pay fair and adequate compensation promptly. Meanwhile, the operative Constitution in the country reinforces commensurate compensation payment based on the principle of equivalent reinstatement.

Allen in his book,³⁷ is of the view of balancing the interest of the public with that of the private individuals. He said, “as a matter of general principle, court accepted that compensation should relate to the value of the property, but declared that legitimate objective of public interest, such as pursued in measures of economic reforms or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value.”

The court has made it clear that it would give states a wide margin of appreciation in determining the level of compensation, as it stated that, it will respect the legislature’s judgment in this connection unless that judgment was manifestly without reasonable foundation.” Thus

³⁵R.W.James,, and G.M.Fimbo, *Customary Land Laws of Tanzania*, East African Literature Bereau, Dar es Salaam, 1973.

³⁶ K.A.O. Wilfred, *Compulsory Acquisition and Compensation in Ghana: Principles & Practice*, Paper presented at the American Real Estate Society Conference in Seattle-Washington, Washington 2011.

³⁷T., Allen, *Compensation For Property under the European Convetion on Human Rights*. <http://www.students.law.umich.edu/jil/artcle-pdfs/v28n2-allen.pdf>.287-335.

from this perception the idea of fine balancing the interest of the public and individual is so important.³⁸

Larbi,³⁹ analyses compulsory acquisition practice in the country, but falls short of critically examining compensation assessment.

A number of previous studies have largely treated the topic from the perspective of compulsory acquisition and right compensation. This paper makes a significant contribution to available literature by dealing wholly with the issues of compulsory acquisition and right to compensation, examining the violation of human right when the land is compulsory acquired by the government. The different of this research and other research paper is that few have write on how human right are violated no of them have compared the violation of human right between Ghana and Tanzania and few or non have write on how The Land Act contradict with the National Environmental Management Act.

1.5 Hypothesis

It appears that the right of citizens are violated through compensation procedures when land has been compulsory acquired by the Government.

1.6 Objectives

The aim of the study is to find out how state laws have tried to protect the occupier of land against compulsory acquisition.

To find out if both state laws violate the fundamental human right to property.

To find out the major causal factor of the conflict and propose possible measure on compulsory acquisition and compensation.

³⁸ *Ibid.*,289

³⁹ W.O. Larbi, (et al), *Compulsory Land Acquisition in Ghana: Policy and Praxis*, Land Use Policy, Vol.1 Issue 2, 2004. 115 – 127.

To identify appropriate compulsory land acquisition solution in resolving conflict between the acquiring authorities and land owner or occupier.

To find out how compulsory procedure complies with the legal framework in pertaining to compulsory land acquisition in both jurisdictions.

To find how the law and practice on compulsory land acquisition in both Tanzania and Ghana.

To find whether there are other law in respect to compulsory land acquisition contradicts with the Land Act.

1.7 Significant of the Research

It is the hope of the researcher that the study has brought the implementable practical solution that to the compensation that, law and practice guarantee the right to property. The study has paved the way to court and other law enforcing machineries to implement and protect the concept of compensation.

1.8 Research Methodology

This research has used library research in which primary source and secondary source were used to obtain data as well as answering the research objectives.

1.8.1 Primary Source

The primary source collection tools used includes reviewing various statutes namely International Instrument, Regional Instrument, Statutes such as Land Act No 4 of 1999, Land Acquisition Act No 47 of 1967 and Case law.

1.8.2 Secondary Source

Secondary source collected include; policy documents, published and unpublished reports, journals, newspapers and internet search. Information collected involved Land ownership and Land

use conflicts, settlement characteristics and social and economic activities of the people. Secondary source also helped the researcher to critically examine the concept of compulsory acquisition and right to compensation in both countries (Tanzania and Ghana) and came up with solution of amending the Land Act so as to ensure right to compensation is clearly protected.

1.9 Scope and Limitation

This research paper is based on compulsory land acquisition and right to compensation by examining the comparative study between Tanzania and Ghana.

CHAPTER TWO

THE CONCEPTUAL LEGAL FRAMEWORK OF COMPULSORY LAND ACQUISITION AND COMPENSATION

2.1 Introduction

This chapter deals with Conceptual Legal Framework regulating Compulsory Land Acquisition and Compensation, include International Instrument such as Universal Declaration of Human Right and International Covenant on Civil and Political Right (ICCPR), and at Regional level include European Convention on Human Right (ECHR), African Charter on Human and Peoples Right 1981, Apart from international Instrument providing the right to compensation there is also another instrument provides for right to compensation this is known as International Labour Organisation (ILO).

The Chapter also mentioned Various Domestic Instrument adopted by Tanzania and Ghana to ensure that a fundamental human right basis is protected under National laws.

2.2 International Legal Instrument

2.2.1 Universal Declaration of Human Right of 1948.

This declaration provides for the right to own property either alone or in association with others⁴⁰ and prohibits arbitrary deprivation of such property.⁴¹

2.2.2 International Covenant on Civil and Political Right (ICCPR)

It was adopted by United Nations General Assembly on 16 December 1966, and entered into force on 23 March 1976. The scope of available remedies for violation of the right to property in the context of displacement is very much determined by another right. This is the

⁴⁰ Article 17(1) of the United Nations Universal Declaration of Human Right of 1948

⁴¹ Article 17(2)

right to a free and informed choice of whether to return or settle elsewhere within the country. The right is deduced from the right to liberty of movement and right to choose one's residence embodied under this covenant Article 12.

2.3 Regional Instrument

2.3.1 African Charter on Human and Peoples Rights 1981

The Convention provides that “the right to property shall be guaranteed. It may only be encroached upon the interest of public need or in the interest of the community and in accordance with the provisions of appropriate laws”.⁴²

All peoples shall freely dispose off their wealth and natural resources. This right shall be exclusively exercised in the interest of people. In no case shall be deprived of it. Incase of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as an adequate compensation.⁴³

All these means one basic fact that state parties to these instruments are required to enact their own appropriate laws which shall recognize, promote and protect the right to compensation and through which the aggrieved parties can accordingly enforce this right in court of law.⁴⁴ This lead to the third discussion on domestic Instrument.

2.4 Domestic Instrument

2.4.1 Constitution

The constitution of the United Republic of Tanzania⁴⁵ under Article 24(1) of the constitution specifies that every person is entitled to own property and has a right to the protection of his

⁴² Article 14 of the Africa Charter on Human and Peoples' Rights, 1981

⁴³ Article 21 (1) and (2)

⁴⁴ A.Rwegasira., *Land as Human Right; A History of Land Law and Practice in Tanzania*. Mkuki na Nyota Dar es Salaam 2012

⁴⁵ The Constitution of Tanzania of 1977(as amended from time to time)

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 the law which makes provision for fair and adequate compensation. The constitution is therefore in essence to the law of the land.

Whereas the Constitution of Ghana⁴⁶ was adopted in 1992 after a years of successive military coup de`tats with the aim of establishing a framework of government that commits to amongst other protection and preservation of fundamental human rights and freedom.⁴⁷ It also state that such fundamental human right and freedom must be respected and upheld by all organs of state, individual and corporation alike.⁴⁸

The Constitution guarantees private property ownership. Article 18 (1) provides that ‘every person has the right to own property either alone or in association with other.’ Article 20 (1) provides that ‘No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit’ and the compulsory acquisition is made under a law which makes provision for the prompt payment of fair and adequate compensation as well as access to High Court to challenge the acquisition or the amount of compensation payable.⁴⁹ Article 20 (3) provides that where a compulsory acquisition or possession of land effected by the State in accordance with Article 20 (1) involves displacement of any inhabitants, the State shall

⁴⁶ The Republic Constitution of Ghana of 1992

⁴⁷ Constitution of Ghana, Preamble

⁴⁸ Constitution of Ghana, Article 12

⁴⁹ Article 20(2) of the 1992 Ghana Constitution.

resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.

The Constitution further provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.⁵⁰ Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.⁵¹

2.4.2 The Land Acquisition Act⁵²

The Land Acquisition Act, 1967 provides in part II that compulsory acquisition powers will be exercised in the public interest. According section 7 of the land Acquisition Act of 1967, occupiers of the selected land may be given a period before yielding possession for example to harvest their crops. Nevertheless, people cannot be told to vacate land without first obtaining due compensation.

However, there are some restrictions to compensation being paid out for the land that have been acquired.⁵³ This is according to section 12(1) of the same Act which provides that:

- (i) No compensation is paid in respect of vacate land (definition of vacant land⁵⁴ in both rural and urban setting are given.)
- (ii) The compensation to be paid shall be limited only to the unexhausted improvement⁵⁵ on the land or alternatively granting an alternative land

⁵⁰ The Constitution of Ghana Article 20(5) idem

⁵¹The Constitution of Ghana Article 20 (6) idem

⁵² The Land Acquisition Act of 1967 (Cap 118 R.E. 2002)

⁵³The Land Acquisition Act of 1967 Section 12(1)

⁵⁴ Under the National Land Policy 1995 and the Land legislation; both Act No.4 and 5 of 1999 vacant land is paid compensation since exchange value in bare land has been recognised

- (iii) Where the development of any land acquired under this act is inadequately, where such land is in an urban area or in a rural area, any compensation awarded shall be limited to the value of the unexhausted improvement of the land.

Section 14 of the Act provides general theories and rules and guideline governing compensation which the valuer should take into consideration in assessing compensation:

(i) Take into account the values of the land at the time of publication of the notice for acquisition and not otherwise;

(ii) Betterment injurious affection and any loss or damages should be taken into account;

(iii) Not to take into account any possible increase in the quality of the value of the land in future.

(iv) If the acquiring authority entered into possession of the land before compensation is paid to the claimant, in addition to the compensation payable, addition interest on the same at rate 6% per annum from the date of possession tool to time the compensation is also be paid.

In Ghana the State Land Act,⁵⁶ provides a legislative framework for ‘acquisition of land in the national interest or other purposes connected’. The Act empowers the president to compulsory acquire land through the publication of an executive instrument where it ‘appears’ to the president that land is required for public interest.⁵⁷

The publication of the executive instrument automatically vests the land in question in the President and all interest of the owners are extinguished.⁵⁸ Notice of the acquisition is given to the land owners/occupiers after the publication of the acquisition instrument.⁵⁹ Affected persons may make claim for compensation within six months of being served with notice of acquisition with the following details;

- (a) Particulars of the claim or interest in the land

⁵⁵ As defined in section 2 of the land act as anything or quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his or her behalf.

⁵⁶ Act(125) of 1962

⁵⁷ State Land Act, section 2(3)

⁵⁸ *Idem.*

⁵⁹ State Land Act, Section 2(1)

- (b) The manner in which the claim are interest has been affected by the executive instrument issued under the Act;
- (c) The extent of any damage done;
- (d) The amount of compensation claimed and the basis for the calculation of the compensation.⁶⁰

Further, the Act provides that person dissatisfied with compensation may challenge it before the High Court,⁶¹ or he may appeal to the Court of Appeal if dissatisfied with decision of High Court.⁶² Displaced people are required to be resettled by the Lands Commission in line with the requirement of the constitution.⁶³

2.4.3 Land Act⁶⁴

Contrary to land Acquisition Act of 1967 which has restriction on compensation for land acquired to exhausted improvements, the two more recent Acts namely land Act and village land Act 1999 both advocates for fair and prompt compensation based on the market value of the property per section 3(1)(g) in both Acts. The same section stipulate that in assessing compensation the following should be taken into account; market value⁶⁵ of the property, disturbance allowance, transport allowance, loss of profit or accommodation, cost of getting or acquiring the subject land and any other cost or capital expenditures which the outgoing owner had incurred till the time of intended acquisition at the market delivery rate of interest. To facilitate the application of the provision of section 3(1)(g) mentioned above the land

⁶⁰ State Land Act, Section 4(1)

⁶¹ State Land Act, Section 4

⁶² State Land Act, Section 4A

⁶³ State Land Act, Section 4(4)

⁶⁴ Land Act No. 4 of 1999

⁶⁵ Act No.4 of 1967 also provides that compensation shall be assessed on the market value. However, the concept is contradicted in the method of assessment as provided by the Act. The new Act redress the situation

(Assessment of value of land for compensation) Regulation 2001 were made under section 179 of the Land Act of 1999 which elaborates on how section 3(1)(g) is to be implemented.

In Ghana the Administration Land Act,⁶⁶ is a consolidation of laws relating to management of customary lands also this Act grant the president the power to vest any customary land in himself as a trustee where it appears to him that it is in the public interest to do so.⁶⁷ In theory, the vesting of customary lands in the president transfers the legal title to the president whilst the beneficial interest and the legal title are transferred to the president who subsequently delegates the management function to state institution such as the lands commission. Despite the above mentioned laws there are other laws which provides for compulsory right and compensation.

2.4.5 The town and Country Planning Act Cap 355 RE 2002

Section 45 empowers the president to acquire the land in a planned area of 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.

Section 54 stipulates further the circumstances other than withholding of planning consent under which no compensation is paid. However, Cap 378 does not provides for the formula to find the value for various building affected.⁶⁸

⁶⁶ Act 123 of 1962

⁶⁷ Section 7 of the Administration of Land Act

⁶⁸ The town and Country Planning Act Cap 355 RE 2002

2.4.6 Minerals and Mining Act, 2006(Act 703)

This Act provides the legal framework for mining in Ghana. In accordance with the constitution, the Act provides that all mineral in Ghana are vested in the president trust for people of Ghana.⁶⁹ Section 2 of this Act provide that the President to compulsorily acquire land or authorize its occupation for the development of mineral resources.

2.4.8 The Urban Planning Act 2007

This is the urban use planning guide and it provides for specific regulation to address compensation. Section 60 provides that compensation payable shall be equally to the value of that land within the planning areas plus the value of any development done with planning consent by the landlord. Compensation will be referred by the land Act of 1999 and its regulation 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 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 state that no compensation shall be made;

(i) By reason only of the withholding of planning consent by the planning authority pursuant to the provision 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 gives in respect thereof.

2.4.9 Land tenure system

All land in Tanzania is considered public land, which the President holds as trustee for the people.

The following tenure system is recognized in Tanzania namely;

The Village Land Act,⁷⁰ this Act recognizes the rights of villages to land held collectively by village residents under customary law. Village land can include communal land and land that has been individualized. All right to land in the Villages is vested under the village council and the village

⁶⁹ Mineral and Mining Act, Section 1

⁷⁰ Village Land Act No 5 of 1999

assembly. Residents have traditionally right to use, transfer through heritage and develop it as well. Villages can demarcate their land, register their rights and obtain certificates evidencing their rights.⁷¹

Customary right of occupancy, villagers have a customary right of occupancy for village land that they hold under customary law or have received as an allocation from the village council. Customary rights of occupancy can be held individually or jointly, are perpetual and heritable, and may be transferred within the village or to outsiders with permission of the village council. Village land allocations can include rights to grazing land, which are generally shared. The village council may charge annual rent for village land.⁷²

Granted right of occupancy, are available for general and reserved land, subject to any statutory restrictions and the terms of the grant. Grants are available for periods up to 99 years and can be made in periodic grants of fixed terms. Granted land must be surveyed and registered under the Land Registration Ordinance and is subject to annual rent. Squatters and others without granted rights may have customary rights to occupy general land, which may be formalized with a residential license or remain unformalized and insecure.⁷³

Leasehold, these are derivative rights granted by holders of granted or customary rights of occupancy. Holders of registered granted rights of occupancy may lease that right of

⁷¹ *Idem*.

World Bank, Involuntary Resettlement source book (Revised April 2004). Operational Manual: OP 4.12. World Bank, Washington DC 2004 Available on www.worldbank.org, (accessed on 13 February, 2015), E. Dondeyne, and J. Stephane, . (et al). *Changing land tenure regimes in a matrilineal village of South Eastern Tanzania*. Tanzania Journal of Social Development, 2003, 7–32.

⁷² Village Land Act,

T. Baha, B. Attito, S. Axwesso, (et al). *The Price of a Malfunctioning Land Management System in Tanzania* 2008. <http://www.hakiardhi.org/HA-Docs/facts.pdf> (accessed 1 January 2016).,

A. Wily, Liz and Sue Mbaya. Land, *People and Forests in Eastern and Southern Africa at the Beginning of the 21st Century*. International Union for the Conservation of Nature (IUCN) Eastern Africa Programme 2001. http://www.dfid.gov.uk/r4d/PDF/Outputs/Forestry/R7477_-_Land_people_-_book.pdf (accessed 1 January 2016)., D.S.C. Sendalo., A Review of Land Tenure Policy Implications on Pastoralism in Tanzania, 2009. <http://www.unpei.org/PDF/TZ-pastoral-paper-2009.pdf> (accessed 29 December 2015).

⁷³ S.Maoulidi, A Critical Analysis of the Land Laws in Tanzania. *A Land Rights Research and Resources Institute (Hakiardhi) report*. Dar es Salaam: Hakiardhi 2006.

occupancy or part of it to any person for a definite or indefinite period, provided that the maximum term must be at least ten days less than the term of the granted right of occupancy. Leases shall be in writing and registered. Short-term leases are defined as leases for one year or less; they may be written or oral and need not be registered. Holders of customary rights of occupancy may lease and rent their land, subject to any restrictions imposed by the village council.⁷⁴

Residential license, this is a derivative right granted by the state (or its agent) on general or reserved land. Residential licenses may be granted for urban and peri-urban non-hazardous land, including land reserved for public utilities and for development. Residents of urban and peri-urban areas who had occupied their land for at least three years at the time the Land Act was enacted had the right to receive a residential license for the relevant municipality, provided they applied within six years of the enactment of the Land Act.⁷⁵

Ghana like Tanzania operates pluralist land tenure system consist of state sanctioned land title and lands held under customary law. Together they own about 78% of all lands the state owns 20% and the remaining 2% is owned by state⁷⁶ and customary authority in a form of partnership, also both system are recognized by the constitution.⁷⁷ Public land are held in trust by the president on behalf of the people of Ghana whilst land held under customary law are held by the relevant communication or families. Customary law in Ghana is relative to specific tribes, ethnicities and communities and is generally unwritten.

⁷⁴ Land Act 1999

⁷⁵ *Idem*.

⁷⁶ W.O.Larbi., Compulsory Land Acquisitions and Compensation in Ghana: Searching for Alternative Policies and Strategies. *Land Reform, Land Settlement and Cooperatives* 2009, 2

⁷⁷ Constitution of Ghana, article 36(8), 257 and 257

Customary land represents all the different categories of rights and interests held within traditional systems and which includes stool lands, skin lands, clan lands, and family lands.⁷⁸ They occur where the right to use or to dispose of use-rights over land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicitly and generally known, but not normally recorded in writing.⁷⁹ Both customary and common law rights exist in land and often co-exist in the same piece of land. The Customary rights and interest include;

The allodial title is the high interest that can be held in land under customary law beyond which there is no superior title.⁸⁰ The allodial title entails corporate ownership by the community as whole and not person ownership of head of the land owning community. Depending on the applicable customary law the allodial title is held by communities, clans or families. The chief / heads of the land owning group holds the allodial title in trust for the entire group.⁸¹

The usufruct or customary free hold is an interest that members of the land owning the group are entitled to as of right. It is usually acquired by occupation and cultivation of any part of the land not previously occupied by another member of the community or allotment. It is superior to all interest except allodial title.⁸² The customary freehold is potentially perpetual and

⁷⁸ Larbi, *Supra*, note 32, 2

⁷⁹ P. Bower, Land Tenure Policy and Development in Tenure and the holding of office or of land or other permanent property of accommodation etc. the period or condition of this. Paper presented at International Conference organised by the RICS, University of East London 1993

⁸⁰ G.A., Sarpong, Improving Tenure Security for the Rural Poor Ghana Country Case Study-Towards the improvement of Tenure security for poor in Ghana. K.Bentis., En chill, Ghana Land Law, 1964; NA Ollennu's., Principle in Land Law In Ghana, 1985: G. Woodman., Customary Land Law in the Ghanaian Court 1996

⁸¹ Constitution OF Ghana article 36 (8); J.B. Danquah Akan Law and Custom and Akim Abuakwa Constitution, 1928. 200

⁸² L.K. Agbosu (et al), *Customary and Statutory Land tenure and Land Policy in Ghana*, Institute of statistical Social and Economic Research, University of Ghana, legon Technical Publication No. 17, 2007.12

can be held for as long as the higher interest allodial title is acknowledged.⁸³ It can be free to other member of the land owning community although transfer to community members must be consented to by the customary head and elders of the land owning community.⁸⁴ Once the customary freeholder is created the land cannot be transferred to another person or group without prior consent of the customary freeholder.⁸⁵ As a result of the legal effect of the customary freehold it has been said to effectively supersede the allodial title. Its creation makes the allodial title only a nominal interest.⁸⁶

Other tenancies such as customary lease and share cropping arrangement are also recognized under customary law.⁸⁷ These are interest usually held by person or group who are not natives of the land owning group / community.

State land, these are lands that have been acquired by the state through compulsory acquisition using appropriate legislation. Article 257-1,⁸⁸ stipulate that “all public land in Ghana shall be vested in the president on behalf and in trust for the people of Ghana”. The boundaries of this land are cadastrally surveyed and scattered throughout the country. Adu Gyamfi 2012 observed that successive government in Ghana before and after independence have used compulsory acquisition to acquire land from stool and there and are managed by the land commission. The state agency responsible for managing and administering state land. The 1962

⁸³ J.B da Rocha and C.H.K Lodoh., Land law and Conveyance in Ghana, 1999. 27

⁸⁴ NA Ollennu's., Principle in Land Law In Ghana, 1985.34: Centre for Democratic Development (CDD) Organisational study of Land Sector agencies 2002. 14

⁸⁵ Ohimen V. Adje and Another (1957)2WALR 275: Mansu V. Abboye and Another (1982-83) GLR 1313

⁸⁶ G.R. Woodman., Customary Land Law in the Ghanaian Court 1996

⁸⁷ M.N Kundesen and N.Fold, Land distribution and Acquisition practice in Ghana's cocoa frontier: The impact of state regulated marketing system 2011. 28

⁸⁸ Constitution of Ghana of 1992

state land Act enabled the government to acquire state any land for “public interest” and this has enable for government too expropriate land for state or private economic venture.⁸⁹

Vested Land, the vested land (split ownership) which occur when the state take over the legal incidents of ownership (the right to sell, lease, manage, collect rent and among other) from the customary land owner and hold the land in trust for the land owning community.⁹⁰ The land owner retain the equitable interest in the land. The right (surface right and in mining context) to enjoy the benefit from the land. This is generally referred to as vested tool and it is managed in the same way as state land. Unlike state land however, the boundaries are not cadastrally surveyed and they are usually larger in size covering wide areas.

The Universal principle in Ghana is that there is no land without an owner” Therefore any piece of land will fall into one of the three ownership categories discussed above. Thus state land vested is required expressly through legislation all other lands outside these categories belongs to the class of customary lands.

⁸⁹ K. Amanor, *Global restructuring and land right in Ghana: Forest Food chain, timber and livelihood*, <http://www.getcited.org/pub/100465465>.(Accessed February 2016)

⁹⁰ W. Larbi., *Developing a Geographic System for Management in Ghana*, Cape town 2008. <http://www.gtzc.org/orboden/Capetown/cape> 41htm(accessed on 21 February 2016.)

CHAPTER THREE

RIGHT OF CITIZEN ON COMPULSORY LAND ACQUISITION

3.1 Introduction

This chapter deals with Compulsory Land Acquisition Procedure in both Countries Tanzania and Ghana right of Citizen towards Compensation and show how the right of citizen have been violated. This chapter it also show how both jurisdiction (Tanzania and Ghana) do not adhere to various international instrument which both state apart to these instrument, such instrument provides for standards principle governing compulsory land acquisition and the right of citizen with regards to compensation. Despite the fact that compulsory land acquisition is one of the most challenging question in land management. State must adhere to the international standards principle when it want to exercise it power of eminent domain as provided by various legislation of the state so as to avoid violation of human rights.

3.2 Procedure for Compulsory Acquisition

The term compulsory acquisition can be defined as the process by which the government acquires a piece of land for the use that favour the public interest. The statutes provide that The president may acquire any land for any estate or term where such land is required for public purpose.⁹¹

Compulsory land acquisition involves expropriation of private right in the property; it is to restraint the right of private owners to be able to dispose off their property according to their

⁹¹ Section 3 The land Acquisition Act, Act no.47 of 1967,[CAP 118, R.E 2002],
Section 2(3)of the State Land Act (Act 125) of 2004 of Ghana

wish. In Tanzania, the land Acquisition Act⁹² provides for compulsory acquisition of lands for public interest/purposes.

The law of the Land Acquisition Act is intended to legalise the taking up, for the public purpose of the land which is private property of individuals pay equitable compensation thereof calculated at market value of property acquired, plus an additional sum on account of compulsory character of acquisition.

The rationale and justification for compulsory acquisition lies on the fact that, first some individual will not yield up or sell their property voluntarily even in situation where the property under reference is required for the general benefit of the community and Second, to uphold the principle that land is vested in eminent domain.⁹³ Eminent domain is the right of the state or the sovereign to its or his own property absolute while that of the subject or citizen to his property is only paramount, the citizen holds his property subject always to the right of the sovereign to take property for public use without the owner's consent upon making just compensation.⁹⁴ This was illustrated in the case of *Coffee Board v. Commissioner for Commercial Taxes*.⁹⁵

Due to these significances, there are some situation which could give rise to compulsory land acquisition which include, the state may acquire land which it may be economically potential for certain investment which would benefit the public or to the community at large.

Procedure for compulsory acquisition in Tanzania is provided under the Land Acquisition Act which stipulate that,

⁹² FAO, "*Land Tenure Studies: Compulsory Acquisition of Land and Compensation*", Electronic Publishing, Policy and Support Branch-Communication Division, 2009, 4. Visit <http://www.fao.org/nr/iten/iten/en.htm>

⁹³ S., Mndeme, Equitable issues in Compulsory Land Acquisition and Compensation in Tanzania with particular reference to the Land Acquisition Act no.47 of 1967 and the Land Act no. 4 of 1999: A General Overview", 4.

⁹⁴ Y.V.,Chandrachud, Concise Law Dictionary, Wadhwa and Company Law Publishers, New Delhi / Agra / Nagpur, 2005³

⁹⁵ AIR[1988]SC 1487,1498.

“...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 person interested... or to such of them as shall, after reasonable inquiry, be known to him. The minister may, by notice..., direct the person...to yield possession of such land after expiration of the period specified in the notice, which period shall not be less than six week from the date of publication of the notice in the gazette... At the expiration of the period...the president and all person authorized by him shall be entitled to enter into and take possession of such land accordingly... Every notice ...shall be published in the gazette as soon as may be practicable after the same has been served. Where any notice...has been published in the gazette the acquisition of the land to which such and relates shall not be invalid by reason only of any irregularity in service of the notice or by reason of it having been published prior to its service on any person required to be served therewith.”⁹⁶

In Tanzania Compulsory acquisition is the power of the government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government exercise of this power is to be efficient, fair and legitimate.

From the Act on procedure of acquiring property, that there should be a notification of the government of an intention to acquire the land; there should be some explanation (workshop) to landowners on their compensation and resettlement rights; then the next step should be assessment of compensation (identification and measurement of the affected assets); followed by resettlement needs analysis; then approval mechanism for assessed sums and payment procedures and allocation of new lands to affected population.

There is of the view that if these steps are properly followed would minimize the acquisition disputes. In briefly steps are discussed hereunder, the first procedure is planning. This is the determination of different land option available for meeting the public need in a participation fashion. The participatory fashion is a backbone of transparency in this step. In this step the exact location and size of the land required to be acquired is identified and the relevant data are collected fairly or without malice. Lastly, the impact of the project which is a vital

⁹⁶ Section 6-8 of the Land Acquisition Act, No.47 of 1967,[Cap 118 R.E 2002]

ingredient in establishing the cost of loss to be incurred is assessed here with the participation of the affected people.⁹⁷

In reality, there is a problematic when it comes to both jurisdiction (Tanzania and Ghana) are required to give notice to the land owner, example in Tanzania it was analysed that in the expansion of Julius Nyerere International Airport at Kipawa in the first stage many affected land owners complained that in the first procedure they were not given notice and non involved in this stage. Such act amount to inhuman and deprivation of their rights. However the government official argued that the involvement of landowners at this stage won't provide any changes because the project was for the public interest.

They also argued that since the entire area was to be acquired there was no need for the involvement of people at the grassroots because the boundaries were marked and the condition of the acquired area were clearly known. In addition, at this stage preliminary cost such as compensation and environment impact assessment were not carried out.

Whereas in Ghana the Land owners are not represented in the acquisition process, up to the point where an Executive Instrument is signed, decision making lies entirely with the political authority. Thus the Land owners got to know of the acquisition only when surveyors went to the Land to demarcate.

However the most important part in acquisition process is the serving of notices of the acquisitions. Therefore on this ground the rights of citizen are violated.

Second procedure is publicity, the notice is published to inform the owners and occupants in the designated area that the government intended to acquire their land. People will be

⁹⁷ FAO, *Compulsory acquisition of land and Compensation, Land Tenure Studies*, Food and Agriculture Organization of the United Nations (FAO), Rome 2008. http://www.fao.org/nr/lten/lten_en.htm (accessed on 03 April 2016)

requested to submit their claims for compensation for land and interest of loose for the acquired land. This notice should, clearly and in language that those people to be affected will easily comprehend with, describe the purpose and process, including important deadlines and the procedural rights of people. Public meetings in which more than two third of people to be affected meet a proper place to proved them with an opportunity to learn ,ore about the project and to express their opinions and needs for compensation.⁹⁸

Third, is valuation and submission of claims. In this step, equivalent compensation for the land to be acquired is determined at the stated date of valuation. Owners and occupants submit their claims. The land is valued by the acquiring agency or another independent body. The acquiring agency considers the submitted claim, and offers what it believed to be appropriate compensation in that time. Negotiation may follow on other aspect like what will be the remedy if the payments take too long and the owners were denied to carry on any further advancement on their properties. This is the “stands still” in which the cause party should bear the burden/liability. There should be a remedy in respect to stand still costs.⁹⁹

With this procedure there has also been violation of citizens rights when it comes to procedure of valuating the land for the purpose of providing compensation, example in the expansion of Julius Nyerere Airport at kipawa the Tanzania Airport Authority contracted Tan Valuer Property Consultants¹⁰⁰ to survey and inspect the properties acquired in kipawa project area. But he was given task to establish the replacement cost for compensation and value of unexhausted only and this was according to section 12 of the Land Acquisition Act.¹⁰¹ About

⁹⁸ *Idem*

⁹⁹ *Idem*

¹⁰⁰ Tan Valuer Property and Consultant is a private company in Tanzania which was contracted to inspect and value properties in kipawa for compensation purpose.

¹⁰¹ Cap 118 R.E 2002

75% of affected land owners were not aware of what item to be valued and only 25% of the land owners had a little knowledge about the valuation process. The reason was because of poor sensitization and limited public consultation and meetings where all issues with regards to valuation and compensation could have been addressed, also the valuer (Tan Valuer), argued that majority of the affected land owners complained that they were not cooperative in the valuation process.

It is important to note that Valuation of property started on May 1997 and completed on September 1997 and the completion of valued property was done on October 2009 and February 2010. The value of valued property was different between the year valued and the year valuation payment was made. This makes difficult to the affect land owners to acquire new land since the price paid to them do not suffice with the current land value hence violation.¹⁰² 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.¹⁰³

The fourth step is payment of compensation; the government pays people for their land or resettles them on an alternate land provided. As noted above payment of the affected Land owners began on 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

¹⁰² G.M.Martin, *The Nature of Resistance and Conflict on Compulsory Land Acquisition Process in Tanzania: The case of Expansion of Julius Nyerere Airport at Kipawa in Dar es Salaam*, Land Development Strategies, Rotterdam 2010

¹⁰³ The assessment for compensations is done in accordance with section 3(1) paragraph (g) (i) to (vii) of the new Land Act, 1999.

payments which the others received, and the last group had problems with probate had to wait until their matter is settled there were dissatisfied land owners who instituted a suit in the High Court (Land Division) on the ground that the respondent (TAA) delayed the compensation, low interest rate on compensation, conflict over relocated land. The appellant hired an advocate helping them to file the suit in the High Court but the decision was given in the respondent side, the appellant was aggrieved and appealed to the court of appeal. Before the appeal was given out TAA without issuing well defined notice ordered Majembe Auction Mart (a private consultation firm) to demolition affected landowner property and forcing them to move the relocation site. This amount to violation of human right. About 90% said that the compensation was not fair while 10% of the respondents said that the compensation was fair.

Another step is possession the government takes ownership and physical possession of the land for the intended purpose. This step is done after the payment step and never before the payment to last coin.¹⁰⁴

The sixth step is appeals. In this step, owners and occupants are given the chance to challenge and contest the compulsory acquisition including the decision to acquire the land, the process by which the land was acquired and the amount of compensation offered. The last step should be restitution. In this step, the owners should be offered an opportunity for restitution of their properties if the purpose for its acquisition does no longer hold the same water or that there was procedural or misrepresentation on the legality of the “public interest” point based on.¹⁰⁵

For instance the affected land owners who were dissatisfied during the kipawa Airport expansion appeal to the High Court (Land Division).¹⁰⁶

¹⁰⁴ *Idem*

¹⁰⁵ *Idem*

¹⁰⁶ G.M.Martin, *Supra*, note 48

The court in Tanzania made it a mandatory requirement to adhere to the just procedures when the compulsory acquisition is implemented. In this juncture, the case of *Mulbadaw Village Council and 67 Others V. National Agricultural and Food Corporation*,¹⁰⁷ is authority for it discussed the mandatory requirement and procedures when acquiring land publicly.

Therefore the laws should clearly state these procedures and set the mechanism in which there can be an authority to ensure that those procedures are crystal-clearly honoured when effecting the compulsory acquisition regardless of whatever project and the motive of acquiring derived from.

Whereas the procedure of compulsory land acquisition in Ghana is quite different international standard principles governing compulsory land acquisition are not observed in Ghana. The 1992 constitution of Ghana enshrined trust in government through eminent domain to compulsorily acquire lands that are necessary for public interest and purpose. Clearly, genuine reasons should be well defined to compel the state exercise such rights and obligations. It is however declared that no property ‘shall be compulsory taken possession of or acquired by the state’ unless otherwise indicated to promote public benefit. Article 20 of the constitution¹⁰⁸ further elaborates that “No property of any description, interest in or over any property shall be compulsorily taken possession unless” the taking of control or acquisition is indispensable, the inevitability for the acquisition is noticeably stated and is as such to prove reasonable justification for causing hardship that may result to property owners, prompt payment of fair and adequate compensation must be followed.¹⁰⁹

¹⁰⁷ [1984]TLR 15 (HC)

¹⁰⁸ The Republic Constitution of Ghana of 1992

¹⁰⁹ The Republic Constitution of Ghana of 1992

Again, it states that where property acquired by the government was not used for the specified purpose or public interest, the property owners can claim back their property. There is uniqueness stating that where there is relocation of affected people, resettlement should be followed taking into consideration cultural, historical and social significance.¹¹⁰

Also, compulsory acquisitions in the country have relied on State Lands Act.¹¹¹ The two statutes are limited to the acquisition of private interest in real estate whiles stool lands are acquired drawing on Administration of Lands Act, 1962 (Act 123). State Lands (Act 125) also provide for lump sum of compensation payable to property owners affected by acquisition. Section 4 also spells out the procedure for making claims whiles section 11 also outlines mechanism for settlement of disputes generating from dissatisfaction of compensation.

In Ghana, the first stage of compulsory acquisition by government is the determination of appropriate and suitable land. An application is then lodged to the regional minister in charge of the region where the land is to be obtained. The regional minister quickly set up a committee Site Advisory Committee to consider the significance and purpose of the acquisition. Issues often considered include an investigation on whether there are sufficient funds to implement the use for which the land will be acquired for. At this point, the body also try to find where there are alternative suitable lands that can be used instead of such possession. At this stage, the site advisory group will make some studies about the land and make suggestions and submissions to the minister which can be consented or condemned.¹¹²

Application is then forwarded by the minister to land commission which is the state agency responsible for administering land issues in the country. Land commission will quickly

¹¹⁰ *Idem.*

¹¹¹ 1962 (Act 125) and State Lands (Amendment) 2005, Act 586

¹¹² Section 4 State Lands (Amendment) 2005, Act 586

prepare an executive instrument for the acquisition and also forward to the minister in charge.

After the executive instrument have been accepted and endorsed by the minister, the next stage is the publication of the instrument in the newspapers to let the populace aware of the acquisition. The use of media such as the television and radio broadcasting becomes very crucial especially where the affected people do not understand the official language. In this way, an interpretation is done to help educate the property owners about the purpose and process of the acquisition. Submission by claimants and valuation of properties is then followed. This is the stage property owners send their claims to the land valuation board which is the national agency for assessing the value of properties. Corresponding compensation is estimated by the valuation board based on defined principles. The personnel of the valuation board are qualified persons from public universities in the country with long time working experience. Compensation is then made to the property owners and sometimes resettlement is followed. Where government think providing financial compensation is not only appropriate, resettlement initiatives are implemented to prevent any perils especially in the agrarian communities. In most of the time, an alternative land is searched and shared among farmers to help them continue their livelihoods. There are circumstances that land owners happen to be dissatisfied with their compensation packages.¹¹³

In this way, they send their claims to the land tribunal and high court for resolution of inconsistencies and conflicts. Based on judgment, compensation is repaid and claimant satisfied and government now take possession of property. What is evident from the acquisition process is

¹¹³ *Nana Kofi V. Ghana Australia Gold Mineral Company Ltd (1997)*

that property owners are not consulted at the initial stage and they only become aware of the acquisition during the delineation and demarcation of the land.¹¹⁴

The right and interest that are currently eligible for compensation are the interest vested in the head of the land owning community, freeholds, and leaseholds. Freeholds and leasehold usually present little or no compensation problems as long as the affected holders are able to establish their interest.

Compensation for communally owned land is paid to the head of the land owning community. Currently no compensation is paid directly to holders of customary right such as the customary freehold. All such holder are expected to be compensated by head of the land owning community to whom the compensation for allodial interest is paid.

Compensation is largely paid in cash except in cases where land of equivalent value is given to the expropriate owner. The latter case usually happens where the expropriated owner is resettled as happened in the Volta River project in the 1960's. The process and procedure are long and winding and involves resettlement on either part of an already acquired land or land yet to be acquired for the purpose of resettlement of person to be displaced. This will require going through acquisition procedures all over again as mentioned above.

Informal occupancy and derived right (right derived from allodial owner or freeholders) are currently not recognized by the existing law as being right eligible for compensation as right. If any payments are made they are ex-gratia and are based on the value of the structured and other assets situated on the land.

¹¹⁴ N. A. Kotey, *Compulsory acquisition of land in Ghana: Does the 1992 constitution open new Vistas?* In Toulmin, C., Delville, P.L. and Traoré. S (Eds). *The dynamics of resource tenure in West Africa*, London, GRET/IIED, James Currey & Heineman 2002. 121-130., G.Albert Adu., *An Overview of Compulsory Land Acquisition in Ghana: Examining Its Applicability and Effects*, National Research Center for Resettlement, Hohai University, Jiangsu Province 2012.

In addition, In Ghana the researcher analysed the case of Nana Kofi and 44 others V. Ghana Australia Goldfield(GAG) Limited this case was chosen from the case which expose weak protection of the law which serves to protect the people interest in land. If further seek to analyse the case from international human right standards as per the required laws based on the legal framework of Ghana governing compulsorily acquisition and right to compensation using the background, fact of the case and the outcome of court decision whether the best practice are followed to protect to property.

The case of Nana Kofi Karikari and 44 others V. GAG Ltd dates as far back as 1997. In the case fort five plaintiff who felt they had a common grievance against the defendant company as a result of unlawful demolition of their unnumbered properties at Nkawantakrom a village near Tarkwa in the west region of Republic of Ghana. The demolition exercise carried out by the defendant company has rendered the plaintiff homeless affecting their source of livelihood and made them internally displaced persons within their own community.

The defendant company was given a mining lease on the land of the community which satisfy condition under compulsory acquisition but they claim that the plaintiff settled there with the aim of attracting compensation from the company but according to there were no settlers there when the concession right was given them, therefore their demand for compensation has no basis from the law.

Briefly the case provide the study based on the legal framework on right to compensation, right to property and compulsory acquisition issue has been a major source of problem affecting people or community whose lands are acquired especially in mining community where there is insecurity of tenure.

The Fact of the case, the plaintiff being voiceless, vulnerable and unsatisfied by the non-cooperative nature of the appropriate authorities and the defendant company actions sought the interest of Centre for Public Interest Law (CEPIL). They force the matter to court seeking compensation for the 45 residents of Nkwantakrom whose land and several properties were destroyed unlawful by the defendant company.

The plaintiff's argument for the case was in reference to the legal framework of Ghana and the Banjul charter which guarantees the right to own property and not to deprived of their property without just compensation.

In the fact presented by Plaintiff the defendant company who alleged to have been given concession right on their lands out a demolition exercise on or around 27 June 1997 and on their lands leading to the destruction of several properties. The plaintiff reported the countless occasion to the authorities within the district but the lukewarm attitude of the authorities have rendered them internally displaced person within their own community in essence have destroy their source of livelihood. From the law, they must be duly compensated for such as action and even observation from the judgment show that they were not duly informed in written before the demolition was carried out.

According to the judgment, the demolition was carried out by armed policemen, thugs and District Security Council (DISEC) which were acting on behalf of the defendant company. However the defendant companies deny such allegation that act by DISEC was done on their behalf. Evidence of the properties destroy were presented during the trial.

In the argument put forward by the defendant, they lay the claim that the community. They therefore settle there when government of Ghana has granted them the mining concession on the community lands. They quickly moved their acquired lands.

They further argued that after serving notice of the acquisition of mining right in the community of Nkwantakrom, the peoples crops and properties were affected have already been evaluated and compensated for.

However evidence submitted by the defendant was proven inconclusive to the extent that the several argument and exhibits submitted by the plaintiff in support of their case was proven enough ground that they were living there and original settlers prior to the arrival of the defendant company, therefore the lands belong to them.

Based on plaintiff argument, the plaintiff filed a writ of summons and a statement of claim against the defendant company seeking justice based on legal framework of Ghana, Act 703 the mining Act and the Banjul Charter with specific reference to right to property and demands for just compensation when people's property are taken or acquired.

The final judgment on 20 December 2007, the court ruled in favour of the plaintiff aside general damages and an injunction they sought for, the trial judge GH¢ 13,000.00 to each plaintiff as cash compensation for replacement cost method and using inflation rate ate the time and GH¢ 2,000.00 as relocation allowance in the sense that such an amount would be appropriate to provide plaintiff with a durable self-contained flat that can withstand the activities of the defendant operation during their mining activities. The judge also ordered that GH¢ 2,000.00 should be paid to the founders of the church, mosque and the first plaintiff as well as for the reconstruction of the difficulty and non-cooperation from the appropriate authorities, the judge follow the example of 1911 English judge who said that the measures of damages is to be dealt

with in rough doing the best one cannot attempt or professing to be minutely accurate, such matter should be dealt with broadly and as best as we can as much of common sense.¹¹⁵

From this case, the researcher observed the weakness and inconsistency as a result of flaws in Act 703. From the judgment it is evident that the plaintiff were vulnerable compensated and the defendant company took advantage of the situation in collaboration with district authorities exploited them.

Also it was evident that there has not been enough legal education to communities affected by the act of the defendant company. There was need for more education for the communities to be abstract with the relevant portions of the law through provision of enough information to communities prior to the activities of any mining companies. Interpretation of law in local dialects for easy understanding of what the law provides for understands their rights.

3.3 Right of Citizen towards Compensation

According to Michelman as quoted by Ndjovu,¹¹⁶ during compensation processes a clear statement of the purpose of compensation practice is desirable. The aim is to show in precisely the variables which determine entitlement to compensation. He further identifies four factors which determine the compensability of a compulsory land acquisition exercise:

Whether the public or its agents have physically used or occupied something belonging to the claimant.

The size of harm sustained by the claimant or the degree to which one's affected property has been devalued.

Whether the claimant's loss is not outweighed by the public's associated gain.

¹¹⁵ Asiamah, An Article written during the review of Mining Law in Ghana 2010

¹¹⁶ C.E. Ndjovu, *Compulsory Purchase in Tanzania: Bulldozing Property Rights. Doctorial thesis*, Royal Institute of Technology, Department of Infrastructure, Division of Real Estate Planning and Land Law, KTH, Stockholm 2003

Whether the claimant has sustained any loss apart from restrictions of his liberty to conduct some activity considered harmful to other people.

However, Durand-Lasserve¹¹⁷ as cited in the IHS (2010) report notes that the issue of compensation is itself linked with the market value of the titles/evidence provided, which determines the ability of poor households to resist market pressures and negotiate fair compensation.

The International Valuation Standards (IVS) on the other hand provide the critical point concerning expropriation based on the issue of compensation. These include valuation methods and manners together with the status lead to full and just compensation. The rules for compensation depend on rules and regulation of each country.¹¹⁸

The underlying idea is that the financial and economic position of the property owners shall remain the same despite expropriation¹¹⁹ No one should become poor or rich as the result of the exercise. However, contrary to more recent literature, these Standards state that only economic value will be compensated leaving the non economic valuer. The full compensation figure shall cover the market value of the property, the depreciation value of the retaining property (severance) as well as other damages and costs which might weaken the financial position of the affected property owner¹²⁰

¹¹⁷A. Durand-Lasserve, *Market driven evictions and Displacements*: implications for the perpetuation of informal settlements in developing countries, In: Huchzermeyer, M.&A. Karan,(eds), *Informal settlements: a perpetual challenge?* University of Cape Town Press, South Africa 2006. 207-230

¹¹⁸ FAO, *Supranote* 112,

¹¹⁹ T. Kalbro, *Private Expropriation and the Public Interest*, *A paper presented at the 32nd International Symposium at the European Faculty of Land use and Development in Strasbourg held on 24th and 25th October 2002*.

¹²⁰ B. Denyer- Green, *Compulsory Purchase and Compensation* Estate Gazette. London 1998

According to Davidson,¹²¹ “fair and market value” which are normally used in most compensation payments does not cover a number of items including; time lag between determining compensation and the time of resettlement; failure to account for non-priced environmental services, cultural assets, or the value of social assets access; and psychological costs of dislocation and consumer surplus.

In many places around the world, the registration of property rights is improperly documented and various licenses or the need for the licenses is poorly understood among the people. Compulsory acquisition in these situations results in people losing their belongings and even living necessities without being able to buy new ones. In most cases re-settlement areas are not supplied with necessities such as schools, health centres, water, electricity, nor a functioning land market.¹²² In such situations monetary compensation becomes problematic to the affected land owners and therefore adaptable methods to the circumstances are required.

¹²¹ Davidson, (et al) Relocation and Resettlement Manual, IHS, Rotterdam 1993

¹²² C.E. Ndjovu, *‘Compulsory Purchase in Tanzania: Bulldozing Property Rights’*, Published PhD Thesis, Kungl Tekniska Hogskolan, Stockholm 2003.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

Land continue to be the essential tool for development despite the fact that Compulsory land acquisition act as a critical policy instrument necessary to facilitate and protect public interest in land development. However, its application both in urban, peri-urban and rural areas should aim at improving the lives of poor people and not otherwise.

An extent of disregarding land occupiers' right to compensation and use other means to access land or resolve land based conflict tends to complicated the matter. It also underline insensitivity among bureaucrats about strategic role land and especially the protection of private property right play in maintaining peace and enhancing livelihood and sustainability particularly among the urban poor.¹²³

The determination of compensation has been the most controversial point when it comes to compulsory acquisition power. Observation from the general argument shows that in most countries, there are of no clear laws regulating the regime of compulsory acquisition with respect to compensation. The ambiguity revolves around what constitutes just, fair or adequate compensation and the criteria use when properties such as lands are acquired by government for developmental purposes. This has lead to different norms on compensation of how, when and where such compensation should take and who should pay.

¹²³ W.J Kombe, Land Conflict in Dar es Salaam and their Socio-political context. Can Universities and Research Institution Make a Difference. Ardhi University, Dar es Salaam, Tanzania.2007

However, international human rights law which has led to the protection of peoples right does not provide an explicit answer to what is required in compensation but the three human rights conditions such as lawfulness, public interest and necessary for democratic society with proportionality including compensation has provided some answers in the sense that it helps to strike a fair balance among competing interest. Sometimes the regional instruments left the issues of compensation to the respective national law and jurisdiction

4.2 Recommendation

The government should strengthen the constitution protection of the right of occupiers of land and there interest to land by adhering fair and prompt compensation, this can be achieved by incorporating international human right principles such a transparency and participation at all stages of the compulsory land acquisition process.

Consultation should be done prior to taking any decision on whether on or not to proceed with compulsory land acquisition. This will ensure that affected communities have the opportunity to take part in decision making that affect the required by international human rights standards.

The revision of the constitution and other Act should include provision that the acquiring authority shall only take possession of land compulsorily acquired after the payment of agreed compensation. This will ensure peace and security that are normally like to happen when there is a delays of payment of compensation.

Also provision of environmental impact assessment should be incorporated in the compulsory acquisition process.

Clear laws and regulation governing the land acquisition process, capacity building in the legal frame for the affected land owners.

The law should incorporate the right of tenants and vulnerable groups that are direct or indirect right to the subject land so that they may get some assistant during reallocation or resettlement.

Legally recognizing customary land right, both government (Tanzania and Ghana) must remedy the legal status of customary land rights. In Ghana, National land policy recognizes customary right of individual and communities lesser than the allodial title. Individual and group customary ownership and use rights over land should be recognized and accorded the same legal status as statutorily registered land title even where these customary interest are not documented.

With to valuation appropriate households are given opportunity to seek professional valuers advice and support the latter claims for compensation with the Land Valuation Board (LVB) on behalf of the affected person. As noted above this unfortunately this is not the practice in Tanzania.

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