

Compulsory Land Acquisitions In Tanganyika: Revisiting The British Colonial Expropriation Principles And Practices

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Abstract: The British took over Tanganyika from the Germans in 1919 after the First World War. In facilitating colonial economic policies the British Colonial Government enacted Land Ordinance Cap 113 of 1923 and Land Acquisition Ordinance Cap 118 of 1926. These laws facilitated the acquisition of native lands and considerably changed the way expropriation was handled leaving behind permanent marks on the later practice. The colonial practice exposed the inner most economic intents of the British government. Use of legal phrases like “for public purpose” embedded in the ordinance had multiple legal interpretations and loose definition befitting the colonial economic cravings of the time. Although major provisions of the colonial acquisition laws are reflected in the later laws, evidence suggests that a few elements of colonial expropriation practices have also sneaked in as “silent laws” of expropriation but others have not. Quite a few practices had been deliberately discarded or inadvertently forgotten for lack of a political will to purify and emulate them or due to lack of good record keeping. Using historical data and archival records from the Tanzania National Archives, this study explored colonial expropriations, mainly by focusing on the principles, laws, practices and procedures used. The main objective of the study was to identify “good practices” used during the said era, the intended and unintended consequences of these unreported practices especially those which need to be emulated by the current laws and practices. The study concluded by shedding light on “bad practices” which are being exercised to date uncritically but also acknowledging “good colonial expropriation practices” which existed then but could be emulated. First, the study insists that “public purpose clause” in expropriation must be affected with “good and fair” intentions and a mechanism to check this be set. Secondly, PAPs’ involvement in land acquisition and compensation negotiations should be codified into laws. Thirdly, adequacy of compensation should be improved by legalising payment of solatium on top of the basic compensation amounts. Fourthly, the practice ought to institute “financial ability to develop a plot” as a basic prerequisite for obtaining an alternative plot during expropriation. Lastly, there is a need to institutionalise statutory time limits for processing land acquisition and compensation claims, and the time needed to remove PAPs from lands so acquired.

Index Terms: Expropriation, colonialism, compulsory land acquisition, expropriation laws and practices, British Tanganyika

1 INTRODUCTION

IN studying African experiences on colonialism and colonial administrative styles, laws and practices, there are questions that are always being asked. Was there anything that had been learnt from the colonialists in their half century rule in Tanganyika? This study focuses on land administration experiences during the British colonial rule in Tanganyika. With the same curiosity Khapoya (2013) asks questions worth reproducing here as a starting point for this discourse.

Virtually everything that has gone wrong in Africa since the advent of independence has been blamed on the legacies of colonialism. Is it fair? Virtually all colonial powers had “colonial missions.” What were these missions and why were they apparently such a disaster? Did any good come out of the African “colonial experience?” (Khapoya, 2013, pp. 99)

In order to answer these questions as related to expropriation, historical study and analyses are critical. It is important to start by noting great semblances that exist between colonial and current expropriation practices. Current laws have roots from

the colonial past. For decades colonial and newly independent government of Tanganyika used Land Acquisition Ordinance Cap 118 of 1926, to compulsorily acquired native lands for “public interests or purposes.” This law was repealed in 1967 by the introduction of Land Acquisition Cap 47, a statute which operates to-date. It is argued that colonization of Tanganyika and the legal developments that followed created monumental milestones in economic, political, and cultural development of the country. However, it must be noted that attainment of independence and the professional developments experienced in the areas of valuation and land laws, had not altered the expropriation laws or practice. This study explores how colonial government used its powers of eminent domain in acquiring interests in land, and gauges its ability in adhering to the principles behind the laws in force. It examines historic cases, principles and practices used, with the intention of learning from the past. It identifies old practices and principles which could be useful in streamlining the current expropriation practice. Khapoya (2013) argues that it is possible to use colonial administrative styles in Africa to see how colonialists tailored their administrative styles to their overall objectives in the colony. It is believed that the British had intended to “civilise” an African who would ultimately be left alone to run his own government using ideas learned from them. So, a close scrutiny of colonialism, colonial expropriation laws and practice is necessary in order to appreciate the degree to which colonial administrative styles in the land offices particularly during expropriation influenced not only the laws and practices, but also urban development initiatives in general.

2 LITERATURE REVIEW

Most of the expropriation theories are based on the existence of powers of eminent domain usable against individual property rights when governments take over land in exchange

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for compensation. Numerous studies describe these powers of the state in expropriating private interests in real estate for public interests (Denyer-Green, 2014; Knetsch, 1983), sometimes meant to enhance greater equitable distribution of land, as an economic resource (Lichfield, 1980). Although some studies have explored current problems in the expropriation process (Alterman, 2007; Crawford, 2007; Plimmer, 2007; Kakulu et al., 2009; Kironde, 2009), only a handful like Sarkar (2010) managed to use a historical perspective of events in trying to learn good aspects of the past in terms of laws and practices, as compared to the current ones. Procedures set by the colonial laws were considered important in ensuring colonial economic policies were implemented. Guided by the statute and improvisations made through land office practices, colonial officers struggled to implement land expropriation for public purposes with a series of challenges and unanswered questions most of which were unavoidable. In which way did the expropriation procedures facilitate the acquisition of lands in colonial Tanganyika? Which “public” were these colonial ordinances serving and benefited? How fair were the laws and in which way did they facilitate colonial expropriation? Were the compensation payments done fairly, adequately and as promptly as required by the laws? Answers to these questions are sought in this paper. Studies by Mphwehuka (2012), Furaha (2009), Mpogole and Kongela (2008) Ndjovu (2003) and many more have focused on land acquisition in Tanzania with special emphasis on how specific land acquisition projects were implemented. There is no work that has dwelt on the colonial expropriation, maybe for the lack of interest on colonial issues or shortage of adequate historic data. Many of the specific expropriation analyses done, attempted to focus on the processes which were largely affected by procedural delays and inadequacy of compensation amounts. This paper makes a significant shift and contribution to the existing body of literature by gathering experiences from the past during which colonial ordinances were employed to acquire land for public use. The current law i.e. Land Acquisition Act Cap. 47 of 1967 which replaced Land Acquisition Ordinance of 1926, was enacted in a different socio-economic and political environment and therefore had different objectives. This study clearly distinguishes between aspects of acquisition and those of compensation which are often, though mistakably, discussed collectively and compares the two scenarios from the historical perspectives of the law and the practice.

3 DATA AND METHODOLOGY

A large portion of this work utilizes data and information collected at different times between 2003 and 2013, from the Tanzania National Archives Offices in Dar-es-Salaam. Data was extracted from different booklets and files that had been de-classified and are now open to the general public. However, supplementary information was later collected from the Ministry of Lands, Housing and Urban Development in Dar-es-Salaam. Preliminary archival data and information obtained from the files dictated to a large extent the scope of the work and aspects that were used in evaluating and comparing the colonial expropriation procedures and practices that were scrutinised in periods extending between 1919 and 1961 and a short post-independence period up to 1967. In order to ensure consistency, systematic synchronization of the collected data from various files, booklets, and government circulars, specific content analysis and synthesis of the data

was systematically undertaken. Ethnographic approach was adopted in which archival sources were utilised to facilitate the re-construction of the expropriation practices of the colonial past. It is unfortunate that due to the passage of time it was not possible to collect the experiences of people who had worked in the then local authorities or central government during the period in question, to prop up the scenarios seen in the documents referred.

4 ANALYSIS AND DISCUSSION OF RESULTS

Evidences collected illustrate that colonial expropriation procedures were based on the laws and practices developed then. However, some of these procedures were later inherited in land administration offices, as bona-fide practices shared and followed dogmatically by the officers. Land Ordinance Cap 118 of 1926 addressed procedural aspects of acquisition and compensability aspects of the affected persons, while practices, evidenced through in-file communications in terms of minutes, internal memoranda and letters, routing slips indicated what local and government officers could do or could not do. This study discovered that in the colonial land administration, many officers were involved in expropriation exercise. Land officers, valuers, town clerks, African Affairs Officers at the local councils etc. all were involved in determining the legality of proposed acquisitions by analysing the purposes for which acquisitions were intended, identified those who deserved compensation, undertook valuation of the affected properties and, generally oversaw the acquisition processes. Like other expropriation cases worldwide, private lands were only acquired where a strong case existed for the government to believe that the purpose for which the acquisition was being done was “public,” significant and legally justifying the use of powers of eminent domain as observed by Brown (1991) and Denyer-Green (2014) elsewhere.

4.1 Colonial Interpretation of the “Public Purposes” Clause

Colonial interpretation of “public purpose” seemed to have been very wide and included among others, adding a “sanitary lane” to some plots, construction and widening of roads; eradication mosquito breeding grounds in the anti-malaria campaigns; development schemes for residential settlements; public housing especially for Europeans; public water supply projects; harbour expansion programs; construction of factories, and many more. Using today’s metaphor, it is clear that some of the so-called “public purposes” were unjustified because they included “non-public” programs meant to perpetrate colonial predatory policies like racial segregation and systematic economic deprivation. Such exploitative “purposes” raised scepticism among the affected people, especially native Africans. In many of the acquisition cases, the affected people had to agree not only to the proposed land acquisitions, but also to the compensation amounts. If no agreement was reached, such cases were sent to the High Court for a decision which in most cases was not in PAPs’ favour. Normally, colonial land office organised and oversaw expropriation processes by identifying the proposed acquisition area, compensable third party interests, and issued notices of the intention to acquire before actual land repossession took place. Despite considerable legal clarity “public purposes” clauses were often misinterpreted or manoeuvred as exemplified in the case of Kisutu demolitions undertaken in 1935. In 1935, forty huts on un-surveyed land at

Kisutu area had to be acquired for demolition in order to give way for some "other developments." Project Affected Persons (PAPs), all of whom were native Africans, doubted as to the real purpose of the intended acquisition by the colonial government. Although dilapidated housing conditions at this area had been there for many years, it was not until there was a story covered in the Tanganyika Herald published on 16th Saturday, February 1935 on the "nuisance" in the said area, that the so called "problems" got exposed and the area immediately earmarked for acquisition. The decision to remove that settlement came as the result of exposed "problems" as observed in a letter dated 22nd February 1935, from the Hon. Chief Secretary sent to the Commissioner of Police overseeing the demolition, where the former wrote the following:

"The area, for years past, has been under close police supervision, particularly at night, but the only solution would be to remove the settlement altogether, for until this is done despite all the efforts of the police, this nuisance is bound to continue"

Although these huts had to be demolished, owners and occupants, who had lived there for a greater portion of their lives and had enormous interests which were being infringed, had to be compensated contrary to the opinion of Dar-es-Salaam local authority officials. To this local authority dealing with the removal of unwanted settlements, the biggest hurdle was the unavoidable "compensations". In order to go around the compensation problem, it was suggested that the government was to demolish the huts assessed at Tshs. 6,800/= each, using its own annual budgetary allocations and recover these costs when surveyed plots at Kisutu area were sold to prospective developers. Despite the powers of eminent domain which were inherent in the government of the day, officials of the colonial government thought that reasons given to justify demolition of the settlement were not strong enough and could be easily "misunderstood." On 7th June 1935, the Chief Secretary on a second thought had to put the issue in its right perspective. "Morality problems and other evils" in the settlement which were regarded as the main reasons for the proposed demolitions, were put aside and "socially acceptable" reasons of "unsanitary and dilapidated state of the buildings" were advanced instead. These reasons were technically thereafter adopted as the main arguments for the acquisition and demolition of the said settlement. However, arguing against project critics, the Municipal African Affairs Officer Mr. Maddocks kept on stressing that the demolished houses were "dangerous," and residents had brought themselves in that situation by letting their houses get into disrepair. These comments were uncalled for, because it was the same government which did not allow these people to rebuild their houses due to town planning rules because the said area had been planned for medium density flat developments. It was argued that these hut owners could not afford nor fulfil the building covenants required by the Township Building Rules, and hence were forced to move out. Kisutu residents were not satisfied with the government's demolition decision. On 21st February 1936, twelve of the displaced Africans on behalf of their fellow PAPs filed a petition to the Eastern Province Provincial Commissioner in Dar-es-Salaam claiming that they had legally owned the land

through adverse possession, and had lived there for over 50 years. They also claimed to have obtained assurances from DCs way back in 1926 and 1930, that their houses would not be sold but would be compensated based on 1934 values, if and when they were to be pulled down by the government. Although the huts were eventually demolished by the government but they were compensated at the then current market rates. The PAPs received alternative plots and free transport and were also permitted to cut and freely collect building materials from the surrounding forests. However, this was only possible because these natives had the sympathy of the Hon. Chief Secretary himself. Experience of the Kisutu case shows that land acquisition was at times manoeuvred for other social and political ends via "public purpose" clauses. Kisutu area, which was un-surveyed and unplanned was to be taken without compensation because land owners had no ownership papers despite their claims through "adverse possession." It was also evident that local government had no budgetary allocation for paying compensation amounting to Tzs. 272,000/= to the PAPs nor did it allow them to repair the huts or give them formal titles for their unplanned land. Rebuilding, repairing or maintaining the huts would have elongated physical life span of the huts, delay their removal and curtail the implementation of the redevelopment schemes for the area. Stringent development conditions were given to the Africans if they wanted to develop those plots and continue to own them. They were required to build high rise buildings which they could not afford. In order to obtain "public" sympathy from all other people except the PAPs themselves, local government advanced morality and public safety arguments which were socially and politically appealing for advocating the demolition of the said areas.

4.2 Locus Standi in Colonial Compensations

In expropriation, compensation claims must possess basic requirements which are legally stipulated that need be to be observed. In Ghana for example, a valid compensation claim ought to specify particulars of claim i.e. interests in land, how such a claimant has suffered as the result of the acquisition, extent of the damage and the amount of compensation requested, and the basis for the calculations of the said compensation (Anim-Odame, 2011). During the colonial rule, owners of land rights which were legally recognized deserved compensation regardless whether the affected property was in a surveyed area or not. However, this was not always the case as seen in the Kisutu demolition case narrated above. Illegal squatters and those who wanted to be double-compensated by a project were usually not considered. Any compensation claimant had to have a documentary proof beyond reasonable doubt as to his or her entitlement. Colonial Governor was required by law and practice to demand a valid, written land title from any claimant before one's claim was entertained in compensation. This rule applied not only to private individuals but also to the government itself. Since colonial government considered it 'fair' to pay compensation for the loss in property rights, it similarly found it important to ensure that such payments went to the rightful affected person(s) and their heirs and not otherwise. In the late 1940s, disputes erupted between individuals and the colonial government which tested government's firmness in observing *locus standi* in compensation cases. There was a case involving some Arabs over Ukonga freehold land, which was earmarked for acquisition. The government which claimed ownership over

the said land could not prove beyond reasonable doubt that it owned it nor did the Arabs. Even without knowing the rightful owner of the disputed land, the acquiring authority proceeded in taking the disputed land as requested by the Commissioner of Prisons subject to sorting out this issue later. In effecting this, compensation for the improvements existing on the land was paid to a special account while following the usual procedures with a hope of identifying the rightful owner(s) of the freehold later. By this, it is evident that the government could acquire interests in property in favour of an applicant who would pay compensation subject to identifying the legal owner of the title over the claimed land. Similarly, in early 1950s when a new 30 acre site for Ukonga Prison and Ukonga settlement was being acquired Aziz and Rizik, heirs of Sheikhs Mbaruk and Mbarak, claimed title over it and accordingly claimed compensation. In this case the government refused these claims on the grounds that those Arabs did not own that land because Germans never issued titles to those communities but only usufructuary rights. If anything, claimants' entitlement would only be to crops and not land due to the nature of rights, unless documentary evidence was produced, which they failed. In order to ensure that land projects were not stalled, colonial government allowed payment of compensation for improvements into a special account regardless of the land's ownership status. Where ownership status had not been determined i.e. still uncertain, payment of compensation for such a freehold land was deferred to a later date when such ownership was unequivocally ascertained.

4.3 Procedures and Methods for Compensation Assessment

Procedures and methods of valuation for compensation were to a large extent embedded in the Land Acquisition Act Cap. 118, and to a little extent on the office norms and practices which developed thereafter. In determining market values for compensation purposes, Chief Government Valuer was required to consult and receive a written report from any officer of the Public Works, Lands, Surveys, Agriculture, Forestry or Railways Department regarding property values thereon. Similarly, he had to provide acceptable supporting arguments regarding the valuation done and these were to be made available when demanded by the Court." Although Section 14(a) to (c) of the Land Acquisition Ordinance Cap 118 of 1926 provided the basis for assessing compensation, it did not specifically dictate the method to be used or the type of value to be derived at. The legal proviso concerned was quietly interpreted to mean *market value*. Practically, as a result of this vacuum, substantial valuation variances were noted in compensation rates used and values derived at during valuation of buildings using the cost approach and that of crops and trees, using market evidence. Lack of reliable source of data and a uniform methodology, made operational problems apparent. However, as a counter measure to this problem, professional exchanges regarding valuation experiences, information and compensation data became critical and a preferred practice by early 1950s. These inconsistencies noticed in the valuation of buildings and crops prompted the Chief Government Valuer to issue some valuation directives. On 26th June 1954, the Director of Lands and Surveys was advised by the CGV regarding the best methods of valuing native houses. The question of maintaining "equity" was quite paramount by using value differentials for

various parts of the townships. It was also proposed that the use of the "*cost of construction method*" be introduced because DCs, who sometimes acted as valuers, were quite conversant with the costs of construction rates for various types of buildings prevailing in their own localities. It was noted that the cost method using "so much a square foot was simple, quick, easily understood by anybody and could, with practice, produce completely accurate results and therefore some guidance was critical. Valuation guidelines issued by the CGV comprised of eight classes in different age groups with categorizations according to the building materials used. These guidelines became applicable for all major components of a building and provided approximated values per square foot of the superficial area of a building in question. Together with their accompanying notes, these guidelines had some far reaching implications for they are seen in the reports of so many valuers to date. During colonial period, equity and fairness was said to have been considered in valuation assessment. It was argued that if property assessments for various purposes, including expropriation, were to be equitable, compensations in various parts of township and valuation of similar properties must not only be similar but also must differ as a result of differences in location and rent earning capacity. This valuation approach proposed by the CGV was rather simple for DCs to cope up with. However, with regard to the actual assessment of the value of properties in an area with little or no site values, the cubing system which was being used to be abandoned because it was inappropriate and none of the natives or Asians knew what it all meant. Generally, it can be said that the cost method of valuation was said to be simple, quick, easily understood by everybody and with little practice it produced relatively accurate results. *Besides the buildings, acquisition of land often included crops and trees. These assets had to be compensated as a result of either being in the area to be acquired or having been destroyed during preliminary investigations prior the intended acquisition. In both cases, individuals were entitled to compensation. It was up to the aggrieved persons to make formal requests to the government specifying the extent of crop damage, compensation rates to be used and the amount of compensation. All these issues that have been highlighted formed a basis for compensation negotiations. Apart from all other loss-related costs, claimants incurred other types of costs for which they demanded compensation. Such costs included money paid out as ground rents or lease rentals on rented accommodation or costs of labour employed just before the destruction or notice of the destruction of the crops and trees, was issued. It was certain that such "damages to crops could not be assessed well in advance" and therefore they were to be assessed for payment afterwards i.e. after destruction. Where there were disputes regarding the amount or the tree count, representatives of the government and that of the client verified the figures by always recounting the crops and recalculating the compensation sums jointly, so as to resolve the cases within reasonable time. However, where the parties failed to agree, lawyers were called in to assist.*

4.4 Compensation Payment and the Role of an Incoming Occupier

Compensation payment has always been shrouded by a number of sensitive questions. First, who pays compensation on acquisition of land for public purpose and secondly, what roles does an incoming occupier play. It was apparent that in

the colonial practice, the incoming occupier had to shoulder the responsibility of paying compensation to the outgoing occupier or the affected party, regardless of his status. For the purposes of public interest, the government had to pay compensation when land was being acquired. However, where the government failed to pay compensation alternative arrangements were sought. Landowners were occasionally allowed to sell plots from their lands that had been designated for a planning scheme with explicit procedural instructions from the government. The acquisition of land for Upanga Development Scheme, which involved land of one Kidata bin Abdullah, provides a good example in this respect. In 1950, the government wanted to take Kidata's land on Plot 64 Flur III Dar-es-Salaam, measuring 150,512 sq. ft. with title CT 6826 without family's consent nor compensation payment because the government did not have the money at the time of acquisition. As an alternative, the family requested the government to allow them sell the land it lawfully owned, to anybody because the government was not capable of paying compensation then. This proposal which was accepted by the government but Kidata's family had to pay for land surveyors sent by the government. The family was similarly required to sell those plots at "market values" when they were ready and pay a tax of 3% of the sale value to the government. This deal got the consent of the Municipal African Affairs Officer before being executed. To many observers the deal looked "fair and reasonable." In another case in which the government could not pay compensation, a different strategy was used. In this case, buildings on the land to be acquired were sold for demolition before planned and surveyed plots were prepared and eventually sold to prospective developers, to not only to recover planning and surveying costs, but also pay for compensation costs. In 1935, the Commissioner of the Eastern Province, when resolving the compensation problems facing residents of Kisutu, an area earmarked for demolition, proposed a strategy to the Land Officers:

...It might be desirable as a first step to sell the buildings for demolition purposes and thereafter to put the plots to sale...The best way to effect this would be for the Government to compensate the hut owners and have the huts demolished. The cost of this should then be recovered by charging a premium on each surveyed plot as it is taken up. I am unable to say, however, what demand there will be for the plots already surveyed when they are cleared of the huts.

Besides paying monetary compensation, sometimes the government had to allocate alternative building plots for all displaced people provided they demonstrated their ability to build. In 1948, a Makuburi resident, a displacee of the area, was to be compensated and receive an alternative plot because his land was acquired for public purposes. The local Wakili Mpamba, acting in consonant with the government policy and directions of the day refused to sign papers belonging to Iddi Ali because he did not show him the Tshs 300/= demanded as a proof of his financial ability to build on a plot to be allocated by the DC. Without Wakili's signature, which was important in ascertaining one's financial capacity to build, the DC vowed not to allocate any building plot. Mr. Iddi Ali lamented in a letter to the DC that he did not have the

required amount but still his land was being taken and had nowhere to go. Reiterating the position held by the Wakili, the District Commissioner of Uzaramo insisted in his reply to Iddi:

"If a man has no money to build a house he should rent a room and not build a small 'banda' which is forbidden in the township. He can build what he likes outside the township but not inside the boundaries, only proper houses are allowed."

4.5 Time Limits to Compensation Claims

Regardless of the length of the expropriation exercise, compensation claims could not be received by the acquiring authority indefinitely because this would have jeopardized the execution of the intended projects. So, as a colonial rule, compensation claims had to be registered by an aggrieved as soon as possible to ensure that "justice" was obtained on time because "*justice delayed is justice denied.*" It was apparent that after a certain period such claims were not entertained any more. In 1953, Salima d/o Mohamed had her coconut trees destroyed during the execution of one of the government projects and had to be compensated. Two years after compensation had been paid to all other affected people, this lady complained regarding inadequacy of compensation she received due to "outdated rates" and undercounting. Salima's lawyers Messrs Dharsee & Mc Roberts argued for higher compensation rates in favour of their client but the Dar-es-Salaam District Commissioner rejected those claims. Although he seriously sympathised with the affected woman, he emphasized on the validity of period within which a discontented claimant ought to present his or her demands:

Salima was obviously at fault in not pointing out in the first instance that the number of trees for which she received compensation was incorrect. Had she protested and produced her annoyance at the time, the matter could have been rectified then, and she would have received her money for the correct number of trees along with the other recipients. It is surely the responsibility of the owner more than anyone else to see that she receives just compensation for her property. As she was negligent, I cannot see the Government is in any way to blame.

4.6 Salvaging Building Materials

Building materials like bricks, timber, corrugated iron sheets, door and window frames and shutters are items that can be removed from a building to be demolished. According to the colonial practice, once properties have been acquired and compensated, it was the discretion of the acquiring authority to allow PAPs to salvage their building materials. It was a common practice to allow PAPs to take with them used materials to enable them build "new" homes elsewhere, probably on the alternative plots allocated. This practice originated at the time when building materials were scarce especially during and after the World War I. During this time the affected people could not either afford or find building materials to buy for reconstructing demolished houses from compensation payments received, mostly because of the

building materials were very scarce and compensation payments received were either delayed or so meagre. So, by allowing PAPs to take building materials with them, this helped them to reduce expropriation trauma, expedited their moving out and settling down elsewhere, without making commotions. A three months' period was normally allowed by the acquiring authority for this purpose. However, where an acquiring authority needed a building or a structure he has already been compensated, and an outgoing occupier or property owner insists on having his building materials salvaged, the authority had the discretion of deducting and adjusting the amount of compensation payable to reflect this.

4.7 Land Repossession and Policing

Once land was acquired, it was critical that legal ownership and physical possession of the land in question changed hands immediately. This was to be followed by effective land policing by the new owner to ensure that the previous owner does not illegally prolong his occupation of the demised land parcel and so inhibiting incoming owner from utilizing the acquired land for the intended use. Serious land policing protected the acquired land from squatter invasions especially when there was a period of "visible ownership vacuum" i.e. after acquisition but before the new owner physically takes the acquired land and makes his presence felt. Promptness in compensation payment and removal of the PAPs from the acquired lands were, and still are critical, in effecting land repossession. Delayed compensations due to factors like lack of funds or conflicting interests on the land acquired may ensue as a result of protracted delays in land repossession. It is for this reason that where squatters were reluctant to move physical force was used and where there was an urgent need of having early property possession, special arrangements had to be made by the acquiring authority. Where early land possession was desirable, PAPs were led to accept a financial deal, in some form of an allowance, which would entice them accept earlier surrender and the inconveniences that followed. On a number of occasions PAPs were paid a further 50% payment on top of the assessed property compensation values to entice their earlier surrender of the land acquired or to be acquired. When and where such urgency existed, compensation had to be paid before land was physically taken. This had been the practice in the mining sector for a very long time and the Director of Minerals extended the advice the land sector for them to emulate the procedures for its own advantage. In June 1953, the Dar-es-Salaam Resident Engineer wanted to hurriedly demolish two houses valued Tzs 6,500/= each, located along South Street for the construction of a sewer line. The engineer having been cautioned by the DC that if he wanted to obtain a "hurried entry," first the occupants had not only to agree but also receive a further 50% payment on top of the assessed value. This procedure had to be followed before the intended work started because tenants and subtenants would be disturbed by the proposed works. Available records show that many of these hurriedly done acquisitions did not follow these procedures because the acquiring authorities were always in a rush and had numerous mandatory steps to follow before work started. However, the basic pre-requisites for hurried acquisition as explained above were rarely followed and people could not demand it because it was just a "practice" that had no legal force and after all many of them were less informed about this informal arrangement. Where the use of the acquired land is not

immediate, squatters are known to invade lands which seem to be idle and the acquiring authority had failed to timely and effectively utilize them. When a surveyed plot measuring 5½-acres along Pugu road was allocated to Messrs Sarantis and Panayotopoulos Co Ltd in May 1957, several people were found living in one semi-permanent and 27 permanent huts as "squatters." When they were asked to move to Temeke, they categorically refused. No existing records could prove that they were the former owners and that they had already been compensated in 1951 and 1952. They were forced to move out. It was evident from this episode that for six years this land acquired by the government for industrial use had been neglected left idle and unattended, until squatters moved in. When dealing with such cases, the government reiterated its official position that squatters and PAPs already compensated were both illegal occupiers of other people's land and would not be compensated. However, trees and crops on acquired lands or on road reserves would not be compensated if its owners continued to use these adjoining lands though where crop owners had to be evicted, then compensation would be paid.

4.8 Role of Valuers in Valuing for Expropriation

Purposes

Valuation as part of the colonial expropriation process brought serious operational and technical problems. There was a noticeable scarcity of manpower within the profession for there were very few "valuers" who worked in Tanganyika relative to manpower requirements and there were so many jobs needing their services, many of which could not be executed on time. As a result of this, a number of non-valuers had to be engaged to "value" properties for various purposes like taxation or rating which in principle had to be handled by professional valuers from the Valuation Section at the Ministry of Lands. However, due to this shortage building-related professionals like engineers from the Public Works Department, had been utilised in valuing buildings as early as 1920s when they were invited for the first time. These engineers valued buildings for a number of purposes including rating. Quite often than not, in order to ensure that valuations undertaken by non-valuers were acceptable, they had to seek external assistance in order to support their "valuation" work. For example, DCs who often undertook property valuations under written instructions from land officers and heads of specific government departments, sought the assistance from "old and prominent people" from the neighbourhoods in which subject properties were located. This external "professional assistance" sought was regarded as critical because it helped "non-valuers" to arrive at "right and acceptable" property values meanwhile drumming up local acceptance for the values arrived at. When the Uzaramo District Commissioner was required to value properties in Ukonga for compensation purposes, he contacted Mndewa Ubye a local leader of Ukonga for help. He asked him to identify two or three old prominent people, knowledgeable on the property market to help him establish the prices through a discussion before he wrote a valuation report. Similarly, Auctioneers and Court Brokers were often used to undertake valuation of buildings for various purposes, including sale and compensation, on invitations from the DCs. Dar-es-Salaam DC Mr. C. C. Harris had, on many times, employed a renowned auctioneer and court broker Mr. Saidi Salim Hariz of House no. 100 Nyamwezi Street Dar-es Salaam, to undertake property valuations. On 29th September 1953, for example, he

asked Mr. Hariz to accompany him and Jumbe of Kinondoni so that they could value two houses on a plot he had allocated to Mr. Hanna Nassif. Likewise, on 16th June 1954, the same auctioneer, was, once again invited by Mr. Gondwe on behalf of the Dar-es-Salaam DC, to value two houses in Migombani Street and one in Selous Street.

5 OBSERVATIONS AND CONCLUSION

A survey of the colonial expropriation law and practice indicate that the principles used then looked fairly good and were not very different from elsewhere. However, it was evident that whatever was being practised was not always fair despite being legal. Although the laws were said to have been followed, seldom were the principles of procedural and substantive fairness adhered to as propagated by theorists on the subject. So, the issue that confronts real estate lawyers and expropriation historians is the question whether the colonial expropriation principles and practice adhered to principles and theories of fairness. Were the expropriations really for public purpose to justify them? Did the colonial government equate unsparingly damage to compensation amounts payable? Were the *locus standi* requirements fair? Were the principles of procedural and substantive fairness followed? Which of the practices, regardless of the pitfalls noted here and there, represented some acceptable principles and practices of good governance that deserve to be emulated? Acquisition for public purpose is one of the most controversial issues worldwide regardless of the era. During the colonial expropriations discussed above, "acquisition for public purposes" was a "legal song" that justified the acquisition of native lands and a reason to expel them from strategic areas. Although the 1926 ordinance specified that for land to be acquired its purpose must be "public," the reality was quite different. The colonial government manipulated this legal provision for its own colonial ends. Expropriation and town planning laws, rules and regulations of the day were arbitrarily used to remove native Africans from some areas through the implementation of segregative laws that included development conditions and zoning regulations which implemented planning zones. Land Officers, DCs and PCs had a lot of powers in defining a public purpose, identifying the 'public' the laws were meant to serve and in deciding the legality of acquisition and compensability of the PAPs. Definition of a "public purpose" was critical in determining whether a particular piece of land was to be taken or not. In the colonial practice, the true intentions for acquisitions were sometimes hazy and concealed and socially appealing reasons were always advanced instead as a scapegoat, especially where and when the "public" intended did not include native Africans or cases where some resistance was eminent or foreseen. Colonial government did not hesitate to deploy the police in dealing with expropriation resistances and pockets of expropriation holdouts. Analyses of Kisutu, Gerezani, Upanga and other expropriation cases indicate that when the colonial government had wanted to remove native Africans from areas they regarded and earmarked as strategic like town centres, 'public purposes and benefits' clause was used. It is evident that the true intent of the colonial government in expropriating such lands was clearly segregative in nature and always had economic and social reasons for justifying the so called "public purpose." It is clear now that the "public" that the colonial government referred to in its statutes, was not the one the African populace

postulated. Principles and rules surrounding the entitlement to compensation *i.e. locus standi*, in colonial compensations were clear. Proof of legal entitlement to compensation was critical and for one to deserve compensation one had to have documentary evidence. The Ukonga cases of 1940s and 1950s indicated that documentary proof was important regardless of one's position in the society and its lack rendered claimants undeserving regardless of the location of the land in question. The pre-requisites for compensation entitlements have transcended the test of time and are being practised today but not as strictly as it was in the colonial days. Legal contradictions regarding land ownership on urban periphery exemplifies the current vagueness of the laws and the practice. Town Planning Ordinance 1956 and Town Planning Act of 2000 insist that on the extension of the urban boundaries, customary land rights get extinct immediately and automatically. This means that legally, the villages and houses so engulfed become "squatters" automatically making them "illegal settlements" immediately. Such properties are thereafter regarded as if they were illegally erected on land which did not belong to them but a township. However, the fact remains that it was the urban areas which followed these peri-urban villagers and not otherwise. Legally, this position would have implied that these former customary land owners deserved no compensation. From the current practice it is clear that these original customary landowners would continue to hold their customary rights, as if no township boundary had been extended and no laws existed to extinguish these land rights. These land owners therefore, are always compensated when their peri-urban lands are acquired. These "law-versus-practice" contradictions are known but the laws pretend that they do not exist. Colonial post-acquisition procedures regarding salvaging used building materials and the land policing present another practice that is of interest. In order to facilitate an instant removal of the affected people, especially in cases where monetary compensations were delayed, PAPs were allowed to salvage the building materials. With deteriorating economic conditions, this requirement is in great need as it was then. As a result, the practice continues today and much as there is no legal basis to its application, many people have taken it for granted. Similar to the old colonial days, once all PAPs have moved away, the acquiring authorities are advised to undertake regular physical policing of the acquired land and undertake immediate land repossession because such lands could easily be invaded by land mongers and squatters. Colonial compensation assessment was characterised by a participatory approach in which the acquiring authorities and the affected people were at some point involved in the process of value determination. The current valuation process is said to be "undemocratic" because PAPs are not involved. Once a notice of the intention to acquire land has been issued, officers from the acquiring authorities' would come, inspect the affected properties and "disappear" until such a time that "compensation schedule" is produced and compensation is about to be paid. The only people involved in the compensation assessment process are the local or village leaders, district and regional authorities and Chief Government Valuer, all of whom merely "endorse" the valuation reports for payment. It is clear that none of the officials endorsing the reports know the demised properties and hence their endorsement seems to be very "political" or artificial in nature. In the colonial practice PAPs made formal compensation requests regarding the extent of the damages,

the rates they thought were applicable and the amount of total compensation requested, all of which formed a platform for mutual negotiations. Methods, procedures and the resultant compensation values have always been a contentious issue in course of compensation assessment and payment. During the colonial period, the valuation method preferred was the comparative or market sales method when establishing "market value." However, due to lack of expertise and the dormant nature of the property market, this approach had to be complemented by the "cost method." In years that followed land nationalisation, land was said to have "no commercial value." So, attempts to develop vibrant property market were abortive and the use of "cost method" in valuation was automatically and unconsciously promoted, instead of a fairer and a most practical "market value" approach encouraged during the colonial period. This methodological deficiency is still observed to date among valuers who use the *cost approach* despite the existence of a relatively vibrant local property markets. Regarding items to be compensated, colonial practice included "rents" i.e. ground rents or lease rentals on top of compensation for lands, unexhausted improvements or land development, crops and trees that were being compensated. Currently such items are not included in the assessment of compensation payment for the displaced person though it is hypothesised that "disturbance allowance" payable to all PAPs include such inconveniences. Colonial practice was firm on who pays compensation, when such payments were to be made and emphasised on the financial ability of the displaced to build on an alternative plot to be allocated. This was meant to ensure that "good structures" were built in urban areas and not otherwise. PAPs were supposed not only to build but also ensure that all lands allocated to them were affectively built. Where local governments lacked the ability to pay compensation, especially in projects involving "planning schemes," individuals were allowed to sell some of the surveyed plots to prospective developers provided agreed tax was paid to the government and land owners met all planning and surveying costs. Such strategies were critical for ensuring that land ripe for development was not invaded by squatters and spontaneous developments, while land owners enjoyed the advantages of land owning and policing.

6 RECOMMENDATIONS

Compulsory land acquisition for public purposes has been exercised for the past one century and a number of things were noted. First, during the colonial era and the first few years of the post-independence, Land Acquisition Ordinance Cap 118 of 1926 was used extensively. However, after 1967 the Land Acquisition Act Cap. 47 and later in 1999 the two Land Acts were added to the list of statutes that were used in facilitating compulsory land acquisition. Despite the superficial similarities in practice and in the written proviso of the laws governing these expropriations, issues like the "public purpose" for which land was being acquired and the practical interpretation and implementation, indicated a serious divergence with the inner most intent of the two governments behind the "acquisitions" for public purposes. A question that was asked by Khapoya (2013) seemed to be relevant today particularly in the land sector and during the expropriation processes. "*Did any good come out of African (these) colonial experiences?*" Many expropriation-related actions done during the colonial period were seen as good and fair by the British

colonials endowed with "positive and good" intentions and outcomes. To many native Africans, these actions were "bad and unfair" muddled with immoral intentions and negative consequences. From this analysis, it is clear that there is a need to revisit the existing land expropriation laws for the purpose of examining all critical issues, re-test workable solutions that had been applied to various past expropriation situations and include all practical and acceptable procedures in the newer laws. All strategies that seem to have successfully worked during the colonial era and in the post-independence era, but are not written anywhere, should be compiled and codified for use. Among aspects that need to be addressed include:

- i) Introducing strategies that will quicken the expropriation and compensation process by substantially reducing the unnecessary bureaucracy including time taken in the approval of compensation schedules. Currently, all reports for statutory valuations e.g. compensation or property taxation must to be approved based on inherited but unwritten colonial practice, which has outlived its practical usefulness. Contrary to the colonial situation there are many valuers who are now academically and professionally qualified and licenced needing no approval as colonial "non-valuers" did.
- ii) Emulating the colonial practice of negotiating over compensation payable which seemed to be a good thing that ought to be studied carefully and main streamed into the current laws so that PAPs understand the dynamics of compensation assessment and in so doing reduce the possibilities of expropriation holdouts,
- iii) Introducing into current laws the ability to build as a requirement of getting alternative plot during expropriations if effective development of urban plots is to take place in resettlement areas,
- iv) Ensuring the owners of large pieces of land in areas that have been earmarked for planning schemes to be allowed to sell plots after planning and surveying them at their own costs and paid appropriate tax,
- v) Fixing time limits for lodging compensation claims which would not processed after sometime and a claimant would lose his or her compensational rights,
- vi) Ensuring promptness in acquisition and compensation assessment and payment, removal of PAPs and land repossession all of which must be statutorily provided,
- vii) Addressing the issue of inadequacy of compensation by instituting an policy option of paying a solatium on top of the basic compensation at the discretion of the acquiring authority, but this should not be a right for every expropriation project,
- viii) Accepting application for "hurried acquisition" where it is desirable by allowing "topping-up allowances" of some percentage. This should be included in the overall compensation calculations to reflect the inconveniences to be suffered by the PAPs.

Besides having specific recommendations, it is suggested that all past un-officiated practices discussed that were at done at the mercy or discretion of the officials of the acquiring authorities need to be revisited while gauging their usefulness. Similarly, those useful practices that do not deserve to be codified into laws and regulations, could be condensed into a

form of official practicing handbooks which would provide some standard official practices during expropriation. The British had always boasted of colonizing Africa for sharing their skills, values and culture with the hope that someday Africans would be able to run their own affairs using tools learned from them. One thing is certain from this study that the colonial laws and the practices were fairly instructive and continued to be practically useful in the post-independence era, but it is the inner most intent of the government of the day that seemed to matter and not the legal codifications as such.

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