This paper presents a review of the legal aspects of compulsory land acquisition in Tanzania vis-à-vis implementation of the same on the ground. The law outlines statutory requirements for consultation with current occupiers of the land that are potentially affected by a proposed acquisition. However, this investigation revealed that these provisions are seldom adhered to due to fears among the law makers and enforcers that may subsequently lead to projects being resisted or delayed. This has often led to tensions between the government and those currently occupying the land. Participation of land occupiers in the valuation and verification exercises was also found to be very limited. These in-grained process which breaches the provisions of the law, led to poor enforcement of the same which in turn limited the opportunity to identify weaknesses or strengths of the law. Furthermore, it jeopardises principles of good land governance leading to not only mistrusts of the government, but also sets a bad precedent for future attempts to guide and regulate peri-urban land development.

Key words: Peri-urban; participation; land occupiers; valuation; compensation; compulsory acquisition

INTRODUCTION

This paper investigates the differences between the participatory ideals for compulsory land acquisition as provided for in the Tanzanian law vis-à-vis realities on the practical implementation of the same. It reviews the implications of the prescribed legal processes vis-à-vis practiced processes from a planning perspective. The Ward of Wazo was chosen as a case study area. Wazo is one of the destination areas for peri-urbanization in Dar es Salaam where land was compulsorily acquired in 2002 for public interest. Of interest also is to assess how compulsory land acquisition is effected following the introduction of legal provisions that require the government to recognize the market value of the land since 1999. Prior to 1999, land was considered to have no value except for unexhausted improvements made on it. The recognition of market value of land brought new experience and challenges with respect to compulsory land acquisition in the country. For the first time, the acquiring authority was required to pay compensation at market rate even for bare land and anythe improvements made on it.

Wazo Ward is located in Kinondoni Municipality. The National Population Census of 2012 put the Ward population at 90,825 people (URT, 2012). The Ward is made up of seven Mtaa areas namely Wazo (itself), Salasala, Kilimahewa, Mivumoni, Kisanga and Madala. The Ward is bordered by the old Bagamoyo (Ali Hassan Mwinyi) Road to the East, Goba Ward in the South, Bunju Ward to the North East and Mbezi Ward to the South East. The total area for Wazo Ward is calculated at 3,394.22 Ha. About 294.25Ha of land were compulsorily acquired from two of the seven Mtaa areas (Wazo and Mivumoni) for planned urban expansion as part of the “20,000 PLOTS PROJECT”. The goals of the project included: to eradicate poverty; enable access to surveyed and planned plots; reduce the proliferation of informal land development; and reduce problems arising from haphazard construction of houses.

The review found numerous breaches of mandatory legislative requirements which led to non- participation of land occupiers in the process. Further, lack of
opportunities for two-way communication process and technical terminologies used in the conduct of the valuation process defeated the essence of participation. The results cast doubt on the realization of principles of good governance, legitimacy, voice, fairness and the rule of law. Further, it is argued that continued breaches of these aspects of good governance may cause the government to lose legitimacy in matters relating to land development. Evaluation of the case study suggests that the denial of a transparent process in land administration contravenes the process of natural justice.

UNDERSTANDING PERI URBAN AREA (PUA)

The definition of Peri Urban Areas (PUA) differs depending on the context and specific situations (Iaquinta and Drescher, 2000; and Satterthwaite and Tacoli, 2002). Difficulties in having a unified definition of what is a peri-urban area is attributed to the challenges associated with delimiting the spatial extent of the zone itself (Olujimi and Gbadamosi, 2007). Despite the difficulties, there should at least be some understanding of this zone in a contextualized setting. For this matter, PUAs of Tanzania are defined as areas located within a radius of ten kilometers outside the boundaries of an urban or semi built up area which may be prescribed by the Minister for Lands, Housing and Human Settlements (URT, 1999). These areas accommodate all social classes of people, and increasingly the rich.

Msangi (2011) put forward some specific aspects that characterize the PUAs in the Tanzanian context. These are:

a) Areas that exhibit overlap of the rural and urban land uses i.e. a mosaic of land uses between the city’s continuously built up area and its rural hinterland;

b) Areas that are often inadequately provided with basic social services and infrastructure, water supply, all-weather motorable roads, sewerage systems (in most cases, on-site sanitation is used);

c) Areas that exhibit fast informal growth regulated by social institutions, customary actors, non-governmental institutions, community based organizations, informal estate agents and speculators;

d) Areas that accommodate mixed social classes including the poor, middle and high-income people;

e) Areas exhibiting multiple land tenure regimes including statutory right of occupancy, customary and quasi customary tenures;

f) Areas that accommodate competing but often unregulated land uses (residential, commercial and urban farming); and

g) Hot-spot areas for peri-urbanisation.

Using the above characteristics, Figure 1 indicates delineated areas (Wards) that constitute the peri urban areas in Dar es Salaam.
URBANISATION AND ITS IMPLICATIONS ON PERI-URBAN LAND DEVELOPMENT

The “level” of, and the “rate” at which, urbanisation occurs are important concepts in the study of peri-urban growth, (UN Habitat2003). While the level of urbanisation refers to the proportion of the total population that is living in urban areas, the rate of urbanisation refers to the speed or percent at which it is urbanising, Kyessi (2002). Urbanization in Africa is moving from city-based to region-based configurations as a result of peri-urbanization. Growth and expansion is driving development beyond the defined urban zone resulting in increased pressure for peri-urban areas to accommodate land uses which were earlier urban-based. In the process of spreading out, surrounding rural land and adjacent towns can be engulfed (UN-Habitat2009). Such outward growth which is often towards the peri urban areas is also a result of similar growth patterns experienced within the cities themselves. The growth overspill is mostly experienced in the immediate outer-ring of cities. Apart from accommodating migrants from the cities and associated urban land uses, they also experience increased population from both natural growth and migrants from the rural areas. The process of peri-urbanisation results in land use changes which are more urban in character and economic activities shift from rural subsistence to urban orientation.

This trend of moving from a city-based to region-based urbanisation creates pressure on the peri-urban zone for various land-uses. Conversion or peri-urban land to urban residential purposes is the most common. This has retrospectively prompted the government to initiate efforts to accommodate and regulate migrant actions and spatial growth dynamics in the peri-urban zone. For example, the government initiated the 20,000 PLOTS PROJECT in Dar es Salaam in 2002 as one of the measures to guide city expansion by compulsorily acquiring land from the peri urban areas for public use and subjected the same to formal land use planning. The intention was to guide the spatial growth of the peri-urban zone to accommodate the growth overspill from the city in a planned manner (Msangi, 2011).

COMPULSORY LAND ACQUISITION AND ITS JUSTIFICATION

In Tanzania, the power to acquire land on compulsory basis is vested in the President as the custodian of all land in the country. Compulsory land acquisition is defined as the power of the President to acquire private rights in land through exercising power of eminent domain in order to serve a public interest (FAO, 2008). However, this has to be done in accordance with the laws of the land that govern compulsory land acquisition. Legitimate public interests for land include: construction of roads; railways; airports; hospitals; schools; electricity mains, water and sewage facilities; as well as the protection of watercourses and environmentally fragile areas (ibid).

The Legal Processes for Compulsory Land Acquisition

The legal processes associated with compulsory land acquisition in Tanzania can be grouped into four major steps namely:

i) Legal preliminaries which include declaration of planning areas (i.e. areas in the path of urban development as may be determined either by the residents or respective LGAs);
ii) Assessment of the value (valuation) of properties and filling of claim forms;
iii) Verification of the value of the land and filling of compensation schedule; and
iv) Payment of compensation.

Sections 3 and Section 4, sub-section (2) of the Land Acquisition Act No. 47 of 1967 confers power on the President to compulsorily acquire land for public interest in Tanzania (URT, 1967). It further states that payment of compensation should precede compulsory acquisition of land. However, such a decision by the President must have the support of the National Assembly and should be gazetted. Section 4, sub-section (2) of the Act illustrates this:

“…Where the President is satisfied that acquisition is for public use or in the public interest or in the interest of the national economy, he may, with the approval and a resolution of the National Assembly, and by order published in the Gazette, declare the purpose for which such land is required to be a public purpose and upon such order being made, such purpose shall be deemed to be a public purpose for the purposes of this Act…,” (URT, 1967:4).

The National Land Policy (1995) among others recognize the land rights and interests of land occupiers which include the right to be re-allocated plots for their use, occupation and development as per the intentions of the scheme in force. Further, Sections 6.3.0 and 6.3.1 of the Policy provides for the protection of these rights especially where the land occupiers are affected by compulsory land acquisition. The policy made it mandatory that compulsory land acquisition has to be preceded by declaration of planning areas and extinguish previously enjoyed (customary) rights. The policy further outlines that such compensation should be fair, adequate and prompt, without which declaration of planning areas will remain ineffective i.e. will not suffice to extinguish customary rights (URT, 1995).

Extinguishing of previously enjoyed customary rights is also a requirement of the parent law i.e. the Constitution of the United Republic of Tanzania (URT, 1977); and the
Land Use Planning Act (URT, 2007). They both provide for protection of the rights of land occupiers and payment of fair, adequate and prompt compensation. Article 24 (1-2) of the Constitution of the United Republic of Tanzania provides for the right of its citizens to own properties and for protection of the same.

“...every person is entitled to own property and has a right to the protection of his property held in accordance with the law; it shall be unlawful for any person to be deprived of property for the purpose of nationalisation or any other purposes without the authority of the law which makes provision for fair and adequate compensation...”, (URT, 1977).

THE COMPONENTS OF COMPENSATION – TANZANIAN EXPERIENCE

The Land Act (URT, 1999) and Land Policy (URT, 1995) recognise the value of the land beyond unexhausted improvements made on it. Enforcement of this provision came into effect in 1999 with enactment of the Land Act. Not only does an adequate amount has to be paid as compensation, but it also need to be paid promptly. The Land (Assessment of the Value of Land for Compensation) Regulations of 2001 (URT, 2001a) identify the components of compensation. These include accommodation, loss of profit, disturbance allowance, and transport allowance.

Accommodation allowance (which is paid to all affected sitting land occupiers) is based on the market value of the building for a period of 36 months. Loss of profit which is also payable for a period of 36 months is only paid if there were business activities carried out on the acquired land. This is calculated as a net monthly profit and has to be ascertained by audited accounts (where necessary and applicable). Disturbance allowance (which is also payable to all) is calculated by multiplying the value of the land by the average percentage rate of interests offered by commercial banks on fixed deposit by 12 months at the time of loss of interest in land. On the other hand, transport allowance is the actual cost of transporting 12 tonnes of luggage (by rail or road) whichever is cheaper) within 20 kilometres from the point of displacement. However, the regulations caution that transport, accommodation and loss of profit allowances shall not be paid where the said land was un-occupied by the date of loss of interest in land.

The regulations further states that if “prompt compensation” is not paid, then interest rates offered by commercial banks should be charged (Regulation 13). The regulations define “prompt compensation” as one which has been paid six months after the subject land has been acquired. If compensation remains un-paid for six (6) months after acquisition, interest rate (at the average percentage rate offered by commercial banks on fixed deposit) shall be recoverable until such compensation is paid.

LEGAL PROTOCOLS FOR VALUATION IN TANZANIA

i) Assessment of Value and Filling of Claim Forms

An assessment of the value of the land or any other property proposed to be acquired for planning purposes, or any other development, must be undertaken to establish the appropriate amount to be paid as compensation. This is provided for under Section 1 (1) subsections (f) and (g) of the Land Act No. 4 of 1999, which states how the value, and for this matter, the market value, shall be determined, (URT, 1999).

Section six (6) of the Land (Compensation Claims) Regulations of 2001 states that: “(a) the Commissioner for Land will issue a notice to land occupiers informing them about the government’s intention to acquire their land; (b) require them to submit claims for compensation i.e. the amount of money they expect to be paid (hope value) as compensation filled in a special form; and (c) require them to appear physically on such date, time and place where the assessment shall be done ready for the assessment (URT, 2001b)”.

ii) Verification of the Value and Filling of Compensation Schedules

Section 8 and 9(1) of the Land (Compensation Claims) Regulation of 2001, provides that once valuation has been done, the Commissioner for Lands will prepare a compensation schedule3and submit it to the “Fund”3 together with the claims for compensation filled by applicants (hope value) for verification. The Fund will verify the claims for compensation (filled by applicants – i.e. hope value) and compensation schedules from the Commissioner. Within 30 days from the date the Fund received the claims and compensation schedules, it is expected to give a decision on whether to accept or reject payment of compensation (URT, 2001b).

iii) Payment of Compensation

Section 10(1) of the Claims Regulations provides that compensation shall be in monetary terms although it may also be in the form of all, or a combination of:

i) A plot of land of comparable quality, extent and production potentials to the land lost;

ii) A building or buildings of comparable quality, extent and use comparable to the building or buildings lost;

iii) Plant and seedlings; and

iv) Regular supplies of grains and other basic food stuffs for a specified time (URT, 2001b).
METHODS

This study was conducted as a desktop review of policy and legal positions for compulsory land acquisition together with interviews with different actors involved in compulsory land acquisition process. In-depth interviews were held with officials and households in Wazo Ward (Dar es Salaam) where land was compulsorily acquired in 2002 to pave way for the 20,000 PLOTS PROJECT to provide land for the public interest. Interviews were conducted with 77 households, and officials at the Ministry of Lands, Human Settlements Development, and Kinondoni Municipality (where Wazo Ward is located). Methods for qualitative analysis namely case analysis meeting, contact summary, and contents analysis were used for data analysis. Quantitative methods including determination of percentages and tables were further used to reinforce the qualitative analysis.

RESULTS AND DISCUSSION

Compulsory Land Acquisition for Public Interest - Experience from Wazo Ward

Economic Activities of the Households Prior to the 20,000 Plots Project

The 77 interviewed households were all engaged in more than one economic activity at a time. Before implementation of the 20,000 PLOTS PROJECT, 52 percent of the households were jointly engaged in agriculture and animal keeping. Another 26% were engaged in petty trading in combination with agriculture and animal keeping; 14% self-employed in combination of carpentry and tailoring; 4% retirees from the public sector but also undertook agriculture and animal keeping; and the remaining 4% were engaged in casual labouring (Table 1).

Table 1: Economic activities prior to 20,000 plots project

<table>
<thead>
<tr>
<th>S/N</th>
<th>Economic activity</th>
<th>Nr</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Agriculture and animal keeping</td>
<td>40</td>
<td>52</td>
</tr>
<tr>
<td>2.</td>
<td>Petty trading + [Agriculture and animal keeping]</td>
<td>20</td>
<td>26</td>
</tr>
<tr>
<td>3.</td>
<td>Self-employment (tailoring carpentry, mechanics) + [Agriculture and animal keeping]</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>4.</td>
<td>Formal employment + [Agriculture and animal keeping] + driving</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>5.</td>
<td>Casual laboring</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td>77</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Adopted from Msangi, (2011).

With an exception of casual labouring which constituted 4 percent; the other three (petty trading, self-employment and formal employment) were undertaken in combination with agriculture and animal keeping. Therefore, most economic activities were underpinned by the land asset which makes it an important asset supporting the livelihood of the vast majority of occupants.

Sensitization of the Residents During Project Conception

Prior to start of the “20,000 PLOTS PROJECT”, Wazo was declared a planning area. This was an important legal requirement. It was followed by what was intended to be perceived as “involvement and sensitization” of both property owners and local leaders. It is referred to as “intended to be perceived as participatory” because the residents were merely informed of the project rather than being involved from its crafting. As explained by the then project secretary, selection of Wazo as a project site was contrary to the legal provisions requiring for participation of the affected residents. Even the Town and Country Planning Ordinance, CAP 378, (URT, 1956) which was applicable at the time, required in Section 24(1) (a) and (b) that land occupiers be served with a six-month notice informing them of the intention of preparing a detailed scheme in their area; and also allowing them an opportunity to prepare their own scheme and submit it to the Authority (within the six months’ notice duration). To the contrary, project planning was exclusively done by the Ministry of Lands, Housing and Human Settlements Development in July 2002 without any regard to the legal provisions which would have given the land occupiers an opportunity to be involved. Instead, the Ministry of Lands, Housing and Human Settlements Development prepared the plan; which was later endorsed by the Dar es Salaam Regional Authority and Municipal Authorities.

Explaining why property owners were not involved during the initial project stages as provided for by the law, the then project secretary noted that they wanted the project to start without wasting a lot of time or being derailed.

“…The settlers, Ward and Mtaa leaders were deliberately not involved due to the fear that they would have resisted and thus derailed smooth start and implementation of the project…”.

Contrary to statutory requirements, what was communicated to the affected people was a decision already made by the Ministry. Residents had no opportunity to influence the decision. As table 2 shows, the majority of the residents (84%) became aware of the Minister’s decision to acquire their land and implement the project in a public meeting held in the area. 12% got informed through announcements made in the radio and by hearsay. The rest did not know anything at all.

Table 2: Residents’ awareness about the project

<table>
<thead>
<tr>
<th>S/N</th>
<th>Nr</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>64</td>
<td>84</td>
</tr>
<tr>
<td>2.</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>3.</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>4.</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>77</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Adopted from Msangi, 2011
As noted by Nour (2011), participation refers to a process and not a product, not simply the share of benefits that participants receive, but the role they play. Arnstein (1969) further defined citizen participation as an empowerment process seeking to re-distribute powers to enable the powerless and those excluded from the political and economic processes to have a stake in determining how information is shared, goals and policies are set, resources are allocated, programs are operated, and benefits like contracts and patronage are parcelled out i.e. means by which they can induce significant social reform which will enable them to share in the benefits of the affluent society. Extending further the definition of participation, Kadurenge et al. (2016) further defined community participation as a process by which citizens and other interested parties take part in the control of development initiatives and the decisions and resources that influence those initiatives. This can be achieved through community involvement in identification of problems, design and application of solutions, monitoring of results, or evaluation of performance as well as by providing resources. Thus, participation can be construed as an empowerment process seeking to re-distribute powers, enabling the have-nots to not only enjoy the benefits, but also participate in determining how information is shared, goals and policies are set and programmes operated. It is about enabling the communities to have control of development initiatives and the decisions and resources that influence those initiatives.

Deducing from the above, residents’ involvement noticed in Wazo did not provide any chance for the residents to participate in either decision-making or identification of the problem calling for intervention through the 20,000 PLOTS PROJECT. Further, no elements of resource sharing, control of the proposed development intervention or giving the communities any powers to change or influence the decision already made i.e. they were not given any opportunity to make their views heard. They were only given information that their area has been earmarked for the 20,000 PLOTS PROJECT and that their land will be acquired to pave way for the project. This was even further confirmed by statements made by the local leaders that despite being the representatives of the people and a link between the people and their LGA, they had no knowledge of the decision.

Taking land without involving the land occupiers or even making them aware of the matter including the cons and pros is not only against the legal requirements which calls for participation, but is also against Article 21 (2) of the National Constitution of 1977 revised in 1998 states that:

“…every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation….”, (URT, 1977:25).

Comparing the process followed during land acquisition vis-à-vis the legal requirements for participation of property owners, it is evident that the legal imperatives (as provided for in CAP 378 (URT, 1956) (repealed) as well as Urban Planning Act of 2007 (URT, 2007) (which repealed CAP 378) are not in accord. Property owners were not involved right from the decision to declare Wazo as a planning area. Section 8 (1 and 3a; and 4 of the Act confer powers to the Minister for Land Use Planning to declare any area of the land to be a planning area through an order published in the Gazette. However, this has to be preceded by a favourable public hearing in the area. The law also requires that such an order together with a map of the area be posted at public places within the area.

Although land acquisition was preceded by declaration of Wazo as a planning area (done under CAP 378 of 1956 through the Government Notice Number 231 of 13/08/1993; (and is still enforceable under the Land Act of 1999 and Urban Planning Act of 2007 to date); the fundamental question of having property owners participating in the decision-making on matters that affects their wellbeing was denied. Toker (2007), Hamdi (1991) and Kadurenge et al. (2016) note that participation is a process of involving and empowering communities to have opportunity to participate and have influence on matters that directly concern their lives, properties and development.

This apart, the compensation process also negates the ideal legal prerogatives. The residents were presented with only one mode of compensation which was monetary form without consideration for the alternatives available under the law (i.e. alternative plot of a comparable quality and size; an alternative building(s) of comparable quality; plants and seedlings or regular supply of grains and other basic foods). Giving money to all assumes that they all needed money. It is argued that in practice a one size fits all model does not exist in reality. Allowing the people to enjoy varied compensation options could have been one of the avenues for soliciting their support and participation, thus fostering project ownership. This could have enticed them to support the project or even volunteering for its success. Additionally, not being aware of existing legal provisions should not be taken as a blanket that people are completely unaware of what they deserve.

The lack of adherence to regulatory process constituted a source of contention between land occupiers and the government. It created a perception of an unfriendly government. Failure to uphold principles of good land governance sets a bad precedent for future attempts to properly guide urban expansion in peri urban areas.

**Valuation Process**

Valuation of properties was done in the presence of local leaders whereby property owners were required to
identify their property boundaries and assets; participate in carrying crop counts, signing the valuation forms after accepting the counting results; and finally receive compensation money within the specified time. Explaining how the valuation process was undertaken on the field, majority of the interviewed residents (97 per cent) said that the valuation process was technical and hastily done that they could neither comprehend nor follow it up. The level of resident involvement was limited to physical presence and filling in claims forms Nos. 69 and 70 (for the value they expected to be paid). These forms, however, were not used to verify compensation.

The excerpt below provides more insights from a residents’ perception on how they perceived the valuation exercise:

“...The valuation exercise was rushed and surrounded by secrecy; we did not know the basis through which the amount of compensation was determined. They were moving around with a certain instrument (later established to be a hand-held GPS); and there was no room to ask questions or get clarifications on the valuation exercise they were doing. They were simply counting and recording crops (that will be compensated...).”

It is undeniable that the valuation process reduced the residents to mere spectators rather than participants. Non-participation in the process, and technical terminologies used defeated the essence of participation. It also cast doubts on the realization of principles of good governance, legitimacy, voice, fairness and the rule of law. As such, continued breach of these noble aspects of good governance may cause the government to lose legitimacy to its people when it comes to matters of land development.

**Compensation Schedule and Verification of the Value of Land**

Sections 8 and 9(1) of the Land (Compensation Claims) Regulation of 2001 provides that once valuation is completed, the Commissioner will prepare compensation schedules? and claims for compensation and submit the same to the Land Compensation Fund for verification i.e. to authorise or deny payment of compensation, (URT, 2001b).

The value obtained from the valuation exercise is filled in the compensation schedule form. Other information contained in the Compensation Schedule includes:

For crops:
- The value arrived at by examining the type of crops; quantity of crops, and maturity level of the crops and amount of compensation per respective crops;

For the land:
- It contains information on the value of the land itself at market price

For the house:
- It contains information on the value of the house derived by valuing the size of the house arrived at by examining the type of construction material (permanent or temporary); type and materials used for the windows and doors including reinforcement

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Figure 3: A filled sample of compensation schedule form
such as iron bars (if any); type of floor finishing; number of rooms; type of toilet and the quality of finishing; the amount of compensation to be paid per square metre; overall amount to be paid after multiplying the total square metres with the unit price per square metre. It also takes into account the depreciation value (which is deducted from the total sum).

The compensation schedule form is an important document that summarises detail of the valuation undertaken for both crops and buildings. General information contained in the form include the valuation number of the property owner; name of the property owner; location where the property is situated. (See Figure 3).

Despite the importance of this document, it was not issued to property owners whose affected properties were valued for the purpose of compensation. From the household interviews, only 4 respondents (5 percent) knew about this form and in fact had their copies. The rest were not aware of what this form was and did not even know what purpose it served. One of the project official interviewed by the author on non-issuance of this form to property owners, had this to say:

“...Compensation Schedule is only given to an individual upon request, and not otherwise. Whoever requested the forms from the Chief Government Valuer was given a copy. I remember there was a time when the residents wanted these forms (Compensation Schedule) to be distributed by their local leaders, but we told them that distributing them was not an official procedure. What an individual is paid is confidential upon the payer and payee; it is not public information unless the payee decides so. Therefore, to the best of my knowledge, whoever had complaints such as underpayment was issued with a copy of the Compensation Schedule; asked to study it properly before submitting his/her complaints illustrating issues or areas that were contentious. For example, if one had 8 coconut trees but only 6 were recorded; the Compensation Schedule was instrumental for one to lodge complaints. Thereafter, valuers were sent to verify...”

Whilst the procedure appears fair and logical, the fact remains that the residents were not adequately informed and educated on among others, the importance of this important form (compensation schedule) and the necessity for them to demand for their copies. Non-issuance of this important document to the affected households leaves them with little room to authenticate or challenge the basis for final payment received. It also put them in a disadvantaged position before the chief government valuer if they want to appeal against the valuation sum.

The compensation schedule form can serve two purposes. One is the verification by the affected property owner at the time of valuation (prior to signing of the document); thus, giving them the opportunity to check the accuracy of the information. The second purpose is by the “Fund” (upon being submitted by the Chief Government Valuer) to allow or disallow payment of compensation (upon verification). While the opportunity for participation could be exercised in the first stage, the second stage allows for benefits of participation in case one is aggrieved by the valuation exercise and lodges an appeal against under-valuation (underpayment). However, participation of affected property owners in Wazo was very limited; mostly reduced to the level of mere spectators.

The technical nature of the valuation process and the fact that it was hastily done, rendered it incomprehensible among many property owners; who as a result, could not understand, ask questions of clarification or influence anything. Furthermore, non-issuance of a copy of the Compensation Schedule Forms to majority (95%) of the affected property owners; rendered void any possibility of appealing to the “Fund” in case of miscalculation or mis-reporting (underpayment) of the expected compensation sum.

If land occupiers were well informed and actively involved; they could have been fully aware of how their legal rights were handled, and hence owned the process and its outcomes. This would have avoided unnecessary complaints regarding underpayments which ensued the valuation exercise; a situation which the government is often locked into with respect to compensation issues. Therefore, non-issuance of the form was not only a denial of a transparent process in land administration in the country, but also contravention of natural justice.

CONCLUSIONS AND RECOMMENDATIONS

Non-Systematic Implementation of the Law

This paper has identified a range of institutional constraints to resolving land disputes in the rapidly growing and transforming peri urban areas of Tanzania. In Tanzania, like many other African countries, compulsory land acquisition is still the de-jure approach to access land to facilitate development in the ‘public interest’. In the case of Wazo Ward, the legal shortcomings aside, non-substantive involvement of sitting land occupiers as demanded by the law raised discontent among the residents.

While the law may have been formulated with good intentions, it has not been systematically enforced. This raise concerns in regard to the soundness of the entire legal system and the implementation ‘machinery’. The non-systematic enforcement in the case study inhibited
opportunity to test the weaknesses or strengths of the law itself. More importantly it was observed to reduce peoples' trust in the legal system and the formal bureaucracy.

It is recommended that the law be allowed to take its full swing so as to be able to identify weaknesses that may direct type and extent of improvements to be made rather than evoking actions which unnecessarily brands the law and the implementation machinery as ineffective. Proper identification of weaknesses will allow for initiation of proper remedial actions.

Residents Participation and the Potential to Explore Options

As in many other countries, compulsory acquisition laws in Tanzania require the involvement of affected residents. However, the contrary is often the case. For example, in Wazo it was realized that the residents, whose prime asset, the land, was acquired, were only informed of the project rather than being involved. Awareness creation among the residents on their rights and obligations at the early stages of project implementation was seldom done. Denying households, the opportunity to know and even exercise their legal rights do not only undermine basic human rights, but also limit their ability to question the process or bring any changes to the modus operandi of the implementation process.

The case of Wazo has demonstrated weak residents’ participation and hence non-ownership of the project. It thus created a feeling that the project belongs to the government and not for the people. This apart, by not involving the people, it means that their democratic right of participation and access to information and properties and protection of the same enshrined in the constitution was not only undermined, but also denied. Their ability to pursue justice against unfair compensation was also muted. Regardless of the potential motivation for development projects, under these conditions people can’t easily organize themselves to support a project by the government to achieve fair outcomes. Conversely, they can easily organize against a plan or project or a government decision.

Early awareness raising and active participation of affected property owners could have offered opportunities for joint exploration of alternative options to lessened the impact of the project implementation or restore their livelihoods.

It is recommended that all those charged with responsibilities either preparing a plan or implementing a project to effectively adhere to legal provisions, principles of good land governance and promotion of coherent land development. This will provide an option to resolve land disputes in the rapidly growing and transforming peri urban areas.

REFERENCES


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ENDNOTES

1 A Ward is an administrative unit below a Municipality and it is made of several Mtaa areas. Mtaa (street) is a small area or geographical division of a ward, and it is the smallest unit within an urban authority

2 The compensation schedules are signed by six people before payment is affected. These are the valuer who took the valuation on the ground, an appointed land officer, WEO or MEO of the respective locality where valuation was undertaken, the Chief Government Valuer, District Administrative Secretary (on behalf of the District Commissioner) and Regional Administrative Secretary (RAS) on behalf of the Regional Commissioner

3 The Land Compensation Fund established by Sections 173 of the Land Act 1999. Objects and purposes of the Fund is to provide compensation to any person who, as a result of the implementation of any of the provisions of the Land Act by the Government or any public or local authority, suffers any loss or deprivation or diminution of any rights or interests in land or any injurious affection in respect of any occupation of land.

4 Interview with the then project secretary.

5 CAP 378 was the principal legislation governing town planning in the country when the 20,000 plots project was being implemented. It defined a planning area as an area declared by the responsible Minister to be a planning area with defined boundaries for implementation of a general planning scheme. The same definition has been adopted by the Urban Planning Act of 2007 which repealed CAP 378.

6 Interview with one of the sitting land occupiers in Wazo who was present and involved during the valuation exercise

7 Compensation schedule is a certificate that summarises details of the valuation undertaken for one’s properties and the computations therein for the purpose of determining the amount of compensation to be paid. General information contained in the form include the valuation number of the property owner; name of the property owner; and location where the property is situated

8 Interview with the then project secretary