

LAND LEGAL REGIME IN TANZANIA ZANZIBAR: ACCESS RIGHTS AND LAND OWNERSHIP TO THE PROTECTION OF INDIGENOUS PEOPLE

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ABSTRACT

This article examines the extent to which the legal and management framework governing the land resource in Tanzania Zanzibar provides the access rights and land ownership to the protection of indigenous peoples. The study focuses on the legal and management regime administering land resource and their significant impacts to the indigenous people of Tanzania Zanzibar. It outlines the historical background which is very extremely important in understanding the legal framework and development of land resource in the country towards the level of unanimous measures undertaken by the government of Tanzania Zanzibar in safeguarding the land ownership, access rights and protection of indigenous peoples.

The study analysis explores on the provisions of the Constitution of Zanzibar, 1984ⁱ and enacted laws including the Land Tenure Actⁱⁱ, The Land Adjudication Actⁱⁱⁱ, The Registered Land Act^{iv}, The Land Transfer Act^v and other ancillary related laws. These laws were passed by the House of Representatives of Zanzibar for the objectives of governing and administering land resource and other related matters in Tanzania Zanzibar. Indigenous people and other key stakeholders had cried a lot, on alleging that the peoples' access rights and ownership of land are jeopardized to the extent of threatening their legal property rights and increasingly land tenure insecurity^{vi}.

In the perspective of protection of indigenous peoples' rights on their ownership of land resource, the article's focus is on the legal framework governing the protection indigenous peoples' rights to the land ownership. The main focus is on Tanzania Zanzibar. Additionally, in the level of discussion, the article brings about other regional and international best

experiences of the legal framework on the access rights, land ownership and protection of indigenous people.

Keywords: Land law, Natural Resources, Land Tenure System, Land Law Review, Access Rights and Land Ownership to the Protection of the Indigenous People, Tanzania Zanzibar.

INTRODUCTION

The term land is denoted as an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it^{vii}. On the other spectrum, the term land is defined as those parts of the surface of the earth that are capable in law of being owned and are within the court's jurisdiction. In this context, the ownership of land includes the airspace above it and the subsoil below^{viii}. Moreover, the term land is defined under the Act^{ix} to include land covered by water, all things growing on land, and buildings and other things permanently affixed to land, except trees when specifically classified and owned separately. Generally, as it is indicated from the specified definitions, the word land is a broader terminology and has complex meaning. However, in a broader sense, the term land connotes as a part of earth's surface that includes all things growing on land, water, buildings and other things permanently affixed to land in one way or another, and it can be legally owned by individual(s), company or any other legal entity.

In addition to that, the other scholars went further to define the term land in a legal perspective to include both physical assets and the rights in which the owners or others may enjoy in or over it^x. For instance, the right to walk across a neighbour's premise (easement) and those rights to the restrictive covenants. Therefore, the word 'land' should not be merely used in the restrictive sense of soil or surface of the earth but it also connotes for all nature, living and lifeless. In other words, the term land consists of all natural resources including air, water and land itself.

Under this context it is construed that, land is an essential natural asset for human survival due to the fact that land is the source of all material wealth to human. The richness and economic prosperity of any country or human is always linked to the natural resources which are originated and embraced from finite land resource. It is further elucidated that land resource is

a primary foundation of other rights accessibility^{xi}. For instance, the right to food, right to housing and right to water are only comprehended because of the essence of land resource in the community. Therefore, land is a vital factor of production which facilitates an inclusive and sustainable development of not only people of one country or community but also people of all other countries in the world^{xii}. It is envisaged that the consumption and production of goods, service and other patterns emanated from the use of natural resources should be enjoyed in order to speed up development of all individuals in the universe.

On the other spectrum, although it is understood that there is no unanimous and conclusive definition of the term indigenous people among the global scholars but the attributes constituted in the terms indigenous people used to connote various meanings^{xiii}. The United Nations (UN) explains the term indigenous people to mean aboriginal peoples who lived on their lands before the coming of settlers; they inhabited a country or geographical region at the time when people of different cultures of ethnic origins arrived^{xiv}. They are most characterized by self - identification as indigenous people, historical continuity with pre- colonial societies, strong link to the territories and surrounding natural resources, distinct language and other cultural values, and form non dominant groups of society.

The African Commission explains four key characteristics of people or communities identified as indigenous people^{xv}. One, indigenous people's cultures differ from the dominant society and their ways of life are under threat to some extent. Two, their ways of life depend on access and rights to their traditional land and natural resources^{xvi}. Three, they suffer from discrimination as they are being regarded as less developed and less advanced in the eyes of other economic dominant classes in the community. Four, they often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalisation, both politically and socially. Five, they are subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority^{xvii}.

The notion of land tenure security can be understood as the degree of confidence for individuals in maintaining access to use and control over their land^{xviii}. The emphasis of land tenure security is based on full enjoyment of human rights preventing arbitrarily deprivation of access to use and control land with compliance of national and international standards, recognition of indigenous peoples' land resource as a genuine asset in the form customary rights or any other acceptable formalities, and establishing appropriate dispute resolution mechanisms and

rewards in case of violation of tenure rights^{xix}. There are multiples rights of indigenous peoples to their land including right to enjoy distinctive spiritual relations to their ancestral lands, availability of means for their livelihoods and cultural survival.

To sum up the above explanation, the term indigenous people means people who occupied a country or a geographical region in the country during pre- colonialism period or post colonialism and who became dominant later through occupation, settlement, conquest or any other acceptable means. Most of times, indigenous people share and retained the same cultures, economic and political system, use their traditional land and natural resources endowed in the geographical areas and their ways of life are different from the dominant societies in which they live. And for the purpose of this article, the researcher uses the terms security or protection of indigenous people to describe the safety of indigenous communities and people of Tanzania Zanzibar.

LAND RESOURCE ADMINISTRATION IN TANZANIA ZANZIBAR

An Overview

As indicated that land is the basic resource for human survival and growth. It is evidenced in many aspects on the significance of land in human affairs. It is largely understood that all human activities are taking place on land^{xx}. These activities among other things include dependence upon land physical environment (habitation), providing means of survival and productions, residential, agriculture, exploration, development and production of oil and gas resources, mining and many other social and cultural activities.

All natural land in Zanzibar is vested to the President of Zanzibar and Chairman of the Revolutionary Council of Zanzibar. In other spectrum it means that, the President is the chief administrator who is legally empowered by law to govern and administer the land on behalf and for the benefit of the people of Zanzibar^{xxi}. The Zanzibar Revolution of 1964 had noteworthy impacts on land tenure system when the Presidential Decree, 1964^{xxii} vested all lands in the hands of the Revolutionary Government of Zanzibar.

However, the Minister of the Revolutionary Government of Zanzibar responsible for Land affairs is delegated powers to undertake administration of public lands on behalf of the President^{xxiii}. The Minister responsible for land affairs may make dispositions of public land

and perform all powers and duties in accordance to Land Tenure Act, 1992 and on behalf of the President of Zanzibar and Chairman of the Revolutionary Council. Moreover, in the processes of land administration, the Minister responsible for land affairs is vested powers to distribute public lands which are under the control of the Government by grants of rights of occupancy as well as to terminate those rights of occupancy whenever appropriate^{xxiv}, and lease public land which is under the control of the Government^{xxv}.

On the other spectrum, the Miscellaneous Amendment Act, 2018^{xxvi} is further vested powers to the President of Zanzibar and Chairman of the Revolutionary Council to revoke the decision of the Minister responsible for land affairs relating to the disposition of public land^{xxvii}. This amendment Act has the objectives of limiting the excessive powers of the Minister in any arising circumstance of ultra vires action by the Minister in the disposition and administration of the public land in particular. Henceforth the decision of the President shall be final and shall not be questioned by any court.

The establishment of Commission for Lands (COLA)^{xxviii} signifies the level of achievement and best endeavour in the administration land in Tanzania Zanzibar. This commission through its departments is responsible with implementation of the land policy, advise the government on a comprehensive program for the land registration in Zanzibar, to monitor the registration of all lands in Zanzibar, develop and maintain an effective land information management system, specifies standards and norms of land administration and regulate all survey and mapping of Zanzibar, review the existing land laws and where appropriate proposes amendment, regulate national land use throughout the country and undertake general education programs in land use and land administration for creating public awareness on land and development^{xxix}. Although the President of the Revolutionary Government of Zanzibar was legally authorized to establish any additional departments as he deems appropriate for the Commission of Land^{xxx} but currently the Commission discharges its function through its departments namely Department of Lands, Department of Surveys and Mapping, Department of Urban and Rural Planning and Department of Registrar of Land^{xxxi}.

Finally, with regard to the pointed functions of the Commission for Lands, the public draws higher expectation for best services delivery from the Commission for Lands on effective and timely implementation of its activities for the sake of avoiding further land conflicts specifically to the protection of indigenous people in Tanzania Zanzibar.

HISTORICAL DEVELOPMENT OF ZANZIBAR LAND LAWS

History indicates that the development of Zanzibar land laws can be easily understood by referring relations of peoples' groups resided in Zanzibar in the particular period of eras. The development of land laws in Zanzibar can be categorized into three major epochs in line with established changes of economic and political paths which took place in Zanzibar^{xxxii}. During the first phase (pre-colonialism), land tenure was centred on traditional system (local community) whereby every community had its own tradition on land acquisitions and ownership. For instance, in coral rag areas, use of land was regulated by village or clan leaders. It is further identified that, the local traditions directed particular societies on the management of activities such as livestock keeping, cultivation, crop rotation, mangroves harvesting, collection of firewood and stones for lime making and house constructions.

Additionally, during the pre-colonial period land was administered by local communities of Tanzania Zanzibar. The communities had their own set of rules governing and administering land resource^{xxxiii}. This circumstance was facilitated due to the fact that, land was a source of livelihood to mankind and it was an essential asset for production of goods. However, it is indicated that during communalism the land was not attached with value in the eyes of communal rules. Additionally, the land was not determined by its natural soil but for its accessibility and economic tree or plants thereon^{xxxiv}. That is to say during pre-colonial epoch and even before the introduction of money economy in Zanzibar the land had no exchange value and was not treated as commodity.

The second phase in the history of development of Zanzibar land laws coincides with coming of colonialism (during colonial period) with subsequent establishment of colonial states in Zanzibar and the entire of East African region. Zanzibar like as many other countries in Africa and elsewhere in the world passed through foreign administration during 1503 to 1964^{xxxv}. The Portuguese ruled Zanzibar from 1503 to 1697 while Oman Sultanate ruled Zanzibar from 1698 to 1964 within which the British Protectorate came in Zanzibar from 1890 to 1963^{xxxvi}. It was during the protectorate period; the principles of land tenure statutorily were established and brought about changes in traditional land tenure systems. For instance, the establishment of plantation tenure system which initiated the allocation of potential agricultural land to small clusters of people, who hold it under freehold titles in the exclusion of others. Furthermore, during this period the laws governing the holding and alienation of land, succession and

hypothecation were not uniform. The laws are distinguished according to whether transactional parties were Africans, Arabs or Indians, Muslim, Hindu or Christian^{xxxvii}.

The British colonial government enacted various laws in Zanzibar to ensure the stability of land tenure system for their own benefits and interests. These laws include the following:

The Land Acquisition Decree (1909)^{xxxviii}; This Decree was established by the British colonials to provide compulsory acquisition of land for the certain public purposes. It focused to acquire land for providing services to the public. The Decree vested powers to the British Resident to publish under the Gazette that certain land is likely to be needed for public purpose and the District Commissioner was thereafter obliged to cause such public notice to the related locality at convenient time. The public services included the construction of infrastructures, public welfares, and other projects which most benefited the community.

The Land Survey Decree (1912); This Decree was introduced for the objective of governing and regulating land survey matters in the country. The land surveying process was necessary to the extent of simplifying construction of roads, disseminating electricity services and alignment of water infrastructures in the country.

The Registration of Documents Decree (1919)^{xxxix}; This Decree was enacted to govern and administer the registration of documents in the colony. The provisions of Decree stipulated orders which associated the registration of documents. For instance, the Decree provided meaning of immovable property to include land, quarries, buildings, right of away, lights, fisheries and any other benefit to arise out from land, also things attached to the earth, but not growing crops or grass^{xl}.

The Public Land Decree (1921)^{xli}; This Decree stipulated among others that, all public land was subject to right of disposal by the Sultan or the Government of Zanzibar. The British colonial government was, therefore, empowered to grant or refuse permission to occupy public land to any person other than the indigenous people^{xlii}. In other words, only the native people had the right to occupy public land without consulting the Sultan or the Zanzibar Government during that time.

The Land Acquisition (Assessment of Compensation) Decree (1949)^{xliii}; This Decree was established to govern and administer the procedures of compensation for the land which would be affected in the course of mapping exercise and provide an reasonable compensation in accordance to the market values.

The Town and Country Planning Decree (1955)^{xliv}; This Decree had vested powers to the British Resident to declare any area within the protectorate to be a planning area by the order in the Gazette and appoint planning authority to undertake planning scheme in the country. Furthermore, it is stated that the Township boundary of Zanzibar was mapped and the sheets were drawn to cover the area by using air survey method in 1956^{xliv}. In this context, the planning areas were established under the subsidiary legislation of the Decree including the planning area (Zanzibar) establishment Order^{xlvi}, the planning area (Wete) establishment Order^{xlvi}, the planning area (Chake Chake) establishment Order^{xlviii}, and planning area (Mkoani) establishment Order^{xlix}.

The Land Alienation Decree (1939)ⁱ; This Decree established Land Transfer Board in order regulate and control the transfer of land and those attached properties therein from one person to another. The enactment of this Decree was agitated by the increasing activities of land transfer from mostly Africans and Arabs to Indians who in one way or another one failed to pay back their mortgages to Indiansⁱⁱ. Among other things, this Decree had the objective of controlling the trend of transferring land to one class of people and preventing huge portion of land to be under the control of single class of peopleⁱⁱⁱ. Therefore, the British colonial government set up to two land alienation Boards, one in Unguja and another for Pemba in Zanzibar under the Chairmanship of the District of Commissioners. Moreover, the Decree prohibited any parcel of land to be leased, sold, purchased or mortgaged without the consent of the land Alienation Board.

Moreover, during the colonial epoch many other legislations were introduced relating to the administration and governance of land matters in Zanzibar including the Transfer of Property Decree (1917)^{liii}, the Towns Decree (1929)^{liv}, Ground Rent Decree^{lv} (1947) and Land Survey Decree (1911)^{lvi}.

The third phase in the history of development of Zanzibar land laws started from 1964 (after the Zanzibar Revolution of 1964 to date). Historically Zanzibar gained her independence from Britain on 10th December, 1963 followed the Minister Westminster model government^{lvii}. The Executive powers were vested to Sultan as the head of state and a Prime Minister appointed by the Sultan on the advice of the British Resident. However, on 12th January, 1964 the post-independent government was overthrown by an internal revolution headed by Afro-Shirazi Party (ASP) through an outstanding leadership of the late Sheikh Abeid Amani Karume, and from that moment to date the Government of Zanzibar was proclaimed to be Revolutionary

Government of Zanzibar under democratic system^{lviii}. The late Sheikh Abeid Amani Karume was the first President of the Revolutionary Government of Zanzibar until his assassination on 7th April, 1972. Furthermore, Zanzibar united with Tanganyika into one sovereign State known as the United Republic of Tanzania on 26th April, 1964. The late Mwalimu Julius Kambarage Nyerere and Sheikh Abeid Amani Karume later on became the first President and the first Vice President of the United Republic of Tanzania respectively^{lix}.

The Zanzibar Revolution of 1964 resulted significant changes to the administration and management of land resource. The confiscation of immovable properties and other attached properties were the first move of the Revolutionary Government of Zanzibar for the purposes of benefiting and supporting people specifically the majority of indigenous people. From this period several Presidential Decrees concerning land matters were enacted including the following: -

The Confiscation of Immovable Properties Decree (1964)^{lx}. This Decree was established with the objectives of enabling the Revolutionary Government to acquire any property on the condition of national interests of the Republic. Under this context, it was very significant move by the newly Revolutionary Government of Zanzibar which intended to distribute the land resource to the landless indigenous people and to support the livelihood of their families.

Moreover, the Public Land Decree 1965^{lxi} was passed for the purposes of effecting all lands owned in the Islands of Zanzibar to be under the guardianship of the government. The enactment of this Decree amounts that, the Revolutionary Government was mandated to retain exclusive powers to acquire and distribute land to the people or institutions as deemed appropriate.

On 1966, the Revolutionary Government of Zanzibar passed the Land (Distribution) Decree (1966)^{lxii} to enable the government to merge all lands that acquired under the Confiscation of Immovable Property Decree, 1964 as well as to empower the President after consultation with the Revolutionary Government of Zanzibar to make distribution of land^{lxiii}. Additionally, the specific focus of this Decree was to address powers of the President on distributing land basing on the specific condition of agricultural purposes which evidenced on the instrument which set out the terms of the grant of the redistributed land. In the exercise of distribution of land to the indigenous people various terms and conditions were considered including the life tenure of the grantee and spouse and legal right of inheritance upon their deaths.

The land (Distribution) Decree, 1966 was later on amended under the Land Distribution (Amendment) Decree, 1969.^{lxiv} The amendment focused to extend further the distribution of land from agricultural to non-agricultural purposes, namely building purposes (residential and commercial purposes) specifically in the urban areas. In this exercise, a person to whom the land was distributed received a certificate of title signed by the Principal Secretary, Ministry of Works, Communication and Energy^{lxv}.

Generally, the Revolutionary Government of Zanzibar continued to undertake serious efforts on land reformation for the benefit of her people in the efforts and outstanding measures for fostering land inclusive growth and sustainable development. For instance, several land policies formulated and projects were undertaken including the policy for providing affordable housing to the majority of the population who were marginalized poor people and could not afford standard housing on their own during 1970s^{lxvi}, facilitating the department of lands and surveying in the Ministry responsible for land, formulating the Zanzibar Town Masters Plan 1978-1998 which intended among others to provide significant development of all town areas in Zanzibar^{lxvii}, formulating the Land Policy of 1982, establishing the Zanzibar Integrated Land and Environmental Management (ZILEM) which intended to help the Zanzibar Government to introduce comprehensive land management system in 1992 and establishing the Sustainable Management of Land and Environment (SMOLE) in 2003 under the auspice support and sponsorship from Finish International Development Agency (FINNIDA)^{lxviii}.

LAND TENURE SYSTEM

The Land Tenure Act, 1992 identifies two users of public land namely, the government or the public on one hand and private individuals land on the other hand, where a right of occupancy may exist. Unlike the land tenure system of other jurisdictions, the land tenure system applicable in Tanzania Zanzibar is detailed to be classified into the following four major classifications^{lxix}:-

The first category is public land. As pointed out that, all land in Zanzibar is reflected to be public land. This circumstance includes land utilized by private individuals and the land utilized by the public or is under the government control. In addition to that, the public land is further divided into three sub-groups namely land utilized by the public at large which includes beaches, natural forests, bushes, rivers, lakes and coral rag areas. The other sub-category is

known as land allocated to the public institutions for providing social services such as education and public health. The last sub-category of public land is land under the government control which is specifically earmarked for social, agricultural and economic developments^{lxx}.

The second category is the three-acre plots (agricultural land grant). The Zanzibaris received agricultural grants of three fifth (3/5) hectare of lands from the Revolutionary Government of Zanzibar under the Presidential Decree, 1969^{lxxi}. The management and utilization of three-acre plots were restricted only to agricultural activities^{lxxii} and the plots were forbidden to be sold, transferred^{lxxiii} or sub-divided under any circumstance^{lxxiv}.

The third category is referred as the Wakf Land. It is grounded on the Islamic principles of charity. The registered Wakf is administered by the relevant institutions which issues Wakf Deed to the respective beneficiaries. Normally, the Wakf Land is devoted by the benefactor to the beneficiaries and used for the entire duration of the Wakf specifically. The law governing Wakf permits the transfer of Wakf property but it should be observed that, the transfer process must observe the laid down procedures provided by the Wakf institutions and it must continue to serve the intended objectives^{lxxv}.

The fourth category is Communal Land. This category of land tenure system is administered by local communities mainly in rural areas. The land includes family land, land set out for special local meetings, for religious ceremonies, for cultural occasions such as cemetery or other agricultural and economic activities including fishing landing sites. It is apparent that majority of people depend upon this type of land tenure. Nevertheless, in the recent period the title to communal land was not accepted by the succeeding administrative rule to have equal forms of other land ownership. The communal land ownership is considered as an outranked form of land ownership in the country and there is no rationalization for this kind of attitude on the part of ruling class and majority perception^{lxxvi}. However, currently this type of land tenure system is becoming an item of the past due to an increasing of private land ownership^{lxxvii}.

THE CURRENT LEGISLATIVE FRAMEWORK GOVERNING LAND RESOURCE IN TANZANIA ZANZIBAR

An Overview

As indicated that Zanzibar is an integral part of the United Republic of Tanzania which consisted of semi-autonomy^{lxxviii}. Zanzibar administers her autonomous government with separate legislative body popularly known as the House of Representatives, Judiciary and the Government with her own President. With exception of the Union matters headed by the Union Government, other non-union matters are governed by the Revolutionary Government of Zanzibar including land matters. It is necessary to understand that, all laws enacted by the House of Representatives of Zanzibar are exclusively applicable in the jurisdiction of Tanzania Zanzibar. Therefore, the fact is that legal framework, enforcement procedures, management and institutions discussed in this paper are exclusively applicable within the jurisdiction of Zanzibar.

Due to the economic globalization which necessitated rapid technological advancement, trade liberalization, free flow of factors of production, trade and markets. Zanzibar also started to alter her economic policies in the mid-1980s by opening the doors of private investment sector^{lxxix}. The Revolutionary Government of Zanzibar endorsed the private and foreign investment to generate the economy of in Zanzibar. However, the challenge existed was that of land legislation which allowed confiscation of land. In the efforts of tackling the problem of confiscation of land which threatened the development of private and foreign investment, the Bill of Rights were entrenched under the Constitution of Zanzibar of 1984 to protect the private property from deprivation or dispossession movements^{lxxx}.

However, in the measures of enabling and developing the private and foreign investments the Revolutionary Government of Zanzibar had continued to resolve the problems of uncertainty of land ownership, insecure tenure and even boundaries disputes by enacting other existing land legislations and legislations of other related matters to land including the following legislations: -

The first legislation is known as the Land Adjudication Act, 1989^{lxxxii}. This Act provides for the adjudication and first registration of rights and interest in land and for matters connected therewith and incidental thereto. It also requires the recording officer to observe the rules of adjudication in the preparation of an adjudication record^{lxxxii}. However, it is unfortunate that

the project of land adjudication which commenced in early 1990s was later on stopped in the mid 1990's due to the political situation in Zanzibar^{lxxxiii}.

Secondly, the Registered Land Act of 1989^{lxxxiv}. This Act was enacted to provide for the registration of land and interest therein. It also set up a registry of all land titles, maps, parcels and boundaries in Zanzibar. However, the implementation of the provisions for this Act is under the Minister responsible for legal affairs of Zanzibar^{lxxxv}.

Thirdly, the Land Survey Act of 1990^{lxxxvi}. The Act provides for licensing and professional conduct of land surveyors and regulating land surveys and other related matters. The Act establishes the Surveyor's Board which administer among others, the process of granting licence to practice land surveying in Zanzibar^{lxxxvii}. Also, it keeps a register of all licensed surveyors in accordance with the provisions of this Act. Moreover, the Act repealed the Land Survey Decree, chapter 100 of the laws of Zanzibar^{lxxxviii}.

The fourth land law is identified as the Land Tenure Act, 1992^{lxxxix}. This Act was enacted to provide for land ownership, use and rights attached to land and other matters connected or incidental thereto. This is the principal land Act in Tanzania Zanzibar which provides basic legal principles and relations to the land matters in Zanzibar including occupied or unoccupied natural land^{xc}. With consideration to the genesis and significant impacts on land matters in Zanzibar, the researcher provides thoroughly analysis in this study relating the challenges and gaps of the land tenure Act in relations to the access rights and land ownership to the protection and security of indigenous people.

Moreover, the Land Transfer Act, 1994^{xcii}. The Act provides for the regulations of the permanent transfer of land and the leasing of land. The Act establishes the Land Transfer Board in Zanzibar which among others deals with consideration and review of the applications for the transfer or leases of land that have been submitted for consideration^{xcii}. Moreover, the Act provides the restriction of land transfer that no permanent transfer of land or long-term lease has to take place until the transaction is reviewed and approved by the Land Transfer Board.^{xciii}

The sixth land law is the Land Tribunal Act, 1994^{xciv}. This Act provides for the establishment of Land Tribunals to hear land disputes and matters connected therewith or incidental thereto. The Act establishes land tribunal which has the jurisdiction over the proceedings instituted whereby the parties have conflicting claims to the land over right of occupancy or possession, registration of land, the use, development and capacity of land, land valuation and issues

involving compensation for land, removal from possession or eviction from land, demarcation of land connected to activities related to the subdivision of parcels and any matter related to the demarcation or surveying and many other matters involving land^{xcv}.

The seventh law is the Condominium Act, 2010^{xcvi}. This Act was enacted to govern and administer properties registration. It set up the system of separate ownership of individual units in multiple-unit buildings, it may be vertical or horizontal buildings, the individual units of which are designed for separate ownership and the remainder of which is designated for common ownership solely by the owner of those units. The Act also established Condominium Board which among other functions, it maintains and keep lists of register of condominiums, condominium plans, proprietors, developers, unit owners and tenants, to monitor the conduct and activities of condominium owners, developer and condominium plan and to settle any dispute related to the condominium matters in civil nature before such disputes referred to the court of law^{xcvii}.

Furthermore, the Commission for Lands Act, 2015^{xcviii} provides for the establishment of the Commission for Lands and Matters connected therewith and incidental thereto^{xcix}. The Commission for Lands is established to discharge multiple functions including to recommend as well as to advise the implementation of land policy, to advise the government on a comprehensive program for land legislations in Zanzibar, dispute settlement, to conduct research matters related to land and to regulate national land use planning through the country^c.

Other established legislations that govern matters connected to land resource in Zanzibar are Investment Protection Act, 1986^{ci} and the Commission for Lands and Environment Act, 1989^{cii}.

INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS INVOLVING ACCESS RIGHTS AND LAND OWNERSHIP TO THE PROTECTION OF INDIGENOUS PEOPLE

Under general perspective, the United Nations, regional groupings and the world community recognize that indigenous people's rights all over the universe are required to be addressed to the maximum level. It is evidently that despite of the efforts undertaken to hold national and international forums. The indigenous people in Africa and elsewhere in the world become inferior and detrimental group of people who most of the time are deprived their civil,

economic, economic and human rights. For instance, many difficulties are alleged to face indigenous populations including denial of access rights and land ownership from informal settlements, lack of equitable access to land, lack of recognition of land tenure rights, discriminations, political marginalization, discriminatory laws, lack of access to education, suspension of culture and identities and threatening of their integrity^{ciii}.

As indicated above, indigenous people are faced with many obstacles in their ways of life. However, this study intends and is confined to focus an overview of international legal instruments towards the access rights and land ownership to the protection of indigenous people over land resource matters.

With regard to International and regional legal instruments to land issues, it is acknowledged that several international legal instruments link land matters in relation to various human rights^{civ}. These rights are categorized into a number of civil, cultural, economic, political, self-determination, environmental decision-making, and protection of social rights for indigenous people. The international and regional covenants and treaties play a significant role in addressing a platform for comprehensive variety of land issues with respect to security of indigenous people throughout the world.

The rights of indigenous people over their land tenure security are described under various International Standard Instruments including but not limited, the Universal Declaration of Human Rights (1948), United Nations Declaration on the Rights of Indigenous People (2007), Declaration on Human Rights Defenders (1998) and the Guiding Principles on Business and Human Rights

Starting with the Universal Declaration of Human Rights (1948), it is proclaimed that every individual is entitled to all rights and freedoms outlined in the Universal Declaration of Human Rights (1948), without distinction of any kind such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.^{cv} This article of the Declaration provides rights of every individual including access rights of indigenous people to land ownership irrespective of any kind of distinction. In other words, it is proclaimed that indigenous people should be given the same rank consideration to the land tenure system like any other individual in the country and at international level.

Moreover, the United Nations Declaration on the Rights of Indigenous Peoples proclaims about the rights of indigenous people to have the rights to determine and develop priorities and

strategies for the development or use of their lands or territories and other resources^{cvi}. In the same context, the member states and other key stakeholders are obliged to consult and cooperate in good faith with the indigenous people about their own representative institutions for the purpose of obtaining their free prior and informed consent prior to the approval of any project affecting their land or territories and other resources, specifically in the connection with the development, utilization or exploitation of mineral, water or other resources^{cvi}.

In addition to that, the Indigenous and Tribal Peoples Convention (1989) provides about rights of ownership and possession of the indigenous peoples' land. The member states are directed to take vibrant measures in appropriate cases in safeguarding the access rights for people concerned in the using of lands which are not occupied by them but traditionally have access for their subsistence and traditional activities including cultivation of crops, cultural and spiritual activities^{cvi}. Moreover, the convention maintains the protection and safeguarding of the rights of peoples concerned to the natural resources pertaining to lands of indigenous people. Having set out this context, it is concluded that the Indigenous peoples have the access rights and land ownership to participate in the use, management as well as the conservation of the related natural resources^{cix}.

However, the States are required to make adequate consultation with indigenous peoples in the circumstance which the State retains the ownership of mineral or sub-surface resources or rights to other resources relating to lands. In this related context, the governments are obliged to establish procedures of consulting the indigenous people with a view of maintaining their interests before the inauguration of any program or project for the exploration, development or production of the particular resources for the benefits of the country including the majority indigenous people.

Also, the International Covenant on Economic, Social and Cultural Rights (1966)^{cx} proclaims about the rights of disposition of natural wealth and resource to every individual. The Covenant contends that every individual may freely dispose of his or her natural resources including lands notwithstanding prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international laws. In other words, the Covenant prohibits deprivation of indigenous peoples' means of subsistence without due process of law^{cx}.

The African Charter on Human and Peoples' Rights (1981)^{cxii} provides about unquestionable and inalienable right to self-determination to all people. The Charter further promulgates that all peoples shall have right to existence and they shall freely determine their political status and shall pursue their economic and social development in accordance to the freely chosen policy^{cxiii}. And like other indicated international covenants, the African Charter on Human and Peoples' Rights propagates about freely disposal of wealth and natural resources^{cxiv}. This right shall be exercised in the exclusive interest of the people including the participation and protection of indigenous people towards their land resources. The member states are restricted to deprive peoples' property without the lawful provisions of law. However, in case of exercising mandatory dispossession of peoples' properties there should be an adequate provision of compensation the infringed indigenous people^{cxv}.

Furthermore, there are many other clauses of international legal instruments which address the issues of land as an essential item of natural resources towards the ownership or possession of indigenous people. These instruments include among others, the International Convention on the Elimination of All Forms of Racial Discrimination (1965)^{cxvi}, the Convention on the Rights of Persons with Disabilities^{cxvii}, the International Covenant on Civil and Political Rights (1966)^{cxviii} and Framework Convention for the Protection of National Minorities^{cxix}.

REVIEW OF THE LEGISLATIVE FRAMEWORK GOVERNING LAND RESOURCE IN ZANZIBAR: A REFLECTION OF LAND TENURE ACT, 1992

The Land tenure Act, 1992 is a primary land law in Tanzania Zanzibar^{cxx}. It general provides for land ownership, use and rights attached to land and other matters connected or incidental thereto. The Act outlines the key legal framework of land including the principles of public land that, all-natural land within the islands of Zanzibar occupied or unoccupied is hereby declared to be public land and hence be deemed to have been so declared from March, 1964^{cxxi}. In addition to that, the Act declares all public land to be vested in and at the disposition of the President for the use and common benefit of the people of Tanzania Zanzibar. ^{cxxii}

On the other spectrum, the Act empowers the Minister responsible for land issues to administer the public land, make dispositions of public land and perform all powers and duties mentioned

and clearly contained in the Act upon the directions and on behalf of the President of the Zanzibar and Chairman of the Revolutionary Council^{cxxiii}. In this context, the Minister is vested powers to distribute public lands which are under the control of the Government by grants of rights of occupancy as well as to terminate those rights of occupancy whenever appropriate and in accordance to the provisions of the Act^{cxxiv}. A part from the powers for distribution of public lands and terminates the rights of occupancy granted to the Minister, also the Act vested powers of making lease for public land which are under the control of the Government^{cxxv}. Therefore, it is concluded that all land in Zanzibar is typically considered to be public land in Tanzania Zanzibar which includes both lands used by private individuals and the land used by the public or is under control of the Government^{cxxvi}.

However, the Written Laws (Miscellaneous Amendment) Act^{cxxvii} provides successful check and balance stability provisions which control the possibility for the Minister to act ultra-vires on land resource issues. The President is granted powers to revoke the decision of undertaken by the Minister on the disposition of public land based upon the evidence presented before him and such decision of the President shall be counted to be final and shall not be questioned by any court of law^{cxxviii}. The provisions of the Act provide finest and standard legal framework on the issues pertaining land resource. Among others, the Act endorses an indication of good governance principle of land resource in Tanzania Zanzibar where by the President is empowered to revoke any decision of the Minister on process of land disposition by controlling excessive powers which might be executed by the Minister responsible for land resource issues based on the ground of evidence presented before the President. The tendency of controlling the Minister from the exercise of power abuse helps to open an opportunity of protecting the access rights, land ownership and ultimate benefiting the indigenous people in Tanzania Zanzibar.

Moreover, the Land Tenure Act stipulates significant methods for right of occupancy to the indigenous people of Tanzania Zanzibar^{cxxix}. The defined ways for right of occupancy mentioned in the Act ensures the access rights and land ownership to the protection of the indigenous people. As indicated that land remains to be an asset of great importance to the African economies including Tanzania Zanzibar, as a source of income, food, employment and export earnings^{cxxx}. A part from such attributes, land plays a great social value for providing settlement, cultural symbolic and ritual associations including burial, scared woodlands and mythical life system of various people in the given geographical locations^{cxxxi}. The Act

continues to recognise right of occupancy of land for indigenous people in many methods including a grant from the Minister, inheritance of a lawful registered interest, purchase of a lawful registered interest, recognition of a rightful interest following an adjudication carried under the Land Adjudication Act and subsequent registration under the Registered Land Act or gift of a registered interests from a bona fide holder of a right of occupancy^{cxxxii}. In line to the above methods of right of occupancy, the Act also provides the conditions that assure the existence of right of occupancy including that the holder of the interest be a Zanzibari over the age of eighteen, and that the holder of a right of occupancy shall have an exclusive right to occupy and use the land^{cxxxiii}. The other conditions for right of occupancy are that the holder of right of occupancy shall have the right to make disposition of the land or other interest to any other Zanzibari, and that the interest be held in perpetuity without specific term and be inheritable under the appropriate provisions of the Zanzibar law of succession^{cxxxiv}. Basically, these provisions point out the legal framework for the conditions and methods of right of occupancy which are very essential bridge for accessing land resource and ownership to the protection of the indigenous people in Tanzania Zanzibar.

The Land Tenure Act also provides vested power of leases to the Minister responsible for land matters^{cxxxv}. The Act empowered the Minister to lease any public land which does not comprise a right of occupancy to any person including Zanzibaris or non Zanzibaris. And for the purpose of attracting the growth of investment in Tanzania Zanzibar, the duration of public land lease undergone amendment from the maximum period of forty-nine years^{cxxxvi} to the maximum term of ninety-nine years^{cxxxvii}. These amendments provide an indication of the individuals' participation and opportunity of economic investment activities for the benefits and protection of all people including indigenous people.

All in all, the Land Tenure Act articulates the rights of appeal from the decision of terminations^{cxxxviii}. It is enunciated that an appeal for the decision to terminate a lease of public land on grounds of a violation or breach of terms and conditions restricting the sale, assignment, sub-letting, sub-lease, or sub-division shall be made to the Land Tribunal. This legal provision helps to develop economic rights and substantiate the growth of fundamental freedom of individuals who believe to be infringed their rights in the process of leasing and all other related decisions executed by the Government through the decisions of the Minister responsible for land matters.

SHORTCOMINGS OF THE LAND TENURE ACT IN RELATIONS TO THE ACCESS RIGHTS AND LAND OWNERSHIP TO THE PROTECTION OF INDIGENOUS PEOPLE

An Overview

Generally, it is clearly understood that, the question of land in Tanzania Zanzibar and even other parts of the world at large has resulted turmoil and confusion situation among indigenous peoples' groups. This circumstance is further demonstrated in the prominence enclosed to land as the basic source of livelihood to mankind and increasing resistances of control and ownership of the land.

However, with regard to the confined specific scope of this study which focuses on the Zanzibar Land Legal Regime with reflection to the access rights and land ownership to the protection of indigenous people. The study discusses further the challenges and gaps in the related provisions of the Land Tenure Act. The Land Tenure Act No. 12 of 1992^{cxix} with other laws related to the land matters play a significant role in the process of governing and regulating land tenure system with in Tanzania Zanzibar. Most of the provisions of Land Tenure Act formulate the legal framework that set up smooth operations and adjudication of the land matters which also helps to simplify discharging of duties of the Government institutions for the benefits of the country and ensures access rights, land ownership and protection of indigenous people and all other key stakeholders. Though the Land Tenure Act is the primary Act which regulates and governs land matters in Tanzania Zanzibar, however the Act comprises the following shortcomings: -

Provisional Grant of Right of Occupancy

The provisional grant of right of occupancy hinders the access rights and land ownership to the protection of indigenous people^{cxl}. The Act states that each grant of right of occupancy shall be made provisionally for a three-year period during which time no legal rights shall exist. In addition to that, the Act prohibits the transfer of land where a provisional right of occupancy is in existence^{cxli}. The objective of granting right of occupancy to the people and specifically the indigenous people of Tanzania Zanzibar since the 1964 Zanzibar Revolution was to qualify and enable them to own land resource^{cxlii}. However, the legal provision of Land Tenure Act does not only diminish the aforementioned objective intended to be achieved by the

Revolutionary Government of Zanzibar but it also curtails the legal property rights as an obstacle to an access rights and land ownership to the protection of indigenous people in properly utilization of their granted lands for development goals. Therefore, from the perspective of the provisions of Land Tenure Act it can be interpreted as an emerging contradiction against the objectives of the 1964 Revolution of Tanzania Zanzibar. Hence the access rights and land ownership to indigenous people are intricated in the sense that the indigenous people are deprived their legal property rights in the granted provisionally right of occupancy.

Compensation upon Termination

The Land Tenure Act addresses the critical issue of compensation in a contradictory way to the aggrieved individuals who affected from the termination of right of occupancy. The circumstance is found under section 63(1) which vests discretionary powers to the Minister responsible for land matters to decide as to whether compensation for the fair market value of the land to be payable by the Government upon termination of the right of occupancy or not. The act of vesting discretionary powers to the Minister to decide whether to pay compensation to the aggrieved individuals or not upon the exercise of termination measures for their right of occupancy undertaken by the Government seems to implicate and hinder the access rights and land ownership to the protection of indigenous people due to the fact that, most of times the adequate compensation is denied to be provided to the aggrieved individuals including indigenous people^{cxliii}. In addition to that, the provision contradicts with the covenant of the African Charter on Human and Peoples' Rights that accentuates right of adequate compensation for the dispossessed people to the recovery of their property or their natural resources^{cxliv}. Also, the provision of the Act contradicts with the Constitution of Zanzibar, 1984 which articulates among others the protection of fundamental rights and individual freedom which specifically prohibit the act of deprivation of peoples' property rights or interest in the properties except from lawful multiples conditions including provision of fair and adequate compensation^{cxlv}.

Moreover, the Section 63(2) enunciates further that, the compensation shall be provided for unexhausted improvements on the land with the value determined at the time of the order of termination^{cxlvi}. Where a right of occupancy of occupancy is granted from the Minister, hence an alternative land would be given to the aggrieved individual. However, it is noted that the Minister responsible for land is obliged to pay adequate compensation on both unexhausted

improvements undertaken on land as well as the value of land in order to recover the rights of deprived individuals from their land. In taking these measures, there shall be a guarantee of access to rights and land ownership to the protection of the indigenous people. As it is declared in the case of *Attorney General v. Lohay Aknonaay and Another*^{cxlvii} that the fair compensation is to be paid on exhausted improvements and value of land. The ruling of the case is generated from the principle that it is unlawful for any individual to be deprived of his property for the purpose of nationalization or any other purposes without the authority of law which makes the provision for fair and adequate compensation^{cxlviii}.

On the other spectrum, the section 63(1) of the Act^{cxlix} seems to contradict with section 56 of the same Act. It is noted that under section 56 of the Act, the Government is compelled to award compensation in the specified circumstances of termination due to the national interest which is contrary to the overwhelmingly discretionary powers vested to the Minister in awarding compensation under section 63(1). However, there exists no interpretation on what constitutes national interest in the entire Land Tenure Act. This circumstance may translate the Minister to be the only judge on his own case in regulating the principle of national interest. Hence, the situation intimidates the access rights and security of land to the indigenous people in Tanzania Zanzibar.

Challenge to an Order of Termination

Regarding to the powers vested to the Minister responsible for Land in making decisions of termination for right of occupancy to the land holders. The section 62 of the Act^{cl} permits the recipient of an order of termination within forty eight hours of the receipt of an order to petition to the Minister for a reconsideration which shall be undertaken within one week of the request. In this context, it is observed that the exercise of termination is a far reaching action and therefore the order should have reasonable time factor to react to it in order to promote access rights and land ownership to the protection of indigenous on land matters.

Disarray of Land Laws

As indicated earlier that, the Land Tenure Act^{cli} and other Laws related to land matters were enacted for the purpose of regulating and governing land ownership, use and rights attached to land and matters connected or incidental thereto. However, some of the provisions for these land laws are found to contradict each other which imply confusion and give the impression of difficulties during the level implementation of institutional powers, duties and responsibilities.

Hence, to some extent this circumstance hinders the access rights and land ownership to the protection of indigenous people in Tanzania Zanzibar. For instance, the Land Tenure Act provides an opportunity to appeal from allocation procedure^{clii} where by in any case when an applicant is refused a provisional or final grant of land which he/she is dissatisfied from such refusal may appeal to the Land Tribunal within the prescribed period of sixty days from the date of such decision.

Moreover, it is provided that the High Court shall be only allowed in the instance where an issue of law is involved^{cliii}. The provision contradicts with section 6(5) and section 6(6) of the Government Proceedings Act, 2010 which specifically stipulate on the civil proceedings against the Government that notwithstanding of any other law all suits against the Government shall be instituted or tried by the High Court or Regional Court^{cliv}. For the purpose of uniformity, easily adjudication of land cases, clarity and develop the access rights and land ownership to the protection of indigenous people and even attracting many other foreign and local investors in the country, the author of this study is on the opinion that all appeals should be instituted to the High Court in order to avoid legal contradiction and procedural difficulties.

The other confusion emanating from Land Laws based on charges. Section 12 of the Land Tenure Act^{clv} allows charges over land only to lending institutions specified in the Schedule appended this Act. However, the schedule is not provided under the Act to date which implies no charges stated in the schedule of the Act. In addition to that, the Land Tenure Act, 1992 expresses default by charges of a charge allows the lending institution to assume possession of the right of occupancy or other collateral used to secure a charge or a loan and utilize its productivity until the full value of the charge is repaid^{clvi}. The impacts of these provisions may restrict holders of right of occupancy to get loans from lending institutions due to insecure environment of debts. This condition may implicate and undermine the access right and security of land to indigenous people in the country. It may also hinder the national efforts of attracting local and international investors which in turn may adversely destabilize economic development of the country.

Moreover, the Land Tenure Act provides the Zanzibari requirement in relations to the land right of occupancy^{clvii}. The Act provides that if the grantee is proved to be a non Zanzibari or attempts to make transfer to a non- Zanzibari an order of termination shall be issued. In this exercise the Minister responsible for land is vested powers to make determination and hence therefore to carry out termination decision to the grantee who attempted or made transfer for

his right of occupancy to a non Zanzibari. The Act did not specify the requirement of awarding an opportunity of the right to be heard by the Minister to the grantee who is an original interest holder of the land^{clviii}. The author of this study is on the view that right to be heard should be a legal requirement to be granted by the Minister to an interested land holder before the execution the decision of termination for the purpose of ensuring access rights and security of land to the indigenous people.

In a nutshell, the Land Tenure Act, 1992^{clix} is a principal Act which governs and regulates land matters in Tanzania Zanzibar. In conjunction with other related laws, the Land Tenure Act provides the legal framework of land matters. It is contended that land is very useful natural resource as a matter of fact the lives of many Tanzanians depends on it^{clx}. Based on the significance of the Land Tenure Act^{clxi} on the land resource and the socio-economic benefits of the country, it is recommended to undergo suitable amendment of those provisions of the Act which in one way or another seems to deteriorate the access of rights and security of land to the indigenous people.

Multiples Land Laws

This study observed the existence of several legislations governing and administering land in the country. In other occasions also it is found that some provisions of laws which relate in the governance of land are contradicting each other, hence it results confusion not only to the level of discharging duties to the related officers and institutions but also undermines the development acceleration in the country as well as resulting difficulties in the process of safeguarding the access rights and security of land to the indigenous people.

Land Disputes

With regard to the perspective of East Africa region, conflicts of land are centred on the access to and control over land and valuable ecological resources which include among others agricultural activities, timber, water, productive pastures, mineral and oil^{clxii}. The human population's activities including alienation of productive areas and exploration of natural resources are believed to trigger sustainability and generate land disputes in many countries including Tanzania Zanzibar.

Generally the occurrences of land disputes in the community are contributed by the key driven factors of resource scarcity which emanated from population growth, inequitable distribution of land, land grabbing or alienation activities undertaken by foreigners from local

populations^{clxiii}, poor land management system, absence or incomplete of clear land registration process, poor understanding and inadequate public awareness of people, lack of transparency in addressing land problems to the public, competitive use of land and resources including increasing of pastoralism and agricultural activities in the communities^{clxiv}. As a matter of land disputes normally result multiples consequences to members of the society. For instance, growth of hostility among members of the societies, fighting, destruction of properties and killings of many people, threatening of peace and order in the community^{clxv}.

On the other side, the Revolutionary Government of Zanzibar undertook efforts of enacting specific Act namely the Land Tribunal Act^{clxvi} of 1994 in addressing and resolving land disputes. The Land Tribunal Act^{clxvii} establishes Land Tribunal which deals with land disputes^{clxviii}. The Land Tribunal is vested primary jurisdiction over proceedings instituted or conflicting land claims of multiples issues including actions associated with claims to a right to occupancy or possession of any parcel of land^{clxix}; demarcation of land which is connected to activities related to the subdivision of parcels and any matter for which demarcation or surveying must be undertaken^{clxx}; the registration of land^{clxxi}; the review of any transfer or lease which has been reviewed by the Land Transfer Board^{clxxii}; the use, development and capacity of land; partition of holdings in which potential multiple ownership is involved; land valuation and issues related to compensation for land; removal from possession or eviction from land; expropriation of land by the Government^{clxxiii} as it is indicated in the civil case of *Attorney General v. Sisi Enterprises Ltd*; agricultural or agro-industrial contracts or lease agreements; succession of land; exchanges, partition of land, illegal subdivisions and other irregularities, use and development of land for the purpose of conservation, development and the use of natural resources, the recovery of public held land and any other matters relating to land^{clxxiv}. Therefore, the Land Tribunal Act set up an appropriate mechanism for the Land Tribunal which helps to adjudicate land disputes for the ensuring access rights and security of land to the indigenous people in the jurisdiction of Tanzania Zanzibar.

However, the occurrences of land disputes are increasing serious problems to date in the land administration in Tanzania Zanzibar. Notwithstanding of the Government efforts and commitments of establishing the Land Tribunal to adjudicate arising land disputes but it is indicated that the Land Tribunal experiences multiples setbacks including of the shortage of magistrates, court venues and lack of adequate fund to pay assessors of the Land Tribunal^{clxxv}. The circumstances largely contribute to the delay of dealing with the proceedings and cases of

land disputes. In addition, the Land Tribunal encountered by the problem of identifiable ownership and clearly defined land boundaries through land registration. It originated from the estimation that about 40% of land cases lodged in the Land Tribunal would not have been filed if the land could be clearly demarcated and registered. Moreover, the increasing land disputes are believed to be accelerated due to the tendency of delayed inheritance among members of families in the society^{clxxvi} and other land grabbing practices that tantamount violation of land law provisions as it is found in the case of *Khelef Khalifa El-Busaidy v. Commissioner of Lands & 2 Others*^{clxxvii}.

CONCLUSION AND RECOMMENDATIONS

Conclusion

This paper set out to contextualize the legal framework of land resource on ensuring the access rights and security of land to the indigenous people. The main focus of the study is based in Tanzania Zanzibar. It is clearly that one cannot elaborate the concept of land tenure in Zanzibar without connecting it into three epochs namely pre-colonialism, during and post-colonial era. It is noted that during pre-colonial epoch the land tenure was typical based on traditional system in which every community had its own system of land acquisition and ownership. Hence, the indigenous people had freely and full enjoyed their land rights. The land resource was administered by the local community without any kind of foreign interference, discrimination or domination.

During the colonial period, the land tenure system of Zanzibar had slightly changed due to the arrival of foreigners since 1503 to 1963. The colonial masters during this epoch had colonized the territories and hence established their governance system including enacting land decrees. The established laws brought the impact of alienation and encroachment of the land resource from the hands of indigenous people to the colonial domination. Therefore, the land resource during this time was governed according to the classes of the people. In other words, the classes of people were key determinant factor to acquire and possess land resource in Zanzibar during colonial epoch. The access rights and security of land to the indigenous people had no place due to the fact that most of decrees enacted had most protected and favoured the colonial ruling classes notwithstanding the majority indigenous people.

However, during post- colonial epoch (after the Zanzibar Revolution of 1964 to date) the management of land resource acquired significant changes where by the Revolutionary Government of Zanzibar once after seizing powers on 12th January, 1964 under the outstanding leadership of the late Sheikh (Abeid Amani Karume, the first President of the Revolutionary Government of Zanzibar) had confiscated the lands from the colonial possession and distribute them to the indigenous people of Zanzibar. This movement was undertaken for the purpose of regaining the alienated land resource and improving the living standard of indigenous people.

Regarding various efforts and techniques of developing and addressing private and foreign investment, it was the finding of this paper that multiples efforts of enacting appropriate legislations were undertaken to ensure the effective participation of private and foreign investors in the development of the country. For instance, the Bills of Rights were entrenched under the Constitution of Zanzibar, 1984 for the purpose of ensuring fundamental freedom of individual rights including the protection of the private property from any kind of violation such as deprivation properties or dispossession movement^{clxxviii}.

This paper has established the utmost extent of involvement of access rights and security of land to the indigenous people under the international and regional legal instruments. Based on the fact that most of indigenous people are in danger and left behind or downgraded from their lands by the powerful community in many parts of the world, hence the international and regional legal instruments are at fore front in safeguarding and protecting the rights of ownership as well as acquisition of land and other properties rights of indigenous people without any kind of distinctions such as race, colour, sex, language, religion, political affiliation or social origin^{clxxix}. Also, this study found that many countries do not prioritize the rights and security of indigenous peoples to their land assets. The circumstance of violating the access rights and land ownership to indigenous people are continued to be exercised though the member states and other stakeholders had ratified the regional and international covenants regarding the security of land for indigenous people. Generally, the member states and other stakeholders are required to comply the resolutions for protecting indigenous people and cooperate in a good faith with indigenous people by obtaining their free and prior informed consent for approval of the projects which can affect their land or territories.

Having concluded that recognizing the access rights and land ownership to the indigenous people are the basic human rights and fundamental freedom of individuals which need to be prioritized and be given highly consideration. The indigenous people deserve the rights land

ownership and acquisitions like any other people in this universe. Little efforts undertaken by the international, regional and national are not enough. Therefore, this paper proposed the following: -

Recommendations

Law Reform

The discussion above shows that it is necessary to redefine the land laws and policies in order to intensify the extent of access rights and security of land to the indigenous people and their economic and social welfares. The following specific recommendations need to be considered:

Firstly, it is proposed that access rights and security of land to the indigenous people should be adopted in the related Land Laws. The proposed adoption of access rights and security of land to the indigenous people should be like as proclaimed under the international and regional instruments or in such away as it contended under our governing national Constitution in order to address and achieve the rights of indigenous people.

Secondly, it is suggested to undertake thoroughly land legislation review and harmonize them in order to eradicate the existing and prospective future disarray of land laws. This study has observed that there are multiple disarrays, contradiction, discrepancies and confusion of laws related to land in Tanzania Zanzibar. For instance, it is indicated that some of the provisions of Land Tenure Act^{clxxx} are contradicting with provisions of other governing laws including related land laws. The proper land law review exercise and harmonization process play a greatest role in resolving the contradictory provisions of law which can help to develop the access rights and security of land to the indigenous people.

Thirdly, the Land Tribunal which was established under the Land Tenure Act^{clxxxi} should be improved and well equipped with adequate staff members including magistrates, court venues and modern working facilities in order to speed up the adjudication process and judgment of multiple land cases. Hence, the exercise of improving the capacity building for the Land Tribunal can help better delivery of justice to the majority of people and flourishing the access rights and security of land to the indigenous people.

Fourthly, section 33(1-6) of the Land Tenure Act, 1992 which relates on the provisional grant of right of occupancy should be amended to suit the access rights and security of indigenous

people. The reason behind is that the section is drafted in such away it restricts and prevents indigenous peoples' rights to own or acquire land resource.

Fifthly, it is recommended that whenever the Government acquires land in the public interests, fair and adequate compensation should be paid to the people including the indigenous people on the issues of land acquisition for national projects or any other arising purpose.

Moreover, the Revolutionary Government of Zanzibar should consider putting in place guidelines and procedures for scrutinizing issues of indigenous people and their land ownership. The guidelines should be formulated in such away they could collect massive claims, opinions, comments and suggestion which could help to establish strategies, policies and legal framework of settling and addressing access rights and security of land to the indigenous people.

Land Registration

The term land registration can be denoted as the system for recording of information on ownership and other associated rights and restrictions pertaining to a particular parcel of land^{clxxxii}. Regardless of commitments undertaken by the Government in enacting Land Adjudication Act, 1989^{clxxxiii} and Registered Land Act of 1989^{clxxxiv} but to there is delay condition in adjudication and registration process in the country which are caused by the shortage of funds^{clxxxv}. Therefore, it is proposed that the Government should looking for funds and continue to conduct comprehensive and thoroughly land registration exercise in the entire country. The land registration process ensures security of land to the indigenous people and other individuals and minimizing land disputes as well as contributing to the economic development in particular.

Good Governance

Good governance is an essential component of equitable land administration due to the fact it addresses accountability, effective and efficient policy –making and combat unnecessary bureaucracy^{clxxxvi}. It comprises peoples' participation. It is a crucial level within land administration in which the affected individuals should be involved in all processes of land adjudication, demarcation and identification of lands and their respective land ownership and boundaries. On the other hand, the enforceability of good governance at the national and society levels help to control the possibility of the existing and future land disputes occurrences.

Civic Education

It has been found that some of the reasons why it is important to understand and the multinational nature of land resource management and disputes are grounded from poor understanding and inadequate public awareness of people. The comprehensive understating of land laws and general management of land resource could help to combat and reduce land disputes and conflicts to the maximum level. Hence, the land resource would be managed and administered under harmony and tranquillity. The Government should consider putting in place a national land management resource centre where people including indigenous people can obtain useful information and counselling on land matters as well as enhancing public awareness programs.

To sum up, the strategy of civic education to the public should focus in resolving land disputes and raising public awareness that land resource should be taken as an asset for wealth creation which can also contribute to socio-economic development for all individuals including the indigenous people.

Equal treatment, inclusiveness and openness in the land governance

The land administrative institutions including Ministries, Departments and related Units are duty bound to discharge their responsibilities and delivering services to the public in a transparent manner and ensuring that land is utmost accessible and possessed for all people who meet the requirements of legislations without any kind of discrimination. It is a believed notion that in case the institutions related to land would consider and putting in place transparency and inclusiveness of all people in delivering their services of land matters, hence the transparency and inclusiveness practices in the country guarantees the maximum possibility of development for access of rights and security of lands to all people in the country specifically the indigenous people.

Management of the Commission for Lands

This study observed that the Commission for Lands was envisaged significant roles in administering land matters in the country including the role of specifying standards and norms for lands administration as well as regulating all surveying and mapping of Zanzibar but it consisted of various administrative and technical barriers^{clxxxvii}. Therefore, this study suggests that there should be indispensable requirement for the Government to provide sufficient human

and financial resources in order to facilitate efficient and effective of delivery quality services to the public in ensuring the access rights and security of land to the indigenous people.

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