



A REVIEW OF CONSTITUTIONAL PROTECTION OF LAND RIGHTS OF INDIGENOUS PEOPLES' IN TANZANIA: LESSONS FROM SOUTH AFRICA

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Abstract

The major obstacle facing indigenous peoples' of Tanzania is land dispossession occasioned by a number of reasons for example development projects disfavoring pastoralism, hunting and gathering modes of production. Despite extreme reliance on land, indigenous peoples' since colonial times have suffered a great deal following ruthless land dispossessions and mobility constraints which have at present extended to an alarming point placing at risk indigenous peoples' livelihood and culture. It is correctly argued by International Working Group for International Affairs in their Technical Note to the United Republic of Tanzania that indigenous territory is more than just a piece of land or water, it is collective memory of culture thus secure collective land rights are therefore at the heart of indigenous claims. Government authorities which are instrumental in engineering and fueling evictions of indigenous peoples' pastoralists and hunter-gatherers are *inter alia* Tanzania National Parks, Tanzania Investment Centre, Ngorongoro Conservation Area Authority, and Tanzania Peoples' Defense Forces. This study seeks to analyze the provisions of the Constitution of the United Republic of Tanzania of 1977 as amended on the protection of indigenous peoples' land rights to see to it whether they accord effective protection to the indigenous peoples' land rights and the extent of that protection. The study will also compare

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protection accorded to indigenous peoples' by the Constitution of the United Republic of Tanzania of 1977 as amended with the position of the Constitution of South Africa of 1996.

Introduction

Most indigenous peoples' in Africa have been subjected to forcible evictions from their ancestral lands and denied access to natural resources upon which their survival as peoples depends.² To many indigenous peoples' the remarkable time is colonial era. Colonialism was a disaster to indigenous peoples' proprietary rights.³

Colonialists alienated land paying no attention to the people who were residing at past in the locality. The concept of pre-existing territorial rights for indigenous peoples' was rarely accepted.⁴ Some indigenous peoples' were forcibly removed from their land, others ceded land under pressure.⁵

Most of the territorial areas occupied traditionally by indigenous peoples' are virgin lands, fertile with richness of resources thus attractive to forcible evictions by states in the name of economic development by allocating them to domestic and foreign investors.

Forceful evictions are done so as to give room for other land uses considered to be more profitable, viz uses for large scale agriculture, creation of Wildlife Protected Areas like Game Reserves and expansion of National Parks, mining activities, erecting of military bases, and other Foreign Direct Investments related activities. This is because the government regards indigenous peoples' ancestral land as idle land or underutilized one thus easily grabbed and leased in events of competing interests.⁶ As indicated above for these uses are regarded as economically viable compared to pastoralism, hunting and gathering.⁷

The situation appears to be so severe to the extent that indigenous pastoralists and hunter –gatherers are made extremely vulnerable.⁸

Indigenous peoples' in Tanzania are no exception to this tragedy. They experienced and still experience the same from colonial era to present. In post- colonial times the government has from time to time dispossessed

² Nchalla, BM. (2012) at p. 1.

³ Smith, RKM. (2005) at p. 396.

⁴ Smith, note 3 above.

⁵ Smith, RKM, (1999) at p. 392.

⁶ Kavilu "Indigenous peoples' Rights Ignored as Tanzanian Government Protects Foreign Investors available at www.galdu.org/web/?odas=5591/glella1=org accessed 16 July 2013.

⁷ Shadow Report *supra* at p. 10.

⁸ Joint Stake Holders Submission on Pastoralism and Hunter-Gatherers in Tanzania Submitted to the Human Rights Council for Universal Periodic Review Mechanism in Review of the United Republic of Tanzania during the 12th Session (2011) at p. 1.

them of their land, the reasons for such dispossessions being the desire by the state to maintain law and order, to make it ready for foreign direct investment,⁹ to give room for tourism activities or forcibly assimilate them to the mainstream cultures since their ways of life are deemed primitive and backward.

In Tanzania, such dispossessions go on to take place despite existence of a constitutional right to ownership of property whereby article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended guarantees the right of every person to own property and to the protection of the property held in accordance with the law. The Constitution speaks for itself that:

‘Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law. Subject to the provisions of sub article (1) it shall be unlawful for any person to be deprived of his property for the purposes of nationalization or any other purposes without the authority of law which makes provision for fair and adequate compensation.’¹⁰

On top of that, Tanzania is party to many international instruments such as International Covenant on Civil and Political Rights¹¹ and the International Covenant on Economic Social and Cultural Rights¹² as well as regional instruments such as the African Charter on Human and Peoples’ Rights¹³ all of which guarantee the right of every person and of the peoples’ respectively not only to ownership but also to the enjoyment of their property.

This study seeks to analyze the provisions of the Constitution of the United Republic of Tanzania of 1977 as amended on the protection of indigenous peoples’ land rights to see to it whether they accord effective protection to the indigenous peoples’ land rights and the extent of that protection. The study will also compare protection accorded to indigenous peoples’ by the Constitution of the United Republic of Tanzania of 1977 as amended with the position of the Constitution of South Africa of 1996.

Definition of concepts

Indigenous Peoples’

The term indigenous is a contemporary designated concept in many international human rights instruments.¹⁴ The term derives from the Latin word *indigena* made up of two words, namely; *indi* meaning within and *gen* or *genere* meaning root.¹⁵

⁹ Peter, CM, (2008) at p. 220.

¹⁰ Art 24 of the Constitution of the United Republic of Tanzania of 1977 as amended.

¹¹ Art 27 of the International Covenant on Civil and Political Rights of 1966.

¹² Art 12 of the International Covenant on Economic, Social and Cultural Rights of 1966.

¹³ Art 22 of the African Charter on Human and Peoples Rights of 1981.

¹⁴ Nchalla, BM (2012) note 2 above at p. 18.

¹⁵ Nchalla BM note 14 above.

Agarawal has made an attempt to define the term indigenous peoples' as follows:

*Indigenous peoples or aboriginal peoples are those who were living on their lands before settlers came from elsewhere: They are the descendants of those who inhabited a country or a geographical region at the time when peoples of different cultures or ethnic origin arrived, the new arrivals later dominated through conquest, acquisition, settlement or other means. Thus they are the people who belong to pre-invasion and pre-colonial societies and they consider themselves distinct from other sections of the societies, prevailing in those territories or part of them. Indigenous peoples are called first people, tribal people, aboriginal and autochthons.*¹⁶

Indigenous peoples' generally speaking are distinct from the mainstream society in terms of their cultures, languages, social and historical institutions. Notwithstanding the fact that they are subjected to discrimination and marginalization just like other members of the ethnic communities, there are notable significant differences on their rights and identity.¹⁷ For example for many indigenous groups, traditional lands are an integral part of their beliefs as well as essential to their existence due to associated usufructuary practices.¹⁸

There is no universal and unambiguous definition of the concept of "indigenous peoples", but there are a number of criteria by which indigenous peoples' can be identified and from which each group can be characterized.¹⁹

Despite the foregoing fact, the most widespread approaches are those proposed in the International Labour Organization Convention no 169 and in the Martinez Cobo Report to the United Nations Sub-Commission on the Prevention of Discrimination of Minorities, 1986. Furthermore an approach suggested by the Chairperson of the United Nations Working Group on Indigenous Populations and Mme Erica-Irene Daes is widely used.²⁰

The International Labour Organization Convention no 169, consider indigenous peoples' as those who are the descendants of those who lived in the area before colonization or because they have maintained their own social economic, cultural and political institutions since colonization and the establishment of the new states. Furthermore, **self-identification** is crucial for indigenous' peoples'. This criterion has been applied in a land-claims agreement between the Canadian government and the Inuit people of the Northwest Territories.²¹

¹⁶ Agarawal (2009) at p. 859.

¹⁷ Who are the indigenous peoples? Available at www.iwgia.org/culture-and-identity/identification-of-indigenous-peoples accessed 22 November 2012.

¹⁸ Baderin & McCorquodale (2007) at P. 342.

¹⁹ Who are the indigenous peoples? *supra* note 17.

²⁰ Martinez Cobo's Report to the UN sub-commission on the prevention of discrimination of Minorities of 1986.

²¹ Art1 (1) (a) and (b) of ILO Convention no 169 stipulates that "This Convention shall apply to tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose

Speaking generally, Indigenous communities, peoples and nations are those which, having historical continuity with pre-existing and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and they are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.²²

The other important peculiar feature with regard to indigenous peoples' is self-determination in their territorial lands, Self-determination in indigenous or tribal peoples shall be regarded as a fundamental criterion for determining the group to which the provisions of this convention apply.²³

Indigenous peoples' of Tanzania

Although many ethnic groups identify themselves as indigenous peoples' only four are deemed to be indigenous peoples' owing to their organization, struggles around the concept and movement of indigenous peoples'. Thus indigenous peoples' of Tanzania are the Akie and Hadzabe, who are hunter-gatherers as well as the Barbaig and Maasai who are pastoralists.²⁴

Most indigenous peoples' in Tanzania lives in Northern Tanzania, specifically in Arusha and the new Manyara region.²⁵

Indigenous peoples' forms the most vulnerable section of the Tanzanian society. Although their means of income vary greatly, they share strong common attachment to land, despite different identities, vulnerability, and marginalization, they all experience similar problems, one being lack of security of tenure.²⁶

Indigenous peoples' livelihoods in Tanzania

In Tanzania modes of production of the indigenous peoples' are pastoralism, as well as hunting and gathering.

status is regulated wholly or partially by their own customs, or traditions; People in independent countries who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belong at the time of conquest, or colonization or establishment of present state boundaries, and who, irrespective of their legal status retain some or all of their own economic, social, cultural and political institution.”

²² Martinez Cobo's Report *supra* note 20.

²³ Article 1 (2) of ILO Convention no 169.

²⁴ Update 2011-Tanzania available at www.iwgia.org/regions/africa/Tanzania/897-update-2011-Tanzania accessed 16 July 2013.

²⁵ IWGIA “Country Technical Notes on Indigenous Peoples' Issues”-The United Republic of Tanzania (June 2012) at p. 1.

²⁶ *Supra* note 25 above.

Hunter-Gatherers Indigenous Peoples'

The Hadzabe²⁷ who inhabits *Monga wa Mono* around Lake Eyasi in Mbulu District predominantly conduct traditional nomadic hunting and gathering activities shifting frequently and seasonally from one area to another searching for game birds, tubers, berries and honey.²⁸

The Akie²⁹ most of whom live in Kiteto District were also nomadic hunter-gatherers before they interacted with Maasai for many generations to the extent that they have adapted the Maasai culture, language and traditions, it is safe to say that even their language is now extinct.³⁰

Pastoralists Indigenous Peoples'

Maasai and the Barbaig self-identify themselves as indigenous pastoralists. They engage themselves in nomadic pastoralism, keeping cattle, goats and sheep while a few others do some farming whenever the climate allows.³¹

Other Pastoralists indigenous peoples' are the Barbaig mainly living in Hanang' District occupying the volcanic highlands neighboring their sacred Mountain Hanang'. They practice semi-nomadic pastoralism engaging in raising cattle, goats and sheep, however today many engage in agro-pastoralism producing maize, beans and millet.³² To the Maasai and Barbaig cattle forms crucial part of their status, identity, culture and world view.³³

Incidents of forcible evictions of indigenous peoples' in Tanzania

Indigenous peoples' to a large extent depend on availability of chunks of land, forests, woodlands and rangelands which will guarantee a freedom of movement and access to natural resources³⁴ for their modes of production are dependent upon their access to common pool resources, the knowledge and understanding of the environment and their skills in maintaining a balance between natural resources and the uses thereto.

²⁷ The plural for Hadza.

²⁸ IWGIA *supra* note 26 at p. 5

²⁹ Also pronounced as Akiek or Akyie, they are known also as Ndorobo in Swahili.

³⁰ IWGIA *supra* note 28 at p. 6.

³¹ IWGIA *supra* note 30 at p. 7.

³² As above.

³³ IWGIA provides that "Cattle are an important part of the Maasai's and the Barbaig's status, identity, culture and world view. Cattle are widely used to establish strong forms of social exchange at specific stages of life, such as circumcision, bride wealth and other rituals where prescribed numbers of livestock are involved. The exchange of animals leads to life-long commitments of friendship and assistance and constitutes a kind of insurance mechanism against droughts or epidemics".

³⁴ IWGIA *supra* note 32.

Despite extreme reliance on land, indigenous peoples' since colonial times have suffered a great deal following ruthless land dispossessions and mobility constraints which have at present extended to an alarming point placing at risk indigenous peoples' livelihood and culture. It is correctly argued by International Working Group for International Affairs in their Technical Note to the United Republic of Tanzania that indigenous territory is more than just a piece of land or water, it is collective memory of culture thus secure collective land rights are therefore at the heart of indigenous claims.³⁵

The major obstacle facing indigenous peoples' of Tanzania is land dispossession occasioned by a number of reasons for example development projects disfavoring pastoralism, hunting and gathering modes of production.³⁶

Currently, Game Controlled Areas are found within legally established and recognized villages in Tanzania. Establishment of Game Controlled Areas in areas belonging to indigenous pastoralists was not meant to prohibit indigenous pastoralist societies to access natural resources and conducting their traditional livestock keeping life styles. Nevertheless, there came abrupt turn of state of affairs in 2009 when a new Wildlife Management Act of 2009 was promulgated which outlawed grazing livestock in Game Controlled Areas unless he obtains the written permission from the director of Wildlife.³⁷

Government authorities which are instrumental in engineering and fueling evictions of indigenous peoples' pastoralists and hunter-gatherers are *inter alia* Tanzania National Parks, Tanzania Investment Centre, Ngorongoro Conservation Area Authority, and Tanzania Peoples' Defense Forces.³⁸

Generally, indigenous peoples' do not gain anything apart from the collective social services as return to the society of the benefits accrued from their land. Instead of gaining from their lands and natural resources they kept, protected, sustainably managed, and conserved for a long time.

Protection of Indigenous Peoples' property rights in the Constitution of the United Republic of Tanzania of 1977 as amended

With regard to the right to own property Article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended reads:

³⁵ IWGIA *supra* note 24

³⁶ Indigenous peoples in Africa- a general overview available at www.iwgia.org/regions/africa/indigenous-peoples-in-africa accessed 19 July 2013.

³⁷ Shadow Report *supra* note 207.

³⁸ Dotto " Pastoralists Cry of Forceful Evictions in Tanzania available at www.preachit.org/pastor-sermons accessed 19 July 2013.

*Every person is entitled to own property and has a right to the protection of his property held in accordance with the law. Subject to the provisions of sub article (1) it shall be unlawful for any person to be deprived of his property for purposes of nationalization or other purposes without the authority of law which makes provision for fair and adequate compensation.*³⁹

Shortly put, the constitution protect property rights of every person including land as long as the said property is held lawfully and outlaw all acts of deprivation of property ownership for reasons of nationalization or any other reason whatsoever without compensating the victim fairly and adequately.

Suffice it to say that, the protection conferred by this article is general to all the people. By using the phrase ‘every person’ the article does not isolate indigenous peoples’. The phrase ‘every person’ suggest that indigenous peoples’ land rights are among others the subject of protection under this provision Therefore by necessary implication indigenous peoples’ proprietary rights, land in particular is protected. though indirectly and inadequately under the Constitution of the United Republic of Tanzania of 1977 as amended.

The said protection is inadequate because, looking critically at this provision, it appears on the face of it that it protect more of individual proprietary rights as opposed to group rights. Since indigenous peoples’ claims to their ancestral land are group claims, the constitutional provision which is phrased in a way that is specific to the protection of individual person proprietary rights does not adequately protect indigenous peoples’ land rights as a group.

On the other hand, although the constitution does not expressly mention indigenous peoples’ right to own property, the non-discrimination principle as entrenched in article 13 indicates that indigenous peoples’ land rights are also recognized and constitutionally protected. It provides unequivocally that all personas are equal before the law and are entitled without any discrimination whatsoever to equal protection under the law.⁴⁰

Although the non-discrimination principle in the constitution also protects indigenous peoples’ land rights, this supposition may be wrong. As hinted herein above, the right to own property protected by the constitution is that of an individual and not a collective right of all indigenous peoples’ as a group, as such it may appear that the non-discrimination principle is specific to indigenous peoples’ claims to land as individuals not as a group.

³⁹ Art 24 (1) and (2) *supra* note 10.

⁴⁰ Art 13 (1) –(4) *supra* note 39 “All persons are equal before the law and are entitled without any discrimination to protection and equality before the law. No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect. The civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law. No person shall be discriminated against by any person or any authority.” or acting under any law in the discharge of the functions or business of any state office. ”

This is not in line with the nature of indigenous peoples' claims which are normally group rights which can only be claimed by indigenous peoples' in a group as peoples.

From the foregoing, one can safely conclude that the Constitution of the United Republic of Tanzania of 1977 as amended does not adequately afford protection to indigenous pastoralists and hunter-gatherers proprietary rights, land in particular for there are not express provisions recognizing indigenous peoples' as distinct peoples'.

Likewise, there are no specific provisions affording special protection to indigenous peoples' group rights as distinct peoples' or other forms of protections as indigenous minorities. This makes indigenous peoples' more prone to forcible land dispossessions.

Cementing on this point, Laltaika E., points out that the current Constitution does not enshrine explicit provisions protecting land rights of indigenous peoples' thus permitting promulgation of laws unfriendly to both individual and collective land rights.⁴¹

Protection of Indigenous Peoples' property rights in the Constitution of the Republic of South Africa of 1996

As opposed to the Constitution of the United Republic of Tanzania of 1977 as amended, the Constitution of the Republic of South Africa of 1996 has promising developments in protecting indigenous peoples' land rights. Albeit the fact that it does not expressly mention indigenous peoples' it contains provisions which when read between the lines affords better protection to indigenous peoples' as compared to that conferred by the Constitution of the United Republic of Tanzania of 1977 as amended.

Section 25 of the Constitution of the Republic of South Africa criminalizes deprivation of one's property save only in accordance with the law of general application; on top of that it prohibit enactment of any law which authorize arbitrary deprivation of the same.⁴²

On top of that, the Constitution of South Africa of 1996 put more emphasis on the issue of compensation to be paid when the property is taken in accordance with the law the amount of which, the time to be paid and the

⁴¹ Pastoralists Indigenous Non-Governmental Organizations Forum and Association For Law and Advocacy For Pastoralists, Report of 50 years of struggles by Pastoralists and Hunter-Gatherers for Land Rights: Examining achievements, challenges and the proposed new constitution as a window of opportunity for the way Forward at p. 15.

⁴² Sec 25 (1) (a)-(c) provides that " No one may be deprived of property except in terms of law of general application and no law may permit arbitrary deprivation of property. Property may be expropriated only in terms of law of general application for a public purpose or in the public interest." (Emphasis mine)

mode of payment shall be that agreed by the persons affected or that decided or approved by the court,⁴³ that compensation paid must be just and equitable and that regard should be had to the current use of the property, history of acquisition, use of the same, and market value of the property, among other factors.⁴⁴

This provision guarantees indigenous peoples' with maximum protection of their property since they are assured that in events of dispossession they shall be timely and reasonably compensated whereby they must agree to the compensation payable in terms of time to be paid and the amount payable or in the alternative the time of payment and amount payable must be approved by the court.

As opposed to Tanzanian supreme law, the South African Constitution goes a mile away to recognize and protect community proprietary rights. It assures a person or a community whose tenure is legally insecure owing to racially discriminatory laws or practices entitlement to a legally secure tenure or to a comparable redress to the extent provided by the law enacted by the parliament.⁴⁵

Moreover, it guarantees a person or a community dispossessed of their property after 19th day of June 1913 following past racially discriminatory laws of restitution or equitable redress to the extent provided by an Act of parliament.⁴⁶

Section 9 of the Constitution of the Republic of South Africa of 1996 guarantees equality of the people and equal protection of the Law.⁴⁷ Different from Tanzanian position on the right against discrimination Article 9 (2) is more elaborate on the notion of equality where it calls upon legislative and other measures to be put in

⁴³ Sec 25 (2) *supra* note 42 stipulate that "Property may be expropriated only in terms of law of general application subject to compensation the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court."

⁴⁴ Sec 25 (3) *supra* note 43 reads "The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances including the current use of the property and the history of the acquisition and use of the property, the market value of the property, the extent of direct state investment and subsidy in the acquisition, and beneficial capital improvement of the property and the purpose of expropriation."

⁴⁵ Sec 25 (6) *supra* note 44 makes it clear that: "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of parliament either to tenure which is legally secure or equitable redress."

⁴⁶ Sec 25 (7) *supra* note 45 states that: "A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of parliament either to restitution of that property or equitable redress."

⁴⁷ Sec 9 *supra* note 46.

place for the promotion and advancement of persons disadvantaged by practice of discrimination. This provision may be interpreted to further extend its protection to indigenous peoples' as disadvantaged persons.

Furthermore, it prohibits the state to directly or indirectly discriminate against any person for whatever the ground be it race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.⁴⁸ Prohibited also are the acts of discrimination engineered by an individual as per sub-section (4) of section 9, the constitution makes it mandatory for the parliament to promulgate a legislation on prevention of discrimination.⁴⁹

Section 31 expressly mentions groups belonging to cultural, religious, and linguistic communities and requires these groups not to be denied *inter alia* the right to enjoy their culture, practice their religion, and use their language.⁵⁰ This provision significantly protects indigenous peoples' as cultural, religious and linguistic communities by assuring them of the right to enjoy their culture, practice their religion and use their language.

Again, it goes a mile away to progressively ensure maximum protection to indigenous peoples' as it guarantees to the community sharing similar cultural and language heritage within territorial entity in South Africa the right to self-determination in addition to the right to self-determination of South African people as a whole.⁵¹

Acknowledging the protection afforded to the indigenous peoples' of South Africa as portrayed herein above Barume KA., opines that although the South African constitution makes no reference to indigenous peoples' it has taken a progressive approach and lay down a foundation for communities to claim their expropriated indigenous lands.⁵²

⁴⁸ Section 9(3) *supra* note 47 reads "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

⁴⁹ Sec 9 (4) *supra* note 48 provides that "No person may unfairly discriminate directly or indirectly anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination."

⁵⁰ Sec 31 (a) *supra* note 489 spells that: "Persons belonging to a cultural, religious, or linguistic community may not be denied the right with other members of that community to enjoy their culture, practice their religion, and use their language."

⁵¹ Sec 235 *supra* note 50 state that "The right of the South African people as a whole to self-determination as manifested in this Constitution does not preclude within the framework of this right recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage within a territorial entity in the Republic or in any other way determined by national legislation."

⁵² Section 181 (c) *supra* note 51.

Also, the Constitution of the Republic of South Africa of 1996 under section 181 establishes the Commission for Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities which is tasked with *inter alia* the duty to respect cultural, religious and linguistic minorities. The said commission is intended to be Impartial and to discharge its functions without fear, favor or prejudice whatsoever.⁵³ On the face of it provision cover promotion and protection of the rights of indigenous peoples.’

Conclusion and Recommendations

Conclusion

The author in this work intended to examine protection conferred to indigenous peoples’ by the Constitution of the United Republic of Tanzania of 1977 as amended from time to time and the extent of that protection if any in comparison to that conferred by the Constitution of the Republic of South Africa of 1996. In achieving this objective, the author conducted on desk analysis of the provisions of the Constitution of the United Republic of Tanzania of 1977 as amended and the constitution of the Republic of South Africa of 1996. After a thorough analysis of the same the major findings and observations are as follows:

First and foremost, the review of article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time revealed that the protection of proprietary rights it confers is limited to the to property rights (such as land) of individuals. and not proprietary group rights such as indigenous peoples’ collective land rights as peoples. Therefore, one can safely conclude that this provision does not adequately guarantee protection to indigenous peoples’ property rights, land in particular as a result their land has been easily grabbed and granted to foreign and local investors living indigenous peoples’ in abject poverty with no means of livelihood and survival.

Second, it is observed that absence of specific, express and unequivocal provisions in the Constitution of the United Republic of Tanzania of 1977 as amended protecting property rights of indigenous peoples’ as a group is among the factors contributing to ongoing forcible evictions of indigenous peoples’.

Third, it is further revealed that, lack of constitutional protection of indigenous peoples’ land tenure systems in Tanzania makes it easy for the parliament to enact laws, which easily expropriate pastoralists and hunter-gatherers ancestral land.

Fourth, it is leant also that non-recognition of the existence of indigenous peoples’ in Tanzania as distinct peoples from the mainstream society is a major reason for their land rights not being adequately protected and also a factor which engineers acts of their forcible evictions in various places of Tanzania.

⁵³ Sec 183 (1) (a)-(c) and 185 (1) (a) *supra* note 52.

Sixth, the study further reveals that, South African Constitution of 1996 has taken a more progressive approach in protecting indigenous peoples' land rights by as compared to the Constitution of the United Republic of Tanzania of 1977 as amended

Seventh, the study portrayed that that absence of institutions which specifically deals with the promotion and protection of in Tanzania make it impracticable for the general public, decision makers, law and policy makers to know the genuineness of indigenous peoples' their land rights and claims something which contribute to their non-recognition, formulations of policies and enactment of laws in favor of their rights. This position is quite different from the position of South Africa were **in** addition to human rights institutions of general character there are specific institutions for the promotion and protection of indigenous peoples' rights.

Eighth, it is found that as opposed to South Africa, Tanzania is lagging far behind in protection of indigenous peoples' especially when it comes to their land rights. Its constitution has enacted broader provisions which can be judicially interpreted to extend protection to indigenous peoples' collective land rights.

Recommendations

The author recommends that the new constitution should be enacted to provide for constitutional recognition of indigenous peoples' as distinct people so as to ensure that they are legally recognized and therefore adequately protected.

That the new constitution should recognize and protect collective rights of peoples' to enable indigenous peoples' to claim and protect their proprietary rights as such groups.

That, the author proposes the enactment of the new Constitution which will entrench a provisions establishing an independent and impartial organ to deal with determination of compensation payable to the victims of land disposessions . This will guarantee victims of land expropriation of land to have prompt, fair and adequate compensation.

The new Constitution should be enacted and entrench provision which defines clearly the term fair and adequate compensation.

The new constitution should be enacted to define and set timeframe within which compensation should be made in event of expropriation of land.

The author proposes the enactment of new constitution which will enshrine provisions to provide for legal security of customary titles to land so as to afford adequate protection to the indigenous peoples' land rights, this will reduce and eventually do away with unlawful forcible evictions.

That, the phrase public interest needs to be constitutionally defined adequately to reduce the possibility for land to be expropriated for reasons which are in fact not public interest.

That, there should be established a specialized human rights institution for the promotion and protection of rights of indigenous peoples' so that the general public, decision makers, law makers and policy formulators can best understand their genuineness, vulnerability and importance of their land for their survival and existence so that decision makers, law makers and policy formulators should consider the same in decisions affecting them.

That, indigenous communities who were dispossessed of their land to be restituted and if that is not viable, they should be awarded equitable redress so that they are enabled to continue with their life styles, culture and livelihood systems.

That, the government has to accept and acknowledge indigenous peoples' ways of life and modes of livelihood and take appropriate administrative and legislative measures to protect their culture and modes of livelihood.

That, indigenous peoples' dispossessed of their lands they should be assured with free legal representation by advocates of their choice for a fee payable by the government so that they should not be disadvantaged in litigations due to lack of legal representation.

BIBLIOGRAPHY

Books

Agarawal HO (2009) *International law and human rights* Allahabad: Central law.

Peter CM (1997) *Human Rights in Tanzania: Selected Cases and Materials* Germany: Rodiger, koppic, verlag. Köln.

Smith RKM (2000) *International human rights* 18th ed New York: Oxford University press.

International Instruments

International Covenant on Civil and Political Rights of 1966

International Covenant on Economic, Social and Cultural Rights of 1966

Regional Instruments

African Charter on Human and Peoples' Rights of 1981

Constitutions

The Constitution of the United Republic of Tanzania of 1977 as amended

The Constitution of the Republic of South Africa of 1996