Legal regulations for valuation and transparency in the real estate market in Tanzania

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SUMMARY

Valuation practice in Tanzania dates back to 1920 but was only regulated recently under the Valuation and Valuers Registration Act of 2016. Valuers Registration Board has since its inception in 2018 registered 290 Valuers and 58 Valuation Firms. The steady growing national economy averaging 7 % per annum, heavy infrastructure investment and accelerated urban growth have collectively stimulated the real estate market which is progressively transforming and attracting investors from outside the country. The demand for valuation services has been on increase notably in land acquisition and compensation, most of which being for donor-funded projects. This paper reviews research projects undertaken in Tanzania during 2010-2022 with focus on valuation challenges and transparency in real estate markets. The main conclusion is despite the positive impacts of legal regulations for valuation, transparency in real estate markets requires more bold intervention that will pull all actors together under one regulatory body.

SUMMARY (optional summary in one other language in addition to English, e.g. your own language)

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1. BACKGROUND

Tanzania which is on the Eastern Coast of Indian Ocean and the main gateway for the landlocked countries of Zambia, Malawi and Democratic republic of Congo, Rwanda and Burundi inherited the British legal and professional systems. However, for the first three decades of its nationhood (up to 1992), Tanzania embraced a socialist doctrine that introduced a central planning system in all sectors. Private land and real estate dealings were considered ant-socialist and were abhorred. Property valuation was limited to those purposes which enhanced government revenue and least on business-related transactions. A trade liberalization policy mooted in mid-1984 and implemented in 1990's opened the country into a liberal market system and democracy. Strained relationship with market economy-countries eased out permitting an increase in Foreign Direct Investment (FDI) which rose from USD 1.6 billion in 1998 to USD 2.2 billion in 1999 and over USD 5b in 2021(BoT, 2022), bulk of which was made up of equity (67 percent). Although only 7 per cent of the FDI went into real estate and business services, the impact on the sector was immense in terms of professional skills imparted.

Subsequent policy and legal reforms have given rise to considerable private sector involvement and attracted both domestic and foreign investors in real estate as well as real estate consultants. Real estate market has been inspired by the implementation of financial sector reforms which were first introduced in 1991 with World Bank and IFM support. The reforms boosted credit markets; liberalized interest rates and enhanced financial intermediation. As an outcome of these reforms in 2010, a housing finance project was implemented, introducing for the first-time home loan systems through establishment of secondary mortgage facility. The aftermath of the housing finance project has been a blooming real estate sector, steady increase of home loan lenders from 3 commercial banks in 2013 to over 30 in 2022, review and establishment of professional regulatory bodies which included valuation legislation

2. METHODOLOGY

This study is based on reviews of research projects carried out in the post-Housing Finance Project by the authors and an account of the revelations encountered while participating in preparing valuation law in Tanzania during 2009-2015. The gist of the paper is exploration of avenues to improve transparency in real estate valuations and enhance credibility of valuations in Tanzania. An examination of real estate and valuation regulations within Tanzania and a review of international safeguards on land acquisition and involuntary resettlement with the aim of drawing corollary with national safeguards and thus search for synergies…

3. SIGNIFICANCE OF VALUATION IN NATIONAL ECONOMY

Valuation wields significant influence on the working of real estate markets. It provides valuable information on the demand and supply of the respective real estate market segments. Lorenz & Lutzkendorf, (2008) observed property valuation is instrumental in aligning economic return with environmental and social performance of property assets in an economy, suggesting property valuation has a further role towards the debate on sustainability.

Valuations are required for different purposes by different actors. In the commercial and residential lending sectors, they provide risk control measure for the capital adequacy by the financial institution. In the finance and investment markets, valuations serve as input for financial reporting and for risk measurement while in business entities, they are useful in fund performance measurement (World Bank, 2009). Valuations carried out in land expropriation instances seek to compensate those to be expropriated at a sum equal to the worth of the asset at the time of the acquisition. Valuation advice is always offered to two parties with conflicting interests such as advice to a buyer and a seller or a lender and borrower. A valuer is expected to offer his or her value opinion as impartial as can be practicable. His impartiality may be compromised by being influenced by his client as observed by (Kamalahasan, 2013) and (Mwasumbi, 2014)

A property valuer is expected to look for and quantify factors that determine the worth of an asset. These factors are those that relate to the social trends or demographics such as the age, income, regional preferences of actual or potential buyers, interest rates which have influence on real estate market demand, health of an economy and government policies and legislation. The quality of information generated by valuers is critical in the working of real estate markets, building confidence to lenders and investors, enhancing property/land-based revenue and assuring just and fair compensation to those losing land to government and investors. In an interesting paper on how values are created and destroyed, Roulac, et al, 2006) made a strong case for understanding how values are created and similarly destroyed in real estate development and investment deals for better decision making in evaluating investment performance. In the light of this, it is imperative that the valuer is sufficiently trained in understanding how the real estate/asset market works, in upholding high professional standards of ethics and acting in the most impartial and transparent manner possible. It is in line with this need that governments around the world have taken measures to regulate the valuation profession either through a legislation or professional code of conduct and ethics. The valuation profession in Tanzania has undergone a series of changes over the years which this paper seeks to address.

4. VALUATION CHALLENGES IN TANZANIA

Waigama, (2008) traced the growth of the valution practice in Tanzania from the colonial era introduced under the Township Ordinance Cap 101 of 1920 and subsequently followed by the House Tax Ordinance, Cap 184 of 1922, the Municipal House Tax Ord, Cap 185 of 1925 and the Land Acquisition Ord Cap 118 of 1926. It was not until 1946 when Municipalities Ord Cap 105 was passed that the law required valuation to be undertaken by a trained and competent person. Throughout the colonial period (up to 1961), valuation practice was in the custody of the department of Public Works and the main object was to assess tax revenue and land rent. In 1968, valuation practice was moved to the Ministry of Lands where it has always been since then. Most of the challenges facing the Tanzania valuer are associated with the evolving political economy of the country and the subsequenct functioning level of the real estate markets

2.1 Training of Valuers

First major valuation challenge that Tanzania faced was lack of trained personnel. This was nevertheless succesfully tackled with the establishment of a training institute in 1974 which has steadily grown to a fully-fledged university producing more than 2,000. Out of these, about 200 are fully registered valuers and over 1,000 are provisionnally registered. Most of these valuers have been employed by central and local governments and a few by private valuation firms whose numbers have grown from a mere 3 firms in 1980's to more than 60 in 2022.

2.2 Socialist Doctrine Impacts

During the first three decades of independence (1961-1990), a socialist doctrine reigned which discouraged private investments and subsequently pushed down property transation and investment deals. Valuation practice was confined to government-related business such as property tax (rating valuation), land rent assessment, financial reporting and expropriation. Towards end of 1960's, there was a growing demand for borrowing from financial institutions which were wholly owned by the Government. In 1969, the Government issued a circular directing all valuations to be approved by the Chief Government Valuer. The circular was later to be an important valuation guideline that would subsequently lead to the licensing and registration of valuers. For many years thereafter, valuation in Tanzania was wholly on the non-market basis. The dictates of the old doctrine of socialism were that land had no exchange value to an individual. Consequently, property market activities were particularly constrained, dealings in land were shrouded and no records of transactions could be obtained where one opted for a market-based valuation.

2.3 Urbanization induced challenges.

Tanzania has been undergoing rapid urbanization (at an average of 5% per annum) which in turn has fueled the need for acquiring land from individuals. As a result, valuation for compensation purposes has been on increase carried out under the Land Acquisition Act of 1967. The 1967 Act forbids compensation to bare land which has since then been perceived to be ‘land has no value’ in Tanzania. Valuations done under the Act, have been a source of frinction between landowners and government with the valuer bearing the brunt of the blame. In the same vein, land price transactions were limited leading to limited property market information for a big part of the period. The urbanization process has not been as smooth as was to be expected. Instead as observed by a recent World Bank Study, the urban growth has tended to be sprawling horizontally and thus costly to control and monitor, resulting in expansion of informal settlements while central part of the cities have continued to be crowded and disconnected and only a few of urban landowers have secured property rights in form of land titles (World Bank, 2021). In the context of valuations, property transaction data is fragmented, property identification is cumbersome and proof of ownership in the informal setting is difficult.

2.3 Externally induced challenges

In the post-socialist era (1992-todate), there has been unprecedented national economic growth averaging 7 per cent per annum, mostly due to adoption of trade liberalization policies, political stability and discovery of natural gas, substantial mineral resources, enhanced tourism and agriculture (Bank of Tanzania, 2022). Furthermore, the national demography has changed with a burgeoning middle class that has attracted housing investment in large cities. As a result, there has been a steady inflow of grants, foreign direct investment (FID) as well as domestic direct investment (DDI), heavy investment in infrastructure, all creating a relatively more active real estate activity.

Some of the donor-funded investments such as gas and oil, road and railway infrastructure projects demand compliance with international performance safety standards (IFC-PS). The challenge to the valuation profession in Tanzania has been the dilemma of coping with the national laws and practices and adoption of the international safeguards. In some parts of the country, households within same geographical areas have been impacted by two types of projects, donor-funded project areas and national projects. In a case where a donor-funded project preceded a locally funded project, the affected households have complained and blamed both the valuer and project promoter.

2.4 Challenges with unregulated real estate sector

There are no specific laws nor regulations to oversee real estate development and investment in Tanzania. Land use planning and regulations address the zoning and control of land use, specify urban space standards and control of advertisements. This can be explained through the history of the country and the infancy of the real estate market. Generally, there is no shared real estate price information, no house price index for example. In a study by Kombe & Komu, (2016), it was established that despite the increasing contribution of real estate section in the national economy, the sector remained largely unregulated, partially quantified and in some respects totally un-quantified in terms of size, growth rate per annum and income generated by its various sub-sectors.

As a result of a lack of formal regulatory and oversight institution and mechanisms coupled with sector's opacity, consumers and other players in the real estate market have been exposed to an environment which is characterized by uncertainty, sub-standards products, overpricing, tax evasion, money laundering and many other deals and acts of dishonest. Real estate developers and investors are not obliged to register their products. Consequently, due to lack of transaction data, the valuer is challenged when it comes to estimate sale value, rentals and in determining the potential investment yields.

2.4 Challenges associated with legal frameworks.

In a study by the authors on the impact of land acquisition for two infrastructure projects in the city of Dar es Salaam, a 132Kv Transmission Line Project that took place during 2005-2010 involving 2,500 affected persons and an airport expansion project in Dar es Salaam that relocated over 3,000 households, it was discovered that there were challenges associated with the governing laws. There were at least five pieces of legislation that guaranteed existing landholders of compensation when their lands are taken by government in Tanzania but with varying levels of requirements. The main legislation is Act No. 47, the Land Acquisition Act of 1967 and the Lands Acts (No. 4 and Village Act No 5 of 1999) which require an owner of land would be entitled to compensation which is market value of the land to be acquired.

The Investment Act No. 26 of 1997 which preceded the Land Act largely borrowing from the then adopted National Land Policy of 1995 places emphasis not on 'full' but on 'adequate' compensation. The two remaining legislation although uphold main provisions of the first two Acts have been a cause of conflicts and disputes. The Road Act No. 13 of 2007 is ambiguous on the fate of landowners whose land abutting existing roads may be a subject of acquisition while, the Export Processing Zones Act No. 11 of 2009, advances new concept of compensation under Section 25 "*… pay the owner of such property just and prompt compensation in a freely convertible currency…"*.

The study noted growing split between the roles and responsibilities of central and local governments and land acquiring (investors) in land administration in Tanzania.

Some of these contradictions, however, have been addressed by a new law passed in 2016, Valuation and Valuers Registration Act which provides for comprehensive measures that include some elements of the International Social Safeguards such as the Operational Directives of the World Bank and the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT).

3. Licensing and Registration of Valuers

To qualify to practice as a valuer in Tanzania, it is mandatory that one possesses an undergraduate degree in real estate or equivalent with specialization in Valuation. The Valuation and Valuers Registration Act No. 8 of 2016 succeeded the Professional Surveyors (Registration) Act No 2 of 1977 which registered valuers as 'Professional Surveyors' in three categories- Fully Registered Surveyor (FRS) for those who had practiced at least 5 years, passed a thesis and oral examination, Provisional Surveyors'(PRS) for those with at least two years of practice under supervision of a FRS and 'Temporary Registered Surveyors'(TRS) for those not ordinarily resident in Tanzania but is otherwise qualified to carry valuation work. The new Act has adopted these three categories but in addition introduced technicians' category with the abbreviation FRV, PRV, and TRV (URT, 2016). The key provision of the 2016 Act is the requirement that all valuations carried out in Tanzania including those by private valuers must be approved by the Chief Valuer. The office of Chief Valuer has been subsequently decentralized to 26 regional levels. The Chief Valuer seated at the Ministry of Lands headquarters approves valuation reports whose value estimate exceeds equivalent of US$500,000, while regional valuers approve those below this level. The valuation business was booming with the number of approved valuations surging from a mere 600 in 1995 to 23,831 (2019) and 54,257 (2022) which account for only those projects whose values are in excess of US 500,000.

3.1 Legislating valuation

The genesis of the Valuation and Valuers Registration Act (2016) was mooted by growing concern on infiltration of non-trained persons masquerading as valuers. Essentially it was a fight by the valuation fraternity to protect their professional interests against others in response to the fast-growing real estate business and especially the expansion of infrastructure projects which attracted civil engineering disciplines in land compensation. It was to a large extent, a response to the growing complaints against valuation which was tarnishing valuers. Press reports in the local media were abashed with complaints on either under valuation especially in land compensation by ex-landowners and revenue authority for tax valuation, overvaluation mainly by lenders in the case of mortgage valuations. In the third account, the valuers were increasingly getting concerned on identifying themselves with the worldwide trends in valuation such as the International Valuation Standards, the Royal Institution of Chartered Surveyors, and the International Finance Corporation Performance Standards. It was thus hoped that a new legislation would move to address all these.

The implementation of the 2016 Act has been praised by the Government and stakeholders as being impressive with a record high of registered FRVs from less than 100 in 2015 to 290, and 724 FRV while the number of registered valuation firms reached 58. The Valuation Registration Board established under the Act has been successfully organizing annual General Meetings in which all registered valuers have to attend and in addition carrying out Continued Professional Education Programmes which have been very useful to practicing valuers. The Board issues annual practicing licenses after review of applicants' performance.

4. Transparency in Valuation practice

Transparency in valuation would mean acting in a manner that parties to a valuation are made to know in advance the procedures involved, what the valuer is looking for and the timing of the delivery. It is essentially, making information available to the parties and in many cases, transparency yields positive outcomes (Coslor, 2016). A Valuer works for two parties with conflicting interests. It is therefore important to consider which type of information is to be shared. There are two basic type of data that a Valuer may consider- the general (public) data which will include information on the location of property such as satellite image of the area, a digital identification or information from government source and the more specific (private) data that relates to the individual asset owner such as the geo-referencing of the property (McDermott & Noseda, 2015).

4.1 Land law and valuation practice

Up to 1999 when a new land law was passed in Tanzania, ex-landowners had no way of knowing how their land and property were being valued. The land regulations made under the Act which were released in 2001 required valuers to serve landowners in expropriation cases a notification of intention to acquire land and in turn the landowners will fill in an agreement form what they perceived to be right compensation for their property. Most landowners happen to be peasants with limited financial literacy, with no experience in land sale transactions and generally poor. Those who filled in the form were either helped by relatives or simply filled in any figure with no regard to the worth of the land and its development. Unfortunately, most landowners over-exaggerated their expectations through the form (Landform No. 70) to the extent of ridiculing the whole exercise and Landform No. 70 had to be taken away. In January 2015, the office of Chief Government Valuer issued 'Valuation Guidelines' insisting that prior to undertaking any valuation, a field valuer will need to engage the landowner, briefing on what the exercise entailed, their rights and disclose any material facts about the whole valuation processes. The Guidelines are echoed in the 2016 laws and address the need to be transparent when dealing with land compensation cases.

From the study experience, there is a close relationship between the rate of objection by landowners and their level of awareness of their rights to compensation. In those projects where sufficient information has been shared with the landowners regarding compensation package, indicative date of getting paid, the number of objections raised has been low. Secondly, the attitude and perception of landowners towards a valuer and his/her team are more likely to be positive if the valuer has treated the landowners with respect and humbleness. Instances where the valuer and client's team visit especially to poor rural landowners with big cars and in large numbers not only threaten the landowners but also generate strong feelings of distrust and exclusion.

5. Implications of the Valuation law for transparency in real estate market

The implementation of the 2016 Valuation Act in Tanzania has included setting up of Rules and Regulations, code of ethics and Valuation Standards and Guidelines. These are considered important instruments that guide and promote high quality valuation services which are central to sustaining real estate markets in the country. Both the Valuation Registration Board (VRB) set up by the Act and the Chief Valuer's Office oversee the valuation practice in the country. While VRB is responsible for registering and licensing valuers as well as instituting disciplinary measures, the Chief Valuer is responsible for quality assurance by evaluating valuation reports submitted by both government and private valuers.

The Chief Valuer issues a para-territorial information on land value rates for all urban areas down to street levels with an indication on the maximum and minimum rates per square meter. This has been an important information that is currently being used for assessing land rent charges as well as land transfer fees within the land office. The rates were also available for use by practicing valuers for mortgage and compensation purposes. Although, the data set indicates land value rates for different user categories, in real terms, they are either values for residential or non-residential users. Land Valuation rates data is sent online to individual valuers at no fees by the Office of Chief Valuer. Other stakeholders such as land managers and estate agents have no direct access to the information. The process of formulating and reviewing rates by the office of chief government valuer usually entails stakeholder workshop reviews after the field data collections.

The Valuers Registration Board (VRB) initiatives towards instituting training programmes for first registration and for continued professional development aim at improving Tanzania valuer competence and encouraging good conduct. VRB has adopted International Valuation Standards but customizing them to meet the local conditions. While these two statutory bodies work together to enhance professional skills of valuers, a local professional association of real estate professionals (AREPTA) runs annual professional conference and meetings during which presentations on good professional practices are delivered by national peers. Tanzania is also an active member of several international organizations which include the African Real Estate Society (AfRES).

6. Conclusion

Regulating valuation alone in Tanzania is unlikely to solve the valuation problem. The evolving real estate market needs to be regulated in tandem with the valuation profession and the allied disciplines. Proposals for setting up ‘Real Estate Regulatory Authority’ along similar lines like that of the Department of Land Development of Dubai have been and they are under consideration by the Government of Tanzania. The proposals include a framework for setting up an information portal where property developers, investors, professional firms and agents will be compelled to contribute data and be allowed to access the data from others to improve their work. When it comes to be realized, a property index construction will have been introduced and more information available to enhance transparency in real estate market in Tanzania.

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