

Beyond Acquisition and Transfer: Nozick's Rectification Principle as a Remedy for Tanzania's Resource Distribution Injustices in North Mara, Tanzania.

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ABSTRACT: The Kurya people of Tanzania, particularly in the Mara Region, have long suffered from systematic injustices in land and resource distribution. These injustices are rooted in colonial dispossession, post-independence policies, and weak legal protections for customary land ownership. The failure of existing laws and policies to protect customary ownership has allowed land grabbing, forced evictions, and economic exclusion to persist, leaving the Kurya people with diminishing access to their ancestral resources. This paper applies Robert Nozick's Entitlement Theory as a framework for addressing these historical injustices. Nozick's libertarian approach emphasizes justice in acquisition and voluntary exchange. He also acknowledges that if past acquisitions were unjust, corrective measures are necessary to restore rightful ownership. The paper argues that the Tanzanian government must undertake a comprehensive historical review of land acquisitions and transfers to rectify injustices. It recommends a historical review of injustice through rectification to recognize customary land tenure, restitution of wrongfully acquired land to ensuring that local populations benefit from their resources.

KEYWORDS: *Entitlement Theory, justice, North Mara, Robert Nozick.*

Introduction

This article is an attempt to apply Robert Nozick's theory of Entitlement in addressing the problem of resources distribution injustices in North Mara community in Tanzania. The community of the North Mara resides in areas rich of mineral resources while not being the right owners and primary beneficiaries of the minerals. The first part of this article presents the historical roots injustices in resources distribution in Tanzania. This intends to disclose that the problem of North Mara is also the matter to be dealt with at the national scope. Also, the article describes how the local communities are systematically denied their right to property right through eviction, less involvement and compensation. The forced eviction and land alienation owe its origin from the national law and policies that tend to favour the investors while the local population remain underprivileged. Moreover, the article describes how the community have been struggling to get access to resources resulting to constant conflicts with the investors. Additionally, we have described Nozick's entitlement theory and its application as a remedy to injustices committed in resources acquisition and transfer from the local communities. Lastly, the article have argued for implementation of historical review to ensuring that Nozick's three principles of acquisition, transfer and rectification are observed in protecting individual communities right of ownership.

1. The Historical Account of Injustices in Resources Distribution in Tanzania

The problem of revoking the property right in Tanzania especially the native's land rights is a historical one, drawing its roots from the colonial time. In the pre-colonial period, land being considered as the major means of production was under communal ownership. Each society had its own land through which their members had equal right and access to make use of it.¹ However, in 1895 the German colonial government initiated a decree that forcefully revoked the right to land ownership by the native communities. The decree only recognised some pieces of land that were under private ownership or previously owned by indigenous communities. The rest of the land in Tanganyika by then was declared unowned land vested under German Empire.²

Abdon Rwegasira. *Land as a Human Right: A History of Land Law and Practice in Tanzania*, (Dar es Salaam: Mkuki na Nyota Publishers Ltd, 2012), 50.

² Rwegasira. *Land as a Human Right*, 53.

Other subsequent land related laws during the colonial period legalised the said forceful transfer of land from the natives to colonial government. Both land registration ordinance of 1903 and land ordinance of 1923 by German and British colonial governments respectively maintained the same. For instance, the British declared that “the whole of the lands of the Territory, whether occupied or unoccupied ... are hereby declared to be public lands.”³ The same law declared that all rights pertain to the public land to be under British Governor in a way that no any occupation or use of the land shall be considered valid unless there is consent from the Governor.⁴

Issa Shivji considered this ground as the origin of the exploitative land laws operating in Tanzania. He argues that, “the existing land tenure structure and legal regime governing land in Tanzania Mainland find their genesis in the colonial political economy. The colonial land regimes established by the Germans (1885-1916) and the British (1918-1961) assumed that indigenous occupants had no ownership rights over land.”⁵ It was unfortunate that the colonial government did not know that land and its resources in Tanzania likewise in Africa has been owned all the time by the natives in a communal system. This misconception was adopted by the Tanzania government and formed part of the basic land policy, laws and land acquisition. These laws in our view have completely denied the natives of Tanzania their natural rights to own, utilise and transfer their land initially acquired in justice.

In 1967, six years after independence, Tanzania enacted the *Land Acquisition Act*. The act outlines the procedures for the government to acquire land for public purposes and housing schemes. This law grants the president the ultimate authority to acquire any land within the republic as deemed necessary. Landowners are only notified of the president’s interest in acquiring their land, without any option to decide anyhow. As a result, the acquisition is mandatory and non-negotiable for the land occupier.⁶ The land policy recommends that “full, fair and prompt compensation shall be paid when land is acquired.”⁷ The land law adds that such compensation should be given to, “any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered.”⁸

It is also provided in the *Land Acquisition Act* that the assessment exercise for compensation should reflect the value of land at that given time in the said location and other improvements done on land.⁹ All these procedures for land acquisition are granted with the assumption that by paying a full, fair and prompt compensation it will be organised by upholding the principle of justice. Contrary, the government acquired about 100,000 acres of land in Hanang district for agricultural project without compensation. This was in 1969 just two years after the land acquisition act was enacted.¹⁰

1. Injustices in Minerals Resourceful Land

Tanzania possesses highly valuable extractive mineral resources. It ranks fourth in Africa for the diversity and richness of its mineral resources, following South Africa, the Democratic Republic of Congo, and Nigeria.¹¹ The mining sector in Tanzania includes both small-scale, medium and large-scale mining. Small-scale mining is often characterized by the use of crude tools and insecurity due to poor mining techniques.¹² The medium scale mining operates by using some sophisticated tools and proper method of disposing chemicals.¹³ In contrast, large-scale mining employs mechanized tools, advanced technology, and well-equipped personnel, with high levels of invested capital.¹⁴

Currently Tanzania has four large scale gold mines namely North Mara Gold Mine, Bulyanhulu Gold Mine, Buzwagi Gold Mine and Geita Gold Mine. All these mines are owned by the multinational investors, except North Mara Gold Mine (NMGM) which the government own sixteen per cent of shares while eighty four

³ Tanganyika Territory. *Land Ordinance Act*. (1923), section 2.

⁴ Tanganyika Territory. *Land Ordinance Act*, section 3.

⁵ Issa Shivji. *Land Tenure Problems and Reforms in Tanzania*. A Paper presented at the Sub-regional Workshop for East Africa on Land Tenure Issues in Natural Resource Management. Addis Ababa, Ethiopia (March 11-15, 1996), 2.

⁶ United Republic of Tanzania (URT), *Land Acquisition Act*. (1967), Section 3-10.

⁷ URT. *Land Policy*, Section, 4.1.1(d).

⁸ URT. *Land Act*. (1995), 3.1(g).

⁹ URT. *Land Acquisition*, (1967), 14(a-g).

¹⁰ Issa Shivji. *Not yet Democracy: Reforming Land Tenure in Tanzania*. (Dar es Salaam: HaKiArdhi, 1998), 9-11.

¹¹ Society for International Development (SID). *The Extractive Resource Industry in Tanzania: Status and Challenges of the Mining Sector*. (Nairobi: Society for International Development, 2009), 11.

¹² SID. *The Extractive Resource*, 12.

¹³ Siri Lange. “Benefit Streams from Mining in Tanzania: Case Studies from Geita and Mererani.” *The Journal of Cleaner Production*. 14(22). (January 2006), 397-404.

¹⁴ SID. *The Extractive Resource*, 12.

per cents remain to Barrick Gold Mine.¹⁵ Stamigold Gold mine is a medium scale gold mining and its hundred per cent owned by the government.¹⁶ Other mineral mining includes diamond, coal, silver, nickel and Tanzanite among others.¹⁷ Large-scale mining investments have created conflicts in local communities over land issues, among many. This leads to community complaints about inadequate, delayed, or non-compensation is done for the acquired land and properties destroyed for the company to occupy the land.¹⁸

2.1 Local Population Denial for Minerals

This section focuses on highlighting the injustices committed against the local community of North Mara Gold Mine in Tanzania, leading to the revocation of their rights to properties such as land and minerals. The choice of North Mara community is due to the high rates of injustice on land alienation, eviction, killings, unfair compensation, to mention just a few to the local community as reported by various local and international human rights defenders and academics.

North Mara Gold Mine, located in Tarime district commenced its operation as a large scale mine in 2002 when the government privatized the area to Afrika Mashariki Gold Mine.¹⁹ This was the results of the nine years survey since 1993. It is published by Barrick, a Canadian mining company that owns and operate the mine that “The Tanzanian company, Afrika Mashariki Gold Mines begins large-scale commercial exploration in the North Mara region. Prior to 1993, the region mostly had small-scale and local gold mining.”²⁰

The area where the mining activities are taking place is the indigenous homes of Kurya people of Tanzania, commonly known as Nyamongo. The Legal and Human Right Centre (LHRC) confirm that the mine is surrounded by seven villages namely, Kewanja, Kerende, Genkuru, Nyakunguru, Nyangoto, Matongo and Nyamwaga.²¹ However, currently there are eight villages surrounding the mining area due to the division done by the local government authorities, established Komarera village from Nyamwaga village.

The land in Kurya tribe is a communally owned property by the clan members. As a communal property, it is shared by the members of the specific clan through small groups commonly known as *ibhisaku*. The clan land, likewise to the land belongs to the specific clan group is considered as a generational land, intended to be utilized by the current generation and the one to come. In the collectiveness of the clan members, they defend their land against any invasion from another clan. It is the same case, when an intruder from another group within the same clan invades the land of the other group. Usually, the conflict of two members of different clans over the acquisition of land is the conflict between clans. The feelings of our or their land usually guide the proper distribution and safeguarding the property.²²

This depicts how land is important for the local community around the North Mara Gold Mine. The Miningwatch Canada report underline that, land is an essential item for the survival of the Kurya community, supporting their subsistence farming, herding, mining and settlement. It plays a crucial role in maintaining cultural and social cohesion, with many families living on ancestral lands passed down through generations without formal title deeds. In their 2023 report on the land acquisition process from 2022 to 2023 in Komarera and Kewanja villages noted that the whole process was not just.²³

The acquisition of Nyamongo land for mining is dominated by stories of injustice, ignoring the local consultation and their consent. Despite legal requirements demanding the government consultation with

¹⁵ Tanzania Mining Commission. *Annual Report 2021-2022*. (July 2023), 6.

¹⁶ Stamigold Company Limited. *Company Profile*. (2022), 7. Available via: chrome-extension://efaidnbnmnnibpcajpcglcfindmkaj/https://stamigold.co.tz/download/Company_Profile%20_2022.pdf

¹⁷ Mining Commission. *Annual Report*, 6-9.

¹⁸ Mary Mohamed Rutenge. *Gold-mining Multinationals and Community Interaction in Tanzania: Towards Localised Social Accountability*. Thesis to obtain the degree of Doctor from the Erasmus University Rotterdam by command of the Rector Magnificus Professor dr H.A.P Polsand in accordance with the decision of the Doctorate Board, 2016.

¹⁹ SID. *The Extractive Resource*, 13.

²⁰ Barrick. *North Mara/How we Operate in Tanzania*.

<https://www.barrick.com/English/operations/north-mara/mining-with-integrity/tanzania/default.aspx#:~:text=East%20African%20Gold%20Mines%20Ltd,the%20North%20Mara%20Gold%20Mine.&text=The%20North%20Mara%20Gold%20Mine%20begins%20commercial%20production%20under%20the,of%20East%20African%20Gold%20Mines>. Retrived on 06/06/2024.

²¹ Legal and Human Right Centre (LHRC). *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania-The Shootings of the Five*. (Fact Finding Mission Report May, 2011), 3-4.

²² Gissa Andrew Mahende. “Are We the Same or Different? The Impact of Ethnic Group Categorization on Inter-Clan Conflicts in Tanzania.” *Developing Country Studies*. Vol. 2, No. 11. (2012), 17-24.

²³ A Miningwatch Canada. *Evicted for Gold Profits: Indigenous Kuria Forced off Land in Expansion of Barrick Gold’s North Mara Gold Mine in Tanzania*. (Report-October 2023), 5.

villagers, the original contract between the Tarime district government and Afrika Mashariki Gold Mine (AMGM) did not adequately involve the affected community. The villagers lost significant portions of land which was the home of 100,000 people for the sake of private investors.²⁴ They were neither properly informed nor granted consent for the agreement. The report states that, “The villagers claim that the original contract between AMGM and the government was concluded without adequate consultation or approval. Villagers were spoken to about the upcoming agreement, but the final document and contract was not approved by villagers and lacks consent of the majority of villagers.”²⁵

The transfer of the contract from AMGM to successors like East Africa Gold Mines Limited, Placer Dome and Barrick Gold Mine maintained injustices and unfulfilled responsibilities. Despite attempts of reconciliation, tensions persist due to unaddressed complaints on land acquisition, minimal compensation and unfulfilled terms in the contract.²⁶ This is also supported by Jacob Martin Mulikuza who asserts that, the change from one mining company to another, among other factors were caused by unending confrontations. The said confrontations between the local community and the mining company were basically because of land compensation.²⁷

It is noted that, when Barrick were taking over the mine from Placer Dome the community had a great fear of losing more land and their mining grounds. The villagers attempted to resist, but in return more land were acquired for the extension of mining activities.²⁸ Since then, the history of land alienation has been a worsening factor for poor relationship between the community and the mining company. Tundu Lissu articulated this in his letter to Canada accusing Barrick’s practises of grabbing land. Lissu reports that:

[In the] beginning of 2004, the company has been taking by force villagers’ lands it requires for its mining operations. This is done by simply dumping millions of tons of waste rock and rubble onto village lands without even the pretence of seeking owners’ consent or payment of compensation as required by law... the Kihinda Clan and dozens of other landowners in the area have lost their lands in this way... Similarly... by simply dumping mountains of waste rock onto farmlands and residential areas thereby forcing the villagers off. All this is done with the active participation of the district administration and police.²⁹

In 2012 and 2014, the company expressed interest to Nyamichele hamlet in Nyakunguru villages. The residents were stopped from developing their areas to allow for compensation assessments. After the assessment, the mining company cleared the land, destroying crops, trees, and buildings, forcing people to vacate. To date, those people have not been compensated. The company has since informed villagers that they are no longer interested in the area, and they can resume their activities if they wish. Villagers were offered only seven per cent of what they were supposed to be paid in 2012-2014 assessment as ‘cloth to wipe their tears with.’³⁰

The 2022 report by Miningwatch is detailed with information collected from the field describing the flaws of the assessment processes for properties compensation in Komarera village. It was the exercise conducted to give space for the company to acquire the area for extension of the mining activities. The report has included a number of injustices committed to the local community owning the land acquired by the mining company. For instance, it was a surprise to see the assessors who were paid by the company being accompanied by Field Force Unit (FFU) or commonly known as *Fanya Fujo Uone* during the process.³¹

The FFU are said to be included in the process purposely to intimidate and threaten the villagers and make them remain loyal to the assessors even when the assessment process is not conducted justly. The report argues that, “in case of verbal dissent by the landowner the number of FFU police was often quickly increased

²⁴ Legal and Human Right Centre (LHRC). *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania-The Shootings of the Five*. (Fact Finding Mission Report May, 2011), 4.

²⁵ LHRC. *Killings around North Mara*, 4.

²⁶ LHRC. *Killings around North Mara*, 5.

²⁷ Jacob Martin Mulikuza. *The Dynamics of Conflict of the Kuria Tribe around North Mara Mine*, A Dissertation Submitted in Partial Fulfilment for the Requirements for the Degree of Master of Social Work (Msw) of Open University Of Tanzania, 2015.

²⁸ LHRC. *Killings around North Mara*, 7.

²⁹ Tundu Lissu. *Six Villagers Killed in Barrick’s North Mara Mine*. (A letter to Canada, June 17, 2006), 1-4. <https://www.jamiiforums.com/threads/tundu-lissu-na-wenzake-waachiwa-kwa-dhamana-na-masharti-magumu.139000/page-4>

³⁰ A Miningwatch. *Evicted for Gold Profits*, 38.

³¹ A Miningwatch. *He was Murdered: Violence against Kurya High after Barrick Takeover of Mine*. (Report, October 2022), 11.

and the landowner was subject to violent assault and detention.”³² The FFU police are the government employees’ security officers who are working with the mining company to provide security services under the agreed terms in the memorandum of understanding between the company and the police service. The assessors did not abide the law by allocating low price to the properties as they wish. None could argue against because they were mistreated by the security personnel present.³³

On other occasions, properties were evaluated without the owners present. In one case, a property owner questioned why his property was assessed without his knowledge and demanded a reassessment to discuss the price. The assessors then beat him up severely. Despite a heavy police presence, they did nothing to intervene. Eventually, the property owner was detained by the police for hours while the process continued.³⁴

2.2 Weaknesses of the Laws to Protect the Native’s Interests

There is a loophole in the Tanzania Valuation and Valuer Act of 2016 which is the established law to guide the whole process of assessing the value of a property in question.³⁵ The law allows the Valuers to get into ones land, premises, or building in reasonable hours when discharging their functions without necessarily being required to inform or seek permission from the property owner.³⁶ It criminalizes any attempt of the property owner to restrict the Valuers not getting an access to the property. The owners are obligated to cooperate with the valuers in giving out the required information to the valuer.³⁷ This gap will be addressed in the next chapter because a provision as such does not grant the property owners with authority to make decision concerning their property. It even contradicts the land law of 1999 which insists on citizens’ participation in making decision on matters of land occupation and use.³⁸

The process of evaluation to allow the transfer of properties to the mining companies was more subjected to force, lack of transparency and freedom for the landowners than their consent. This is evident because property owners were being forced to sign the valuation form even when they are not satisfied with the entire process and the price given.³⁹ Some of the properties especially the good and valuable houses by the local community were not recorded in the assessment form and hence no compensations were given. It is labelled that, “Other people, their houses existed for a long time... [These] are people who have been living there for 50 years but [the assessors claimed] that they did see those houses and they are not going to pay.”⁴⁰ This was contrary to the regulations that require all kinds of improvements done on land to be fairly evaluated.⁴¹

The national land law of 1999 was enacted among other reasons to ensure the equitable distribution of land and that all citizens have an access to land.⁴² According to the said law, land has a value, and must be considered in any transactions involving it.⁴³ The same law instructs full, fair and immediate compensation of the acquisition of land to legal holder.⁴⁴ The Valuation Act established the position of the Chief Valuer whose duties among others are to organise and conduct evaluation when requested by the government, institutions or individuals. He also conducts research and makes available the valuation data bank for public consumption and valuers.⁴⁵

Based on the said responsibilities, the regulations require the Chief Valuer to prepare the data concerning the rates of value of the land in various parts of the country.⁴⁶ The market value of the land will be determined through a comparative survey, based on actual price of the area or nearby localities.⁴⁷ The schedule ascertaining the rates of the land value shall consider the following;

Location where the subject land is situated; accessibility to the said land; legal and social land use restrictions including zoning; general condition of the site; distance of the subject land in relation to public services such as roads, markets, schools, hospitals; land

³² A Miningwatch. *He was Murdered*, 11.

³³ A Miningwatch. *He was Murdered*, 15.

³⁴ A Miningwatch. *He was Murdered*, 16.

³⁵ URT. *Tanzania Valuation and Valuers Registration Act*. (2016), Section 55(1).

³⁶ URT. *Valuation Act*, Section 55(1) a.

³⁷ URT. *Valuation Act*, Section 55(2) a-d.

³⁸ URT. *The Land Act*. (1999), Section 1(1) j.

³⁹ A Miningwatch. *He was Murdered*, 16.

⁴⁰ A Miningwatch. *He was Murdered*, 14.

⁴¹ URT. *Valuation and Valuers General Regulations*. (2018), Section 54.

⁴² URT. *Land Act*, Section 1(1) c.

⁴³ URT. *Land Act*, Section 1(1) f.

⁴⁴ URT. *Land Act*, Section 1(1) g.

⁴⁵ URT. *Valuation Act*, Section 6(1) b and c.

⁴⁶ URT. *Valuation Regulations*. Section 53(1-3).

⁴⁷ URT. *Valuation Regulations*. Section 9.

aspects including terrain of subject land; security of tenure; land size and shape; land use; availability of the public utilities to the subject land such as electricity, water, sewage system; productivity of the subject land; third party interests; readiness of the land for use; and infrastructure already in place.⁴⁸

The schedule describing the land rates remain valid for three years after which the Chief Valuer has to make a review of the whole. However, he has an authority to review the schedule to a given area even before the lapse of three years.⁴⁹ This is to ensure the properties especially land is compensated based on the existing market price.

The explanation by Miningwatch given in 2023 alludes that in Komarera village, the land value was set to be five million Tanzanian shillings per acre. This amount is low comparing with the real market price of the land in the areas around the village.⁵⁰ The same is confirmed by their 2022 report when evaluating the compensation that was done in 2021. The report says, “The payments were so low that the landowner could never buy back that same amount of land nor plant the same crop nor build the houses that had been on their land for the amount they received.”⁵¹ These facts indicate that the land acquisition by the mining company was not justly organised and the livelihood of customary holders of the properties were worsened.

The report reveals a number of cases where the valuation forms were being changed by the assessors after valuation exercise and given low value. The owners’ claims over not served with the copy or allowed to take the photo of the form. This was an intended technique to facilitate the disposed property unjustly.⁵² The Valuation and Valuer registration act says nothing about the property owner being issued with the copy of the properties assessed and the price allocated to each. This is also another weakness that the researcher will address in the last chapter because it acts as a facilitating instrument for injustices committed in the valuation exercises. The local community attempted to protest over the process, but all was in vain, because of the presence of the police officers, hence their struggle to give a written complaint to the company manager was thwarted.⁵³

Most of the people living in villages surrounding the mining area are living in poverty. The land they depended on for local mining and other socio-economic activities have been taken for large-scale mining operations. In a way to express their anger and grievances, the youth usually organise themselves in groups to raid the mining in search of gold for survival.⁵⁴ Seif Omar Mohamed and Benard Nyakwebwa Oyagi identified the problem of violating land rights of the local community in Nyamongo as a source of land conflicts and subsequently affecting community development.⁵⁵

2.3 The Local Population’s Struggle for Resources

For the past ten years, the society has witnessed continuous killings and injuries committed to the local community as they try to earn a living from their lost minerals. According to Lissu, about six (6) villagers around the mine were shot by the security officers guarding the mining areas from July 2005 to June 2006.⁵⁶ In 2009, eleven villagers were killed and other ten in 2010. On 16th May 2011 about five people were killed on the same day by the company’s security officers.⁵⁷ A statement made in the report issued by the government of the said killings stated that;

It is true that 8 people were injured in fighting between the police and the invaders within the area of the Mine near Nyabirama close to the rocks grinding mill. Among those injured five lost their lives after being taken to the services of a medical centre. The number of invaders was more than 1,000 people compared with the number of about 40 police officers who were at the scene.⁵⁸

In its 2022 briefing paper, RAID reported that about 77 people have been killed and 304 injured by mining security personnel since 2006 when Barrick took over the mine. It is noted that the force being used by police officers was unnecessary according to international standards. RAID highlighted the increase in killings,

⁴⁸ URT. *Valuation Regulations*. Section 53(4) a-n.

⁴⁹ URT. *Valuation Regulations*, Section 53(6-7).

⁵⁰ A Miningwatch. *Evicted for Gold Profits*, 18.

⁵¹ A Miningwatch. *He was Murdered*, 15.

⁵² A Miningwatch. *He was Murdered*, 13.

⁵³ A Miningwatch. *He was Murdered*, 13.

⁵⁴ Seif Omar Mohamed and Benard Nyakwebwa Oyagi. “Land Conflict and Community Development Around North Mara Mine in Tarime District - Tanzania.” *American Journal of Humanities and Social Sciences Research (AJHSSR)*. Vol. 5, Issue-3. (2021), 30-37.

⁵⁵ Mohamed and Oyagi. “Land Conflict,” 30-37.

⁵⁶ Lissu. *Six Villagers Killed* 1-4.

⁵⁷ LHRC. *Killings around North Mara*, 9.

⁵⁸ Tarime District Commissioner (DC). *The Report of the Inquiry into the Death of Five People on 16/05/2011 Shot by the Police at the North Mara Mine*. (Translation- 13 June 2013), 19.

injuries, and excessive use of force by the police against the local community.⁵⁹ However, the committee formed to investigate the deaths of five people killed by the police officers was satisfied with the force used by the said police officers.⁶⁰ This situation has led North Mara Gold Mine to be considered the deadliest gold mine in Africa, as detailed in their briefing paper.⁶¹

The conflict between the local community and the mining company in North Mara Gold Mine represents an endless struggle of the local communities for the defence of their resources elsewhere. Mwesiga, T.R *et al* in 2023 conducted research on *The Impact of Mining Legislations on Conflict Management in Geita District, Tanzania*. They identified that mining sector in Tanzania has always been experiencing conflicts between the local community and the investors. The sources of conflicts being unfair property compensation, unfulfilled promises, the grabbing of mining areas for small and medium mining, low benefit the local people get from what is produced and the failure to implement the local content policy.⁶²

3. Nozick's Entitlement Theory as a Remedy to the North Mara Injustices

Nozick's entitlement theory of distributive justice highlights the importance of respecting individuals' right in the whole process of property acquisition and transfer. In the preface of *Anarchy*, Nozick states categorically that, "individuals have rights, and there are things no person or group may do to them (without violating their rights)."⁶³ Will Kymlicka considers this ground as that which constitutes the basis of Nozick's theory of justice.⁶⁴ The right to property ownership is among the absolute rights that nothing can be done to them without violating such rights. Nozick attempts to address the need for individuals, groups and institutions to respect these rights which he considers inviolable. The theory is extensively detailed with a discourse on the property right and the freedom of the right owners to utilize the property. The theory constitutes three principles that in their totality formulate the entitlement theory.

3.1 Principle of Justice in Initial Acquisition

This is the first principle described by Nozick. It highlights that individuals become the right owners of the property if they have acquired justly. In a way that one owns a property either through original acquisition that is mixing their labour with a natural or unowned property; or through a voluntary transfer from someone who already owned that property in principle.⁶⁵ The principle of original acquisition presents what Nozick thinks could be the initial position to explain how resources originally acquired by individuals or collectively by a group shall be distributed. In the first place, the principle adopts the Lockean *proviso* to explain how unowned properties came to be owned. Jonathan Wolff agrees with Nozick that justice in initial acquisition of the unowned properties stands as a basis of assessing whether the subsequent resources distribution is just or not.⁶⁶ That is to say, if there was a just acquisition of resources ownership from unowned to owned state; then, individuals who became the owners are entitled to those resources.

Nozick's historical aspect of resources distribution requires one to evaluate whether the whole arrangements of resources' ownership were just. Other subsequent transfers of already owned resources follow conditionally from that history.⁶⁷ At this juncture, Nozick's principle of original acquisition helps to analyse the right to resources ownership in North Mara community. Perhaps, the question that may demand a critical reply in this aspect is whether the Tanzania local communities have the right to resources as the original owners?

Locke's formulation of property right theory explains how common and unowned properties became private and owned properties respectively. His theory stands as a guiding path in responding to the matter. The statement that [God] "has given the earth to the children of men,"⁶⁸ is at the very beginning of the theory description. This provision gives man the right to use natural reason to utilize the available resources as

⁵⁹ RAID. *Barrick's Tanzania Gold Mine: One of the Deadliest in Africa*. (North Mara Briefing Paper-November 2022), 1.

⁶⁰ Tarime District Commissioner (DC). *The Report of the Inquiry into the Death of Five People on 16/05/2011 Shot by the Police at the North Mara Mine*. (Translation- 13 June 2013), 20.

⁶¹ RAID. *Barrick's Tanzania Gold Mine*, 1.

⁶² Mwesiga, T.R. et al. "The Impact of Mining Legislations on Conflict Management in Geita District, Tanzania." *Ethiopian Journal of Environmental Studies & Management*. Vol. 16. No.5. (2023), 589-600.

⁶³ Nozick. *Anarchy*, ix.

⁶⁴ Will Kymlicka. *Contemporary Political Philosophy: An Introduction*. 2nd Ed. (New York: Oxford University Press Inc., 2002), 109.

⁶⁵ Nozick. *Anarchy*, 150-151.

⁶⁶ Jonathan Wolff. *Robert Nozick: Justice, Property and Minimal State*. (Cambridge: Polity Press, 2003), 79.

⁶⁷ Goodin and Pettit. *Contemporary Political Philosophy*, 227.

⁶⁸ *The Holy Bible: King James Version*. Psalm. 115:16.

provided by God for preservation and subsistence.⁶⁹ Locke argues that, initially the resources were given to humankind in common which he refers as resources in unowned states.⁷⁰ It was only by mixing human labour to a certain piece of resources that converts into a property of that particular person who has used his labour to add value to the common property.⁷¹ Nozick complement to property right theory of Locke suggests that by adding labour to a common property to improve its status makes it more valuable than it was before. Therefore, because the labourer is entitled to the labour mixed with the resources, he is also entitled to the things created by his labour.⁷²

The historical account of resources distribution in Tanzania reveals that natural resources such as land, water, forests among others were held communally. The said resources were important for their livelihood, hence set to be common to all members of the local community to easier access for subsistence.⁷³ The important element of Nozick's theory to consider in this regard is the need to respect that which is mixed with human labour. Following the said element, it is indubitable that Tanzania natives in their respective groups were making use of the resources found in their localities. For instance, the Pare tribe as described in the previous chapter considered the land and water bodies as common resources out of which they could cultivate crops for their subsistence.⁷⁴

Then, according to the principle of justice in original acquisition the natives the Kurya of North Mara are considered as original owners of the resources found in their localities. This *proviso* aligns with Nozick's first principle of entitlement theory which states that, "a person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding."⁷⁵ Therefore, there would be no contradiction if we argue that, the natives are entitled to the resources found in their land because they had acquired them justly.

3.2 The Principle of Justice in Transfer

Nozick's consideration in the second principle of entitlement is on the transfer of the just owned resources. The two underlining characteristics of justice in transfer are justice in the previous acquisition and voluntary consent of the property holder. The first characteristic dealt with embraces the historicity of the whole process of property acquisition to grant a moral justification for the distribution, or transfer of the property in question. It tends to analyse the situation through which the original acquisition was done before the current transfer or possession can be claimed.⁷⁶

The second characteristic takes into consideration the question of voluntary consent in any transfer of ownership. According to Nozick, the distributive justice is just only when there is a voluntary consent of the property owner. This limits any kind of forceful revocation of property rights from the right owner to any other owner.⁷⁷ Robert E. Goodin and Philip Pettit agree with Nozick that Entitlement theory is a procedural theory of distributive justice through which it set procedures for just property acquisition and transferred.⁷⁸ The voluntary consent in transferring the property under holding implies that one is free to transfer his right of ownership under the conditions he sees fit or not. This is what Nozick refers to as the right owner having an absolute right to property acquired in justice.⁷⁹

It can be demonstrated that following Nozick's principle of initial acquisition, the natives through their local communities acquired the properties including land and its natural resources in justice. Also, those communities developed a customary system of transferring their properties to their descendants through inheritance. Therefore, they are entitled to the resources because the whole process adheres to the just procedures as developed and advocated by Nozick. However, contrary as described, Tanzania has established unjust legal structure through which natives are forcibly evicted from their property rights. Similarly, transfers of resources are organised without the voluntary consent of the natives, hence worsening their livelihood.

The right to property ownership is safeguarded in the Tanzania constitution. It states that, "the property owned according to the law must be protected; and it shall be unlawful for any revocation of the property held in

⁶⁹ John Locke. *Two Treatise of Government*. (London: Thomas Tegg, 1823), ST. 24.

⁷⁰ Locke. *Two Treaties*, ST. 25.

⁷¹ Locke. *Two Treaties*, ST. 26.

⁷² Robert Nozick. *Anarchy, State and Utopia*. (Cambridge: Blackwell, 1974), 174-175.

⁷³ Gregory H, et al. Eds. *Custodians of the Land: Ecology & Culture in the History of Tanzania*. (Ohio: Ohio University Press, 2016), 1-20.

⁷⁴ Isaria N. Kimambo. *Penetration and Protest in Tanzania*. (Dar es Salaam: Tanzania Publishing House, 1991), 20.

⁷⁵ Nozick. *Anarchy*, 151.

⁷⁶ Nozick. *Anarchy*, 151.

⁷⁷ Nozick. *Anarchy*, 262-265.

⁷⁸ Robert and Pettit. *Contemporary Political Philosophy*, 229.

⁷⁹ Kymlicka. *Contemporary Political Philosophy*, 104.

accordance with the law without fair and adequate compensation.”⁸⁰ The constitution grants the right to own property in legitimate means, and that right is to be protected. Nozick underlines the same concern that the right owner has got the absolute right to the property acquired in justice. The absolute property right sets a limit to what others can do to the owned property, unless with voluntary consent of the owner.⁸¹ The constitution addresses an aspect of protecting properties under ownership, which is also the core function of the minimal state as presented by Nozick.⁸²

3.3 Rectification of Injustices in Resources Distribution

Nozick advocates for state intervention to rectify past injustices related to property acquisition and distribution. This involves addressing cases where the first two principles of his entitlement theory concerning justice in acquisition and justice in transfer have been violated.⁸³ The cases of colonialism in Tanganyika like elsewhere in Africa involve the use of forced labour, unjust acquisition and exploitation of natives’ resources. Following independence, Tanzania inherited and continued to uphold these unjust policies and laws, perpetuating the same injustices.

The continuation of colonial policies has led to significant disparities in land and its resources’ ownership and distribution.⁸⁴ Locke’s theory of property right recommends that all human being have right to possession of the property acquired in principles. These principles as analysed includes where labour is mixed with the common property, good and enough are left for others and what is in possession is to be consumed without being spoiled.⁸⁵ This is what constitutes the Lockean *proviso* which stands as the foundation of the Nozick’s entitlement theory. Thus, it is interesting to note that the Lockean *proviso* considers the need of the others in property acquisition.⁸⁶ This concern means that, the existing community or and the future generation are assured of enough resources distribution.

In Nozick’s entitlement theory, the Lockean *proviso* is integrated as a key element of the principle of justice in acquisition. The *proviso*, states that one can only acquire property as long as ‘there is enough and as good left in common for others.’ Nozick incorporates this idea to make sure that any new acquisition of property does not worsen the situation of others. He argues that property rights are just if they do not violate this *proviso*, meaning that the acquisition and transfer of property must leave others with sufficient resources and opportunities.⁸⁷ This integration ensures that individuals freely acquire and transfer property while considering the well-being of others and prevent deprivation.

The position of Kantian ethics maintains that those resources are important to the well-being of people even where there are no such resources. To share the resources, the political states should visit other areas of the world and establish political relations with the people of these areas and agree on how to share the available resources. It insists equal treatment and reciprocity, meaning there must be a mutual benefit from each other. Kant criticised the act of one power enslaving another power for the sake of gaining recourses.⁸⁸

The traditional system used by the natives of Tanzania in managing, organizing and distribution of the major means of production ensured that none was deprived in the distribution. The resources whether are land, grazing ground, water sources and mining sites were divided among the groups in the community depending on their clan lineage. These resources belonged to the entire clan members, and the members in each clan had the equal right to access and use the resources.⁸⁹ As described in Kurya community, all clan members were fully responsible in protecting their resources. The said resources were later to be transferred to the next generation through inheritance. This demonstrates that the community considered the need of the next generation.⁹⁰

In entitlement theory, the government is morally justified in redistributing holdings to their rightful owners. The Tanzanian government need to actively address these historical injustices, as they continue to

⁸⁰ UTR. *The Constitution of the United Republic of Tanzania*. (Dar es Salaam: Government Printing, 1977), Art 24, 1&2.

⁸¹ Nozick. *Anarchy*, 162-165.

⁸² Nozick. *Anarchy*, 26.

⁸³ Nozick. *Anarchy*, 152-153

⁸⁴ Tanganyika Territory. *Land Ordinance Act of 1923*, 1-5.

⁸⁴ URT. *Land Act*, 1(1) a.

⁸⁵ Locke. *Two Treaties*, ST. V. 30.

⁸⁶ Locke. *Two Treaties*, ST. V. 26.

⁸⁷ Nozick. *Anarchy*, 175.

⁸⁸ Kant, Immanuel. “Toward Perpetual Peace.” In *Practical Philosophy*. Mary J. Gregor. Trans. (New York: Cambridge University Press, 1996), 311–352.

⁸⁹ Gregory H, et al. *Custodians of the Land*, 1-20.

⁹⁰ Gissa Andrew Mahende. “Are We the Same or Different? The Impact of Ethnic Group Categorization on Inter-Clan Conflicts in Tanzania.” *Developing Country Studies*. Vol. 2, No. 11. (2012), 17-24.

disrupt the current distribution of resources. Despite being rich in resources, Tanzania, like many other African countries, remains poor, with her resources being exploited by foreign investors. Acknowledging and rectifying past injustices, the government should consider adopting the following measures to ensure a more just distribution of resources, in line with Nozick's theory of distributive justice.

4. Historical Review of Property Acquisition

Nozick describes entitlement theory as a historical principle of distributive justice which tends to give priority the way through which a property came to be held. The theory highlights the question of property ownership's history for the purpose of abstaining to distribute that which originally was acquired unjustly from the right owner. He argues that, "the entitlement theory of justice in distribution is historical; whether a distribution is just depends upon how it came about."⁹¹ As developed in this dissertation that, the colonial government introduced exploitative systems of revoking resources from natives' ownership by introducing various laws. The same laws which appeared to be exploitative were later adopted and implemented by the independent Tanzania.

An honest historical review is essential because the past distributive injustices may tend to affect the current distributive justice.⁹² For instance, Katrina M. Wyman argued that one of the indicators of historical injustices is when an act violates fundamental human rights.⁹³ Right to property ownership is one of the fundamental human rights granted to man since creation.⁹⁴ Also, the Tanzania constitution acknowledges the same, and that every person has the right to the protection of the property owned legally.⁹⁵ The case of North Mara community underlined identified how the right to property ownership of the native communities were violated during the transfer of mineral to other mining companies.

The adoption of land law, among other colonial laws, suppressed the right to property ownership perpetuated injustices in resources distribution. Consequently, resource which were initially held and underutilized by the natives was transferred to other ownerships without voluntary consent of the just owners. The entitlement theory by Nozicks call for a historical review of injustices committed against the property right. It is worthwhile to recommend that, the Tanzania government should protect the property right as stipulated in the constitution. This could involve compensatory grants, or other forms of compensation that restore the rightful ownership to communities that were wronged under previous policies.

This work cannot overlook the critique raised by Richman Buwokuromo Igbagara in his recently published article. The article evaluates the applicability of Nozick's theory of distributive justice in Nigeria, noting that the historical review aspect is considered impractical. Igbagara argues that the principle of initial acquisition is likely to lead to disputes and communal conflicts. The central theme of his critique is quoted at length;

How do anyone ascertain original acquisition when some holdings have a very long history? Or how do we even justify any holding in the world owing to the fact that Adam and Eve have originally acquired everything and there was no proper transfer to that effect? The fact is that most current holdings are historically traceable to property that were once the spoils of war, inheritance, obtained by tricks, force and intimidation from pristine histories. Therefore, the authenticity of first and original acquisition can hardly be ascertained. If we are to go by Nozick's theory of justice in acquisition, there is no parameter to measure original/initial acquisition.⁹⁶

This is the same challenge raised by Wyman regarding the complexities of rectifying whether all property acquisitions and transfers throughout history were organized justly.⁹⁷ Nozick himself is also puzzled by the question of how far injustices in property acquisition can be traced back. Also, considering that, the government has been involved and approving social injustices in property acquisition seems to set a limit for the review. Nozick left room for further theoretical investigation to develop a proper and just system for rectification.⁹⁸

In the view of this study, we agree with the said scholars that it would be impractical to trace the historical background of property acquisition without setting a limit. It is absurd to claim that we should

⁹¹ Nozick. *Anarchy*, 153.

⁹² Nozick. *Anarchy*, 155.

⁹³ Katrina M. Wyman. "Is There A Moral Justification For Redressing Historical Injustices?" *Vanderbilt Law Review*. Vol. 61, Issue 1, art. 3 (January 2008), 127-196.

⁹⁴ Locke. *Two Treaties*, ST. V. 24-26.

⁹⁵ URT. *Constitution*, 24(1-2).

⁹⁶ Richman Buwokuromo Igbagara. "A Critique of Robert Nozick's Theory of Justice: Its Effects on Nigeria Society." *Nnadiesube Journal of Philosophy*. Vol. 7(2), (2024), 46-58.

⁹⁷ Wyman. "Moral Justification," 127-196.

⁹⁸ Nozick. *Anarchy*, 152-153.

investigate whether Adam and Eve's properties were justly transferred through generations. Nozick's theory presupposes the need to develop a just system for assessing whether property acquisitions are organized according to principles of justice. Therefore, it may not be necessary to trace the historical origins of all land holdings, but it is important to address any recent historical injustices.

For example, Instead of allowing the government to appropriate land already alienated by colonial authorities, it should recognize such land as customary land under the ownership of clans. Also, the eviction of the Kurya from their resourceful land for the investor's benefits should be rectified, among many cases. Additionally, a system should be established to monitor the current holdings, especially of individuals entrusted with public office, to ensure they do not misuse their positions to unjustly acquire property. This recommendation aligns with Nozick's entitlement theory, which is a process-based theory that evaluates justice within the process of property acquisition.

Conclusion

The Kurya people of Tanzania's Mara Region have struggled with the painful reality of losing their ancestral land, a loss that has uprooted families, disrupted livelihoods, and eroded their cultural identity. What was once a land of abundance and security became a site of displacement and exclusion. Today, these injustices persist land grabbing, weak legal protections for customary ownership, and forced evictions continue to deprive local communities of their most fundamental means of survival and prosperity. However, justice is not beyond reach. Robert Nozick's Entitlement Theory, particularly his Rectification Principle, argues that when property is unjustly acquired, corrective measures must be taken to restore ownership to the rightful holders. This paper calls for the Tanzanian government to conduct a historical review of land acquisitions and transfers to ensure that the Kurya people regain ownership and control over their resources.

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