
INTERNATIONAL JOURNAL OF SCIENCE ARTS AND COMMERCE

ASSESSING LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING COMPULSORY LAND ACQUISITION AND COMPENSATION IN TANZANIA; LAW AND PRACTICE

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ABSTRACT

This study aimed to assess the legal and institutional framework governing compulsory land acquisition and compensation in Tanzania. Despite the Constitutional and legislative guarantee to fair and adequate compensation during compulsory land acquisition, there are dissatisfactions among the Project Affected Persons, which suggests that the existing legal and institutional framework is not effective. Therefore, this study critically analysed the current laws governing compulsory land acquisition and compensation in Tanzania and noted the gaps which need to be amended in order to have an effective legal and institutional framework to govern land acquisition and compensation in Tanzania. The study employed a doctrinal legal research method complemented by a comparative legal research method to assess the legal and institutional framework governing compulsory land acquisition and compensation in Tanzania. Observations made in this study show that the current legal and institutional framework neither provides for a transparent procedure for compulsory land acquisition nor provides for enough compensable items which will lead to fair and adequate compensation. It neglects the rights of third parties, particularly the mortgagee and tenants in compensation during compulsory land acquisition despite having a legal interest in land. This jeopardises their rights to compensation when their interest in land is affected through compulsory land acquisition. There is also ambiguity in defining public purpose and public interest in compulsory land acquisition. The

study also reveals that there have been misuse of the power to compulsory acquisition, whereby case laws proved that some compulsory land acquisition was not for a public purpose as determined by the law. The study recommends that the government should amend some of the land laws and the constitution to ensure effective compulsory land acquisition and compensation.

Keywords: *Compulsory Land Acquisition, Fair, Adequate, Prompt Compensation, Tanzania.*

1.0 INTRODUCTION

Compulsory land acquisition and compensation remain contentious issues in Tanzania, particularly in large-scale development projects and urban expansion. While the legal and institutional framework seeks to balance state interests with the protection of landholders' rights, significant inconsistencies and legal ambiguities undermine this objective. This study, therefore, will assess the legal and institutional framework governing compulsory land acquisition in Tanzania and propose legal and policy reforms to harmonise the laws, enhance the protection of landholders, and promote fairness and equity in compulsory land acquisition and compensation. This study employs a doctrinal legal research method, complemented by comparative legal research

1.1 Legal Framework Governing Compulsory Land Acquisition and Compensation in Tanzania

1.1.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania, as amended from time to time, establishes the principle of equality, that every citizen has equal opportunity to own property and has the right to the protection of their property.¹ It declares that it is unlawful for any person to be deprived of his property for nationalisation or any other purposes without the authority of law which makes for fair and adequate compensation.² The mentioned provisions justify that every citizen has the right to own property, and deprivation of that right without a fair procedure is unconstitutional. The mentioned position was held in the Court in the case of *Attorney General v. Lohay Akonay and Joseph Lohay*.³ The court stated inter alia that customary or deemed rights in land, though by their nature are nothing but rights to occupy land are nevertheless protected by the provisions of Article 24 of the Constitution of the United Republic of Tanzania, and their deprivation of customary right of occupancy or deemed right of occupancy without fair compensation is prohibited by the Constitution.

Although the Constitution provides for the right of fair and adequate compensation in case of deprivation of property, it does not elaborate in which circumstances the property may be acquired. It further does not provide which is fair and adequate compensation. The Constitution,

¹ Constitution of the United Republic of Tanzania, 1977 Article 24 (1)

² *ibid* Article 24 (2)

³ [1995] TLR 80

being the principal legislation of any country, should not leave questions to its provisions. Land, being a source of livelihood particularly for the peasants and pastoralists who form the majority in the population in Tanzania, should be addressed in the Constitution, and the security of land tenure should be clear in the Constitution.

1.1.2 The Land Acquisition Act

This Act provides a legal basis for compulsory land acquisition and compensation in Tanzania. It gives power to the President to acquire any land for any estate or term where such land is required for a public purpose.⁴ Public purposes include: land for implementation of government scheme, use for development of agricultural land, provision of sites for industrial, agricultural or commercial development, social services or housing for Government use, sanitary improvement, including reclamation, laying out of new city, municipality, township or minor settlement or extension or improvement of any existing city, municipality, township or minor settlement, development of air field or port, mining of minerals or oils, use by a person or group of persons who is in the opinion of the President, should be granted such land for agricultural development and construction of public utility. The Presidential approval must be supported by a resolution of the National Assembly published in the Gazette

The above provisions were maintained in the case of *Mulbadaw Village Council and 67 others v. National Agricultural and Food Corporation*.⁵ Where the court stated inter alia that section 3 of the Land Acquisition Act No.47 of 1967 authorizes the President to acquire land for public purpose and section 4 (2) of the Act provides where President is satisfied that a corporation requires any land for the construction of any work which in his opinion would be public utility or in the public interest or in the interest of national economy he may with the approval to be signified by the resolution of the National Assembly and by order published in the gazette declare the purpose for which land is required to be public purpose and upon such order being made such purpose shall be deemed to be a public purpose.

Where any land has been acquired by the President, the Minister on behalf of the Government shall pay in respect thereof out of moneys provided for compensation as may be agreed upon or determined.⁶

The Act.⁷ has given a radical power to the President to acquire any land without limitations. In this case, no land occupier can claim to be safe from compulsory land acquisition, as his right of occupancy can be extinguished at any time through compulsory land acquisition. Therefore, there is no sustainable security of land tenure in Tanzania.

1.1.3 The Land Act

⁴ Cap.118 RE.2023 s 3

⁵ [1984] TLR 15

⁶ Cap 118 RE 2023 s 11(1)

⁷ Cap 118 RE.2023

The Land Act⁸ is one of the principal laws which regulate land in the Tanzanian Mainland. It is the specific law on land matters other than compulsory land acquisition. However, it contains provisions relating to compulsory land acquisition and compensation. It provides that land includes the surface of the earth and the earth below the surface, and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, and buildings and other structures affixed to the land.⁹ It further defines unexhausted improvement as anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by any occupier or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability of its environmental quality and includes trees, standing crops, and growing produce whether of an agricultural or horticultural nature.¹⁰

The Act.¹¹ Provides that an interest in land has value and that value is taken in consideration in any transaction affecting that interest.¹² It provides for full, fair and prompt compensation to any persons whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by state or is acquired under the Land Acquisition Act.¹³ It further provides that in assessing compensation the following issues must be considered: the market value of the real property, disturbance allowance, transport allowance, loss of profits or accommodation, the cost of acquiring or getting the subject land, any other cost or capital expenditure incurred to the subject land and interest at market rate will be charged.¹⁴

The Regulations¹⁵ made under the Act provide for the matters to be considered in assessing compensation. The basis for assessing compensation of any land and unexhausted improvement shall be the market value.¹⁶ Market value shall be arrived at using the comparative method, evidenced by actual recent sale of similar properties, or the income or replacement cost method, where the property is of special nature and not saleable.¹⁷ This provision has been difficult to abide by due to a lack of market data in land transactions. The transactions are private and are determined by the negotiation between the seller and the buyer. In some cases, the transaction is confidential between the parties and does not put their sale agreements open to the public. The use of the income method in assessing compensation is difficult, particularly in rural areas where the peasants do not use their land for commercial agriculture and do not keep records of the

⁸ Cap 113 RE.2023

⁹ Cap 113 RE.2023 s 2

¹⁰ Ibid s 2

¹¹ Cap 113 RE.2023

¹² Cap 113 s 3 (1) (f)

¹³ Cap 113 RE.2023 s 3 (1) (g)

¹⁴ Ibid s3 (1) (g)

¹⁵ Land Regulations, 2001

¹⁶ The Land (Assessment of the Value for Compensation) Regulation, 2001 Regulation 3

¹⁷ ibid Regulation 4

income accrued annually or seasonally. The major method used is the replacement cost, which is applicable to the buildings and cannot be applied to the bare land.

1.1.4 The Village Land Act

This is the principal law which regulates village land in the Tanzanian Mainland. However, it contains some provisions relating to compulsory land acquisition and compensation. Based on the application of fundamental principles of the National Land Policy, the Act.¹⁸ provides that an interest in land has value and that value is taken into consideration in any interest affecting that interest.¹⁹ It further provides for the payment of full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation of customary use is revoked or otherwise interfered with to their detriment by state or is acquired under the Land Acquisition Act.²⁰ The Act.²¹ provides for the payment of compensation when the President transfer any area of village land to general or reserve land.²² It provides that no village land shall be transferred until the type and amount, method and timing of compensation has been agreed upon between the village and the Commissioner for Lands or the persons occupying that land.²³ The same applies when the land is declared hazardous land. The President, upon declaring any land hazardous, shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.²⁴

1.1.5 The Urban Planning Act

The Act.²⁵ provides for the orderly and sustainable development of land in urban areas, to preserve and improve amenities, to provide for the grant of consent to develop land and powers of control over the use of land and to provide for other related matters. Although the Act is not specific for compulsory land acquisition and compensation, it contains provisions relating to compulsory land acquisition and compensation. It provides for the payment of compensation for the damages or injury caused by the revocation or modification of the development consent.²⁶ It further provides that any person whose land is allocated in the general planning scheme for the development for a public purpose may require the planning authority to purchase that land.²⁷ Where the planning authority agrees to purchase such land, it shall advise the Director accordingly, and where agreement between the planning authority and landholders as to the value of such land cannot be reached, such land shall be acquired as though the acquisition were

¹⁸ Cap 114 RE 2023

¹⁹ Cap 114 RE.2023 s 3 (1) (f)

²⁰ Cap 114 RE.2023 s 3 (1) (g)

²¹ Cap 114 RE 2023 Cap 114 RE 2023

²² Cap 114 RE.2023 s 4 (1)

²³ Cap 114 RE.2023 s 4 (8)

²⁴ Cap 114 RE.2023 s (10)

²⁵ Cap 355 RE. 2023

²⁶ Cap 355 RE.2023 s 45 (3)

²⁷ Cap 355 RE.2023 s 60 (1)

compulsorily made under provisions of law relating to compulsory acquisition of land.²⁸ Compensation payable shall be calculated in accordance with the Land Act.²⁹

The Urban Planning Act³⁰ is considered the major cause of compulsory land acquisition in Tanzania. Once the Minister publish in the gazette a declaration of any area as a planning area, such an area loses its customary status and is subject to compulsory land acquisition.³¹ This was clear in the case of *Victor Robert Mkwavi v. Juma Omary*.³² In this case, it was evident that the property in dispute was surveyed in or about 1998 under a special government scheme dubbed the Songas Project, and that it was allocated to the appellant in 2011 and was issued with a certificate of occupancy. However, it was the respondent's case that he occupied and developed the property in dispute after he acquired it lawfully on 14th June 1986 when it was allocated to him by Kunduchi Mtongani Village Authority. The Court of Appeal held that a preexisting customary right of occupancy cannot be extinguished by subsequent grant of the right of occupancy on the same plot of land unless compensation was duly paid before the grant was made. The Act³³ has been the source of insecurity of land tenure, particularly in peri-urban areas and growing minor settlements.

1.1.6 Valuation and Valuers Registration Act

This Act.³⁴ is specific to the matters of valuation and registration of valuers. Since compensation on compulsory land acquisition requires valuation, it has provisions to regulate valuation for compensation. It recognises statutory valuation which is governed by specific law, or whose instruction or procedures are the result of a legal requirement.³⁵ It further recognises valuation for compensation purposes.³⁶ It provides for the validity of valuation and valuation reports for compensation by stating that valuation reports conducted for compensation shall be valid for the period of two years commencing from the date of endorsement of the valuation report by the Chief Valuer of the Government or his representative.³⁷ Endorsement of the valuation report shall be effected within six months after the valuation of interest of the last person.³⁸ After the approval of the valuation relating to compensation by the Chief Valuer, the person or entity responsible shall be liable to effect prompt payment of compensation to all affected persons.³⁹ Failure to pay compensation within six months from the date of approval of the valuation: the entity is required to pay compensation, in addition to the principal sum, and be liable to pay interest to be chargeable at the average percentage rate of the banks on fixed

²⁸ Cap 355 RE.2023 s 61(2)

²⁹ Cap 355 RE.2023 s 63(1)

³⁰ Cap 355 RE.2023

³¹ Cap 355 RE.2023 s 8 (1)

³² Civil Appeal of 2019, Dar es salaam 30 November 2022

³³ Cap 355 RE.2023

³⁴ Cap 138 RE. 2023

³⁵ Cap138 RE. 2023 s 48 (a)

³⁶ Cap 138 RE. 2023 s 49 (2) (b)

³⁷ Cap 138 RE.2023 s 52 (2)

³⁸ Cap 138 RE.2023 s 52 (3)

³⁹ Cap 138 RE.2023 s 52 (4)

deposits until such compensation is paid.⁴⁰ Where the compensation is not paid within two years, the valuation shall not have legal effect and shall start afresh.⁴¹ The Act⁴² prohibits the addition of improvement on the premises upon commencement of valuation.⁴³

The issue of delayed compensation was addressed in the case of *Shaban Said Mkumba v. Temeke Municipal Council*.⁴⁴ The plaintiff was a customary owner of a piece of land measured four thousand eight hundred square meters situated at Kijichi area in Temeke Municipality, that been enjoyment of suit land for more than sixty years; sometime in the year 2001, the Defendant developed an interest to construct the Ward office and public road at the suit land. The defendant approached the plaintiff for the purpose of securing his consent. The fact that the project was designed for social development and the plaintiff had the right of compensation did not deter the defendant from making the offer. From the year 2001, when the defendant showed her interest in the plaintiff's land did not do anything as far as compensation is concerned till 2013, when the plaintiff was forcefully evicted from the land by the defendant on the explanation that the land had been acquired by the defendant and any other issues related to compensation would be resolved later.

The court held that the defendant has the power to acquire land for public interest; doing so without paying fair compensation is unlawful and illegal. The court declared the plaintiff a lawful owner of the suit land and ordered an independent valuer to be engaged by the plaintiff to undertake valuation in corroboration with the land officer of the defendant. Compensation to be paid according to the valuation, which will be done by an independent valuer upon getting verification and approval from the Chief Valuer. Furthermore, the court ordered the plaintiff to be paid general damages to the tune of thirty million (30,000,000) for not using his land, which was the source of his livelihood from 2014.

The Act⁴⁵ has manifested several weaknesses in providing for fair, adequate and prompt compensation. It provides for interest for the delayed compensation, but it has limited the report to be valid for two years only and after that the valuation to be conducted afresh. This means the valuer must conduct a new valuation. At this time, there might be significant changes to the property and land values. The building's value will drop due to lack of repair and maintenance, and the plants and crops depicted in the previous valuation may not be found in the second valuation. It also prohibits land occupiers from making any development from the date of commencing the valuation. This prevents them from enjoying their land and improvements thereon. They are not allowed to repair their premises because the cost incurred will not be

⁴⁰ Cap 138 RE.2023 s 52 (5)

⁴¹ Ibid s 52 (5)

⁴² Cap138 RE. 2023

⁴³ Cap 138 RE.2023 s 53 (3)

⁴⁴ [2020] HCT 383

⁴⁵ Cap138 RE. 2023

reflected in the valuation. It is also silent on the number of revaluations which may be undertaken in the case of delayed compensation. It does not provide for loss suffered by the affected person in the entire period of waiting for compensation.

4.2.6 Graves (Removal) Act

The Graves (Removal) Act was enacted to provide a legal framework for removal of graves when land is needed for public purposes. The Act.⁴⁶ is crucial in balancing the need for development with respect for the deceased and their families. Where any land on which a grave is situated is required for a public purpose, the Minister may cause such grave and any dead body buried therein to be removed from the land and, in such case, shall take all such steps as may be required or convenient for the reinstatement of the grave and the interment of the dead body in place approved by him for the purpose.⁴⁷

The Act.⁴⁸ provides for compensation for the removal of graves. It states that the Minister may, on behalf of the Government, pay compensation as may be agreed upon or determined.⁴⁹ The compensation payable shall be limited to reasonable expenses incurred in the removal, transportation, reinstatement and reinternment of the grave or dead body and any placatory or expiatory rights or other ceremony accompanying such removal and reinternment.⁵⁰ If a dispute or disagreement arises to the right of any person to claim compensation, the amount of compensation or the apportionment of compensation between the persons entitled where there is more than one person interested, the dispute or disagreement shall be determined by the Minister, whose decision shall be final and conclusive.⁵¹

1.1.7 Land Disputes Courts Act

The Act.⁵² was enacted for the main purpose of establishing land disputes courts and the related matters. It empowers the High Court (Land Division) to determine disputes of National interest.⁵³ Since compulsory land acquisition is done by the President for the public purpose, all disputes regarding compulsory land acquisition and compensation should be determined by the High Court (Land Division). The Court of Appeal shall have jurisdiction to determine appeals from the High Court (Land Division). The powers to determine disputes of land matters of National interest by the High Court may hinder the poor peasants, who are mainly affected by compulsory land acquisition, from pursuing their rights when aggrieved. The High Court Registries are located in the Regional Centres, which are far from villages, and in most cases, due to court technicalities and the need for legal experts, the disputes are necessary, and the poor people cannot afford such services.

1.2 FINDINGS

⁴⁶ Cap 72 RE.2023

⁴⁷ Cap 72 RE.2023 s 3

⁴⁸ Cap 72 RE.2023

⁴⁹ Cap 72 RE.2023 s 9 (1)

⁵⁰ Cap 72 RE.2023 s 9 (2)

⁵¹ Ibid s 9 (2)

⁵² Cap 216 RE.2023

⁵³ Cap 216 RE.2023 s 37

1.2.1 There is no Private Land in Tanzania

Before the enactment of the Land Act. The Law of Limitation Act recognised private ownership of land in Tanzania. It defined public land as any land not held or deemed by the provisions of government leaseholds to be held under the right of occupancy or under customary law.⁵⁴ This means that land held under right of occupancy is not public land, regardless of whether it is a customary right of occupancy, a deemed right of occupancy or a granted right of occupancy. After the enactment of the Land Act. The position changed. The Act.⁵⁵ stipulates that all land in Tanzania is public and remains vested in the President as trustee for and on behalf of all the citizens of Tanzania.⁵⁶ The law does not stand in the philosophical anomaly which required private property to be acquired for a public purpose or public interest. Therefore, the law is not effective.

1.2.2 The Constitution does not Guarantee Land to be a Constitutional Category

The Constitution does not stipulate categorically for the protection of property rights on the basis that land is not categorised as separate property. However, it provides for the right to own land, the protection of such for every individual, and the interpretation of various cases provides for ownership of private property protected by law. When the Government acquire land from individuals, payment of compensation is the requirement illustrated in the Constitution.⁵⁷ Though the government is required only to fulfil such a requirement, the notion of compulsory land acquisition requires that only private land be acquired. Nonexistence of a separate category of land solidifies the acquisition to be done completely outside of the philosophy within compulsory land acquisition. Therefore, the Constitution does not guarantee effective compulsory land acquisition and compensation.

1.2.3 There is no Clear Legal Definition of Public Purpose

The laws.⁵⁸ and the Constitution.⁵⁹ do not give a clear definition of public purpose or public interest. Public purpose and public interest are not clearly and tightly defined in the relevant laws; those terms are only defined in cases, despite the fact that they are very crucial and should be maintained. It is not clear in the laws and cases as to whether the public purpose or public interest are to be used interchangeably or independently. The Land Acquisition Act.⁶⁰ provides that the President can acquire any land for public interest without defining the exact meaning of public interest as well as public purpose.⁶¹ Among other things, the court interpreted and defined public purpose or public interest involve community who are beneficiary for government

⁵⁴ Cap 89 RE. 2023 s. 2

⁵⁵ Cap 113 RE.2023

⁵⁶ Cap 113 RE.2023 s 3 (1) (a) and Cap 114 RE.2023 s 3 (1) (a)

⁵⁷ Constitution of the United Republic of Tanzania of 1977, Article 24

⁵⁸ Cap 118 RE. 2023, Cap 113 RE.2023 Cap.114 RE. 2023

⁵⁹ Constitution of United Republic of Tanzania of 1977

⁶⁰ Cap 118 RE. 2023

⁶¹ Cap 118 RE. 2023 s.3

undertaking project. When their legal rights are affected, it means the interests of the community are not considered. In the case of *Agro Industries Ltd v. Attorney General*.⁶² The court held that public interest or public purpose concentrates on guaranteeing the community to be benefited for the works conducted by the government, contrary to the individuals within the state. It is not appropriate for the community to profit indirectly while individuals benefit directly under the shadow of the government project.

1.2.4 Legal Framework Neglects Third-Party Interest in Compensation

Mortgage holders and tenants face significant challenges during compulsory land acquisition and compensation in Tanzania, primarily stemming from a lack of adequate legal protection and compensation mechanisms. The most pressing issue is the lack of compensation, as the mortgagees often find themselves without financial recourse despite their substantial investment in the property. This situation is caused by legal ambiguities present in Tanzanian law, which does not clearly define the rights of mortgagees and tenants during compulsory land acquisition. In the case of *Daud Mohamed Mfaume and 7 Others vs The Registered Trustees of Chama Cha Mapinduzi*.⁶³ The court declared that the act of the defendants to deny the plaintiffs' compensatory money as previously agreed and documented in writing is illegal, unjust, and against the basic rights protected by our laws.

1.2.5 Valuation errors in the assessment of compensation

The study has noted errors in the valuation for compensation resulting into unfair compensation. This was observed in the case of *Salehe Hamis Lufedha V. Tanzania Electric Supply Company*.⁶⁴ the court found that sixteen square meters of his property were not compensated. Therefore, the court ordered that the sixteen square metres be paid at a rate of Tanzania Shillings Three Thousand Fifty Thousand (TZS 350,000/=) per square metre and the interest of 12% per annum from the date of judgment to the date of payment of the decretal sum.

1.2.6 Variation in compensation

⁶² [1994] TLR p. 43

⁶³[2023] TZHC 16011

⁶⁴ [2020] TZH 3883

The compulsory land acquisition and compensation in Tanzania are carried out differently depending on the financier of the project. The donor-funded projects, the International projects and government-funded projects have been noted to have variation in procedure and compensation paid.

1.2.6.1 The Donor Funded Projects

Compensation for compulsory land acquisition in donor-funded projects in Tanzania involves a dual framework: the Tanzania national laws and safeguard policies of the specific donors. In case of conflict, the higher standard, usually the donor's policies, is applied to ensure adequate compensation and livelihood restoration.⁶⁵

1.2.6.2 International Projects

Tanzania and Uganda are involved in the East Africa Crude Oil Pipeline Project (EACOP). This is an international project with a length of one thousand four hundred forty kilometers and requiring twelve thousand and eight hundred acres, of which nine thousand two hundred twenty-three is from Tanzania.⁶⁶ It passes through eight regions in Tanzania, namely Kagera, Geita, Shinyanga, Tabora, Manyara, Dodoma and Tanga. The project is developed in conformity with international requirements for the development, construction, operation and decommissioning required for the projects that have potential for environmental and social impacts including those related to land acquisition and involuntary resettlement which include: Ugandan and Tanzanian legislative policy, regulatory, institutional framework and permitting requirements including land acquisition and valuation regulatory requirements, the International conventions and agreements which Uganda and Tanzania have signed, acceded or ratified such as International Labour Organization Conventions and African Charter on Human and Peoples Rights.⁶⁷ The project further complies with International Financing Standards and related Good International Industry Practice (GIIP), which include International Finance Corporation Performance Standards (IFCPS).

The project basing on International Financing Standards, particularly International Financing Standards Five on land acquisition and involuntary resettlement, identified gaps in the Tanzanian legal framework on compensation and rectified them in order to pay fair and adequate compensation. It was noted that the legal framework covers those with formally recognised rights or claims, including customary. Informal occupiers do not qualify for compensation under

⁶⁵ *Wikipedia*. The Free Encyclopedia. <https://en.wikipedia.org>

⁶⁶ Land Acquisition for the Eastern African Crude Oil Pipe Line (EACOP) Project in Uganda and Tanzania
Eacop.com/media.2025/05/20220315-Land Acquisition-summary.pdf

⁶⁷ Land Acquisition for the Eastern African Crude Oil Pipe Line (EACOP) Project in Uganda and Tanzania`
Eacop.com/media.2025/05/20220315-Land Acquisition-summary.pdf

the law. The project compensated both formal and informal rights or claims identified during the land and asset survey.⁶⁸ Thus, the compensation has been paid outside national standards.

1.7 Variation in procedure for compulsory land acquisition and compensation

Tanzania decided to reduce the Maasai population in Ngorongoro Conservation Area due to environmental degradation caused by overstocking.⁶⁹ The approach for compulsory land acquisition and compensation was different from other government projects. The government of Tanzania introduced a voluntary relocation initiative to move households from Ngorongoro Conservation Area (NCA) to Msomera village in Handeni District. This initiative aimed to mitigate human-wildlife conflict, alleviate environmental pressures and improve access to services for pastoralist families.⁷⁰ The government unlike in other compulsory land acquisitions, where the landholders have no room to negotiate with the acquiring authority, this was different. The local and national leaders persuaded the Maasai who live in Ngorongoro Conservation Area to voluntarily relocate to Msomera village. The compensation package included all six compensable items, and in addition, they were resettled by being given houses of higher quality than they and the alternative land for agriculture and grazing.

1.2.8. Legal and Institutional Framework in Tanzania do not comply with some of the International Instruments governing Compulsory Land Acquisition and Compensation

Tanzanian legal framework does not comply with some of the International instruments, particularly those issued by the World Bank, Food and Agriculture Organisation (FAO) and International Finance Corporation Performance Standards. These instruments require avoidance of unnecessary compulsory land acquisition, and where it cannot be avoided, then it should be minimised by exploring alternative projects.⁷¹ The World Bank require compensation to include replacement cost of the buildings and structures and other assistance which may be necessary to project affected persons to improve or restore their standards of living or livelihoods.⁷² Where livelihoods of the displaced persons are land-based or where land is collectively owned, the compensation should include replacement of land unless it can be proved to the satisfaction of the bank there is no alternative land.⁷³ The Guidelines on compulsory land acquisition and compensation require the concept of public purpose to be clearly defined in national law in order to allow for judicial review, and that compensation should be in cash, right to alternative land or

⁶⁸ *ibid*

⁶⁹ A.E Kweka, 'Assessing the Socio-Economic Needs of the Maasai Community in the Msomera Resettlement Area, Tanzania' *International Journal of Scientific Research and Management*, Volume 13, Issue 09, p.2411

⁷⁰ *Ibid* A.E, Kweka

⁷¹ 'International Finance Corporation Performance Standard 5 on Land Acquisition, 'Voluntary Guidelines on Responsible Governance of Land', Tenure, FAO, Rome, 2022 and 'World Bank Environmental Social Framework', 2017

⁷² *Ibid* World Bank

⁷³ *Ibid* World Bank

both.⁷⁴ Tanzania seems not to adhere to those instruments and therefore, where a project is to be funded by an international organisation, compulsory land acquisition is carried out through the financier's policy.

6.3 Recommendations

In line with the aforementioned weaknesses of the existing legal and institutional framework governing compulsory land acquisition and compensation in Tanzania, the researcher recommends the following measures:

- i. The provisions of the Land Act.⁷⁵ Village Land Act,⁷⁶ and the National Land Policy, which provide that all land in Tanzania is public, should be amended to provide for the private ownership of land, which shall be of freehold tenure. This will improve security in land tenure and limit unnecessary compulsory land acquisition.
- ii. The Provisions of the Land Act.⁷⁷ and Village Land.⁷⁸ Act which provide for compensation to be paid on replacement cost should be amended and provide for compensation to be on reinstatement of the new building or structure and compensable items should include resettlement, cost of restoration of the livelihood of project affected persons, loss of employment and any other justifiable costs on loss or damages and that, loss of profit of small businesses should not be evidenced by the audited accounts.
- iii. The provision of the Land Acquisition Act.⁷⁹ which empowers the President to acquire any land, should be amended by adding the words after obtaining consent from the landowner or a court decision. This will make compulsory acquisition democratic and participatory between the acquiring authority and the land owners. The Act.⁸⁰ should be amended to differentiate the assessment of compensation in urban and rural areas and recognise the land occupied by the indigenous people and their rights in compulsory land acquisition.
- iv. The Constitution of the United Republic of Tanzania should be amended by introducing a separate chapter on land which will state categories of land including private land. Compulsory land acquisition and compensation shall be effective only when it is based on the philosophy behind it, which requires the acquisition of land to be rooted in line with private. Therefore, the government of Tanzania, through the legislature, is supposed to amend the constitution for the purpose of adding a land chapter, which shall lead to the best use of land and effective compulsory land

⁷⁴ Voluntary Guidelines on Responsible Governance of Land, Tenure, *FAO Land Tenure Studies*, 2022

⁷⁵ Cap 113 RE. 2023

⁷⁶ Cap 114 RE. 2023

⁷⁷ National Land Policy, 1995 RE. 2023

⁷⁸ Cap 113 RE. 2023

⁷⁹ Cap 114 RE. 2023

⁸⁰ Cap 113 RE. 2023

- acquisition and compensation. Making land a constitutional category shall make it imperative that people are consulted whenever there are changes in land matters, including compulsory land acquisition.
- v. The Constitution ⁸¹and the land laws governing compulsory land acquisition compensation in Tanzania should be amended to define clearly and tightly the terms public interest and public purpose on compulsory land acquisition. The clear definition will avoid ambiguity about whether public interest is synonymous with public purpose or different. The list of the reasons for compulsory land acquisition on public interest should be clear and limited to those with direct benefit to the community and those that benefit individuals directly and benefit the community indirectly.
 - vi. The government should make comprehensive reforms to the compensation mechanisms governing compulsory land acquisition in Tanzania. Legal amendments should explicitly recognise and protect the rights of mortgagee holders and tenants, ensuring they are entitled to adequate and fair compensation when their interests are affected by the government's action of compulsory land acquisition. This may involve establishing a clear framework that outlines how compensation for the third-party interest shall be assessed. Through incorporating explicit to third part interest into the legal framework, Tanzania can foster a more equitable land acquisition process that respects and upholds the rights of stakeholders involved. The inclusive approach will ensure that the economic impacts of compulsory land acquisition are mitigated to all affected individuals.
 - vii. The government should ensure that the land acquisition and assessment of compensation is transparent. This can be done by establishing national guidelines on compulsory land acquisition and compensation.
 - viii. The government should ensure that the Land Compensation Fund, which is provided by the Land Act.⁸² is operative. The fund for compensation should be deposited to the Fund before the declaration of acquisition of land. The availability of funds for compensation shall eliminate in payment for compensation, which is among the major grievances in land acquisition, particularly for government-funded projects.

1.3 Conclusion

The study has found that the current legal and institutional framework in Tanzania is not effective in undertaking compulsory land acquisition and compensation, as noted in the above findings. The assessment of compensation is not uniform and guided by the laws, which result into double standard compensation within the country. Those whose land is acquired for the

⁸¹ Constitution of the United Republic of Tanzania of 1977

⁸²Cap 113 RE. 2023 s.173

implementation of donor-funded projects or international projects are fairly, adequately and promptly compensated, while those whose land is acquired for government-funded projects have their compensation delayed and neither fair nor adequate due to an ineffective legal and institutional framework. In addition, the study has found that Botswana and Ethiopia have effective legal and institutional frameworks governing compulsory land acquisition and compensation. The provision of compensation based on the market value for the reinstatement of the new building or structure, resettlement and relocation support and livelihood restoration support ensures fair and adequate compensation to the people of Botswana and Ethiopia, while Tanzania do not assess compensation on a reinstatement basis nor provide resettlement support or livelihood restoration support. It was further noted that the existing legal and institutional framework does not comply with international instruments governing compulsory land acquisition and compensation. As a result, land acquisition and compensation in donor-funded projects should be done in accordance with the donor policy and not in accordance with Tanzanian laws.

LIST OF STATUTES.

The Constitution of the United Republic of Tanzania,
 The Land Acquisition Act [Cap 118 R.E. 2023]
 The Land Act [Cap 113 R.E 2023]
 The Village Land Act [Cap 114 R.E. 2023]
 Urban Planning Act, Cap.355 RE. 2023
 Valuation and Valuers Registration Act, Cap.138 RE. 2023
 Graves Removal Act, Cap. 72 RE.2023
 The Land Regulation, 2001.

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Gaudensi George Milanzi and 19 Others v. Masasi District Council and 2 Others (Land Case No. of 2021) [2023] TZHC 21541 (29 September 2023)
Salehe Hamis Lufedha v. Tanzania Electric Supply Company (Land Case No.158 of 2017) TZH Land D3883 (11 November 2020)
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