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Deficiency of Land banks to Tanzania Investment and Special Economic Zones Authority (TISEZA) and its effect on customary land tenure in Tanzania

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Abstract
The creation of the Tanzania Investment and Special Economic Zones Authority (TISEZA) and the adoption of land banks reflect Tanzania's strategic shift towards investment-driven land governance. While the model aims to accelerate industrialisation, enhance foreign direct investment, and strengthen economic growth, it has generated substantial tensions with customary land tenure, which remains the most prevalent system of landholding in Tanzania. This article examines the genesis of TISEZA, the statutory and institutional framework governing land banks, and the implications of these mechanisms for customary tenure. It argues that the deficiencies in the legal and institutional design of TISEZA undermine the security of tenure for millions of Tanzanians by facilitating the conversion of village land to general land with minimal safeguards. Using Tanzanian statutes, case law, and comparative experiences from Kenya, South Africa, Australia, and Sweden, the article highlights the challenges of balancing investment imperatives with indigenous land rights. It concludes by recommending reforms to harmonise TISEZA's investment mandate with constitutional and human rights obligations towards the protection of customary tenure.

Keywords: Land tenure, land bank, Tanzania Investment and Special Economic Zones Authority (TISEZA), customary land tenure

Introduction

Land constitutes the backbone of Tanzania's socio-economic development, with more than 70 per cent of the population dependent on subsistence agriculture and pastoralism. The Tanzanian land tenure system is dualistic, comprising granted rights of occupancy and customary rights of occupancy, both of which enjoy equal legal validity. However, the pursuit of rapid economic transformation through investment promotion has created a structural conflict between state led policies and community-based tenure arrangements.

The establishment of the Tanzania Investment and Special Economic Zones Authority (TISEZA), mandated to manage land banks and investment zones, exemplifies this conflict. Land banks are conceived as repositories of land parcels earmarked for allocation to investors. Yet, their operation often entails the conversion of village land into general land, thereby extinguishing customary rights and exposing communities to tenure insecurity. This phenomenon raises constitutional, statutory, and human rights questions about the protection of customary tenure in Tanzania.

Genesis of TISEZA and Land Banks

The genesis of TISEZA can be traced to Tanzania's policy shift in the 1990s, marked by liberalisation and privatisation under the Structural Adjustment Programmes. The government sought to attract foreign investment as a vehicle for economic growth, culminating in the enactment of the Tanzania Investment Act 1997. This statute laid the foundation for institutional mechanisms to streamline investor access to land.

The framework evolved further with the enactment of the Special Economic Zones Act 2006, which provided incentives for investors within designated zones. The Tanzania Investment Act 2022 consolidated these provisions and formally established the Tanzania Investment and Special Economic Zones Authority (TISEZA). TISEZA was given statutory authority to identify, acquire, and manage land banks for investment purposes.

However, this centralised model often bypasses local land governance structures established under the Village Land Act 1999. Land banks are primarily assembled through the conversion of village land to general land by the President, acting under section 4 of the Land Act. In theory, such conversion requires consultation and compensation, but in practice, communities frequently experience dispossession without meaningful participation.

Doctrinal and Institutional Analysis in Tanzania

Legal Framework for Customary Tenure

The Constitution of the United Republic of Tanzania recognises the right to property. The Land Act and Village Land Act 1999 provide statutory protection to customary tenure. Section 18(1) of the Village Land Act explicitly grants customary rights of occupancy the same legal status as granted rights. Yet, the Acts also empower the President to reclassify village land as general land in the "public interest," which has been expansively interpreted to include investment.

The Tanzanian judiciary has occasionally intervened to protect customary rights. In Attorney General v Lohay Akonaay and Another, the Court of Appeal held that customary land rights constitute property protected by the Constitution. Similarly, in Malbasa Village Council v National Agricultural and Food Corporation (NAFCO), the High Court recognised the vulnerability of pastoral communities facing eviction for large-scale farms. However, enforcement has been inconsistent, and recent jurisprudence has leaned towards favouring state-driven investment policies.

Institutional Deficiencies of TISEZA

The institutional weaknesses of the Tanzania Investment and Special Economic Zones Authority (TISEZA) in administering land banks are profound and undermine the protection of customary tenure. These deficiencies manifest in three interrelated areas: the lack of harmonisation between the Village Land Act and the Investment Act, the weakness of consultation mechanisms, and the inadequacy of compensation procedures.

First, there is a fundamental lack of harmonisation between the Village Land Act 1999 and the Investment Act 2022, creating overlapping mandates between the Ministry of Lands, Housing and Human Settlements Development, local government authorities, and TISEZA. Under the Village Land Act, village assemblies and councils are the lawful custodians of village land, and their consent is a prerequisite before any transfer of village land into general land. By contrast, the Investment Act empowers TISEZA, through the Tanzania Investment Centre (TIC), to allocate land to investors once it has been transferred into the land bank. This duality of authority has generated legal uncertainty, with village institutions sidelined during conversions of land from village to general land. The result is an erosion of the statutory safeguards designed to protect customary rights of occupancy.

Second, the consultation mechanisms embedded within the TISEZA framework are weak and often reduced to procedural formalities rather than genuine participatory processes. The Village Land Act envisages meaningful consultation with local communities through village assemblies before land transfers. However, in practice, the conversion of village land for inclusion in land banks frequently bypasses or trivialises these consultations, treating them as administrative hurdles rather than substantive engagements. Studies on large-scale land acquisitions in Tanzania reveal that many communities are informed only after key decisions have been made, undermining the principle of free, prior, and informed consent (FPIC) recognised in international human rights instruments. This lack of procedural integrity delegitimises land transfers and fuels conflicts between communities, state agencies, and investors.

Third, compensation procedures remain bureaucratic, inadequate, and often insensitive to the cultural and spiritual value of land. Section 3(g) of the Land Act 1999 guarantees that no land shall be taken without prompt, fair, and full compensation. Yet in practice, compensation assessments are narrowly based on market value, disregarding the socio-cultural and intergenerational attachments that communities have to ancestral land. Moreover, the bureaucratic nature of compensation processes results in delays, underpayment, or in some cases, outright denial of compensation claims. The absence of independent oversight exacerbates the problem, leaving communities vulnerable to dispossession without meaningful redress.

Comparative Perspectives

Kenya

Kenya's 2010 Constitution introduced a transformative land regime that expressly recognises community land as a distinct category of tenure alongside private and public land. Article 63 of the Constitution vests community land in communities identified on the basis of ethnicity, culture, or shared interest, thereby offering direct constitutional recognition absent in Tanzania. The Community Land Act 2016 operationalises this framework, requiring community registration and providing safeguards against alienation without free, prior, and informed consent. While the Kenya Investment Authority facilitates investor access to land, compulsory acquisition under Article 40(3) of the Constitution and the Land Act 2012 is tightly circumscribed, requiring parliamentary approval, due process, and judicial oversight. In contrast to Tanzania, Kenya thus embeds stronger procedural and substantive guarantees against arbitrary dispossession of customary or communal land.

South Africa

South Africa has adopted a restitution ARY approach to land justice, rooted in its 1996 Constitution and the Restitution of Land Rights Act 1994. Section 25(7) of the Constitution guarantees restitution or equitable redress to persons or communities dispossessed of property after 1913 due to racially discriminatory laws. The judiciary has played a particularly activist role in protecting indigenous land rights. In Alexkor Ltd v Richtersveld Community, the Constitutional Court affirmed that indigenous law ownership is recognised under the Constitution and that the Richtersveld community's rights included not only surface occupation but also mineral rights. Similarly, in Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd, the Court interpreted restitution provisions liberally to advance substantive justice for historically marginalised communities. These cases illustrate how constitutional entrenchment of land rights, coupled with strong judicial oversight, provides a more robust framework than Tanzania's statutory protections.

Australia

Australia's recognition of indigenous title followed decades of denial under the doctrine of terra nullius. The High Court's decision in Mabo v Queensland (No 2) was transformative, holding that native title survived colonisation and was not automatically extinguished by Crown sovereignty. The Court recognised that native title reflects traditional laws and customs and persists unless lawfully extinguished by legislation or inconsistent grants. The subsequent Native Title Act 1993 codified this principle, providing mechanisms for indigenous communities to claim, register, and protect native title. Importantly, the Act requires negotiation and, in some cases, compensation when native title is affected by development projects. Compared to Tanzania, Australia's jurisprudence highlights how courts can correct historical injustice and construct a framework that balances investment with indigenous tenure security.

Sweden

Sweden's protection of Sami rights illustrates the integration of indigenous claims within a welfare state framework. The Reindeer Husbandry Act 1971 grants Sami communities' collective rights to herd reindeer across extensive areas, recognising their cultural and economic dependence on land. In the landmark Girjas Sami Village v Sweden case, the Swedish Supreme Court ruled that Sami villages hold exclusive rights to hunting and fishing within their traditional territories based on immemorial prescription. This judgment not only affirmed the legal weight of customary rights but also demonstrated how domestic courts

can elevate indigenous tenure above state-issued concessions. While Sweden does not face the same scale of land pressure as Tanzania, the institutional willingness to integrate indigenous rights into statutory and judicial frameworks contrasts with Tanzania's investment-first approach.

Effects on Customary Land Tenure in Tanzania

The deficiencies inherent in TISEZA's land bank model have produced significant adverse effects on customary land tenure. These effects undermine both statutory guarantees under domestic law and Tanzania's obligations under regional and international human rights instruments. Four critical consequences stand out.

First, displacement of rural communities without adequate safeguards remains the most visible outcome. Under the Village Land Act, the conversion of village land to general land is permissible only upon approval of the village council, the village assembly, and the President. However, in practice, these procedural requirements are often circumvented, with communities receiving little notice or having no effective ability to refuse land conversions. This displacement not only contravenes statutory protections but also offends Article 24(1) of the Constitution of the United Republic of Tanzania 1977, which guarantees every person the right to own property and prohibits its deprivation without due process and fair compensation.

Second, tenure insecurity has directly undermined agricultural productivity and rural livelihoods. Agriculture contributes nearly 30 per cent of Tanzania's GDP and supports the majority of its population. Yet, when land is transferred into TISEZA's land banks, villagers often lose secure rights of occupancy and are reduced to temporary licensees or informal labourers on former communal lands. The absence of long-term tenure security discourages investment in sustainable farming practices, undermines food security, and exacerbates rural poverty. This stands in stark contrast to the objectives of the Land Policy 1995 and the Land Act 1999, which sought to promote tenure security as a foundation for socio-economic development.

Third, the erosion of cultural identity linked to land constitutes a less quantifiable but equally profound harm. For many communities, particularly pastoralists and hunter-gatherers, land is not merely an economic resource but a cultural and spiritual anchor. The forced conversion of village land into investment zones interrupts traditional land-use practices, displaces sacred sites, and weakens social cohesion. Tanzanian courts have occasionally acknowledged this cultural dimension. In Attorney General v Lohay Akonaay and Joseph Lohay, the Court of Appeal recognised that customary land rights are "real property rights" deserving protection equivalent to granted rights of occupancy. However, the practical implementation of this principle has been undermined by investment-driven land transfers that fail to account for the intangible cultural loss suffered by communities.

Fourth, increased conflict between communities, investors, and the state has become a recurrent feature of TISEZA's land bank operations. Disputes have emerged in regions such as Bagamoyo, Kilwa, and Rufiji, where large-scale land allocations to investors displaced villagers and curtailed access to farmland and water sources. Such conflicts often escalate into protracted legal disputes or violent clashes, reflecting the absence of effective dispute resolution mechanisms within the TISEZA framework. By prioritising investor certainty over community rights, the system generates instability rather than sustainable development.

These outcomes run contrary to Tanzania's binding obligations under international and regional instruments. Article 21 of the African Charter on Human and Peoples' Rights recognises the right of all peoples to freely dispose of their wealth and natural resources, while Article 14 protects the right to property. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms indigenous peoples' rights to their traditional lands and resources, requiring states to obtain free, prior, and informed consent before approving projects affecting such lands. Tanzania's failure to align TISEZA's land governance with these obligations not only undermines the rule of law domestically but also exposes the state to reputational and legal risks internationally.

Recommendations

First, harmonisation of the Investment Act and the Village Land Act is imperative.

The duality of mandates between TISEZA and village institutions undermines legal certainty and erodes statutory protections for customary tenure. The Village Land Act vests management of village land in village councils and assemblies, subject to the President's trust. By contrast, the Investment Act centralises authority in TISEZA and the Tanzania Investment Centre. Unless these statutes are harmonised, the risk of parallel authority will continue to facilitate arbitrary conversions of village land into general land. Harmonisation should explicitly condition all land transfers on genuine free, prior, and informed consent (FPIC) of affected communities, consistent with Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Second, judicial oversight over compulsory acquisition for investment must be strengthened.

At present, compulsory acquisition in Tanzania is largely executive-driven, with courts playing a limited role in scrutinising necessity, proportionality, or procedural compliance. Yet Article 24(2) of the Constitution prohibits deprivation of property without fair and adequate compensation, which logically requires judicial enforcement. A statutory amendment should mandate ex ante judicial review of compulsory acquisitions for investment projects, akin to Kenya's constitutional framework where courts review whether public purpose justifies acquisition. Such oversight would act as a critical safeguard against abuse of power.

Third, compensation mechanisms must be restructured to reflect not only economic value but also cultural and livelihood attachments to land.

Current practices rely heavily on market valuation of crops or improvements, disregarding intergenerational and spiritual connections. Section 3(g) of the Land Act recognises the right to fair and prompt compensation, yet the implementing regulations lack criteria for cultural loss. Drawing on jurisprudence such as Alexkor Ltd v Richtersveld Community in South Africa, where mineral rights and cultural dimensions were recognised as integral to indigenous title, Tanzania should adopt compensation

guidelines that incorporate cultural identity and long-term livelihood security as compensable interests.

Fourth, community participation must be enhanced by drawing lessons from Kenya's constitutional safeguards. Article 63 of the Kenyan Constitution entrenches community land rights and conditions alienation on community consent and parliamentary approval. Tanzania could adapt similar participatory models by requiring that village assemblies, not only village councils, ratify land transfers, with independent oversight to ensure FPIC. This would move beyond token consultation and embed meaningful participation at every stage of land banking.

Fifth, embed benefit-sharing and community development agreements (CDAs).
Large-scale investments facilitated through land banks should be conditional upon negotiated CDAs, legally enforceable and monitored by independent regulators. These agreements would require investors to contribute to infrastructure, education, health, or livelihood restoration. South Africa's mining sector, through the Mineral and Petroleum Resources Development Act 2002, offers a model for mandatory social and labour plans that could be adapted to Tanzania.

Eighth, strengthen institutional checks and inter-agency coordination.
Given that land governance involves TISEZA, the Ministry of Lands, village institutions, and local government authorities, overlapping mandates remain a persistent challenge. Establishing an inter-agency Land Bank Oversight Committee, with representation from civil society and academia, would minimise institutional conflict and promote accountability.

Lastly, constitutional entrenchment of community land rights.
Unlike Kenya, Tanzania's Constitution does not provide explicit protection of community land rights. Constitutional reform could embed community tenure protections, limit executive discretion in compulsory acquisition, and condition investment-related land transfers on community consent and parliamentary oversight.

Conclusion
The deficiencies of land banks under TISEZA highlight the inherent tension between state-led investment policies and customary tenure in Tanzania. While investment remains critical for economic growth, it cannot be pursued at the expense of constitutional and human rights protections. By reforming its legal and institutional framework, Tanzania has an opportunity to strike a balance that ensures inclusive development while safeguarding the land rights of its people.

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