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ASSESSMENT OF THE UNIFIED PROTECTION OF REAL PROPERTY RIGHTS IN MAINLAND TANZANIA AND TANZANIA ZANZIBAR

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Abstract

This article assesses whether real property rights are protected in a unified manner across Mainland Tanzania and Tanzania Zanzibar. Although Constitution of the United Republic of Tanzania 1977 guarantees every person the right to own property and to fair and adequate compensation on deprivation, land is a non-Union matter, and each part of the Union has developed its own constitutional provisions, statutes, institutions and procedures. The article examines constitutional property rights the vesting of all land in the President as trustee, the system of rights of occupancy, foreign ownership and investment, the conditions attached to occupancy and the statutory meaning of land in both jurisdictions. It finds a shared conceptual foundation in trusteeship and occupancy-based tenure but marked differences in eligibility duration of rights, foreign access and administration. Common challenges include the compulsory acquisition powers, inadequate and delayed compensation, limited formalization of land rights. The article concludes risks and recommendation.

Keywords – Real property rights; Unified Protection; Mainland Tanzania; Zanzibar; Right of Occupancy; Trusteeship; Compulsory acquisition; Compensation; Land law harmonization.

I. INTRODUCTION

In the second draft of the new Constitution, the chairperson of the Constitutional Review Commission, Justice Warioba stated that there were eight major grievances raised from the Mainland Tanzania side.[1] The third grievance was that citizens of Mainland Tanzania did not have the right to own land in Zanzibar whereas citizens of Zanzibar had the right to own land in Mainland Tanzania.

Land administration and its associated legislative frameworks are unequivocally designated as non-union matters within the United Republic of Tanzania. This designation grants Zanzibar full control over land-related issues within its territory, operating independently of the mainland's land governance structures. Consequently, each constituent part of the union is empowered to formulate and implement its own distinct land laws.

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[1] In the Second Draft of the New Constitution 30 December 2013

Despite this clear jurisdictional separation, the Constitution of the United Republic of Tanzania 1977 as the paramount legal instrument explicitly enshrines and safeguards the right of individuals to acquire and own property.[2] This constitutional recognition of property rights is in theory a fundamental principle that extends its protective ambit across the entire United Republic. The existence of a supreme union constitution that guarantees property rights while land itself remains a non-Union matter presents a unique constitutional dynamic. The Constitution mandates that all state organs including the legislative, executive and judicial bodies of both the mainland and Zanzibar must perform their functions in accordance with its other provisions.[3] This provision legally binds all governmental entities to the foundational principles of the union constitution. The Union operates under a two-government framework the government of the United Republic of Tanzania and the revolutionary government of Zanzibar. The first schedule of the constitution defines this division of authority by outlining specific union matters such as foreign affairs, defense, immigration and citizenship.

A related question concerns whether the Parliaments of Tanzania and Zanzibar are unicameral or bicameral. Both are in fact unicameral Tanzania has only a single National Assembly[4] which holds all legislative power over both union and non-union matters without a second, upper chamber while Zanzibar exercising its semi-autonomous power over its own internal and non-union affairs legislates through the house of Representatives.[5] Mainland Tanzania and Zanzibar therefore each have distinct legislative organs and those organs have produced different bodies of law applicable in Zanzibar and in mainland Tanzania respectively.

Article 4 of the Zanzibar Constitution provides that the Zanzibar Constitution is supreme within Zanzibar and that any other law which contravenes it is void to the extent of the inconsistency. Tanzania Mainland and Zanzibar are also geographically distinct which is a further reason why land in addition to not being a Union matter is governed by different bodies of law in the two territories. The two parts of the Union agreed to share only the founding instrument the Articles of Union between the Republic of Tanganyika and the People's Republic of Zanzibar which was signed and witnessed by the late President Julius Nyerere then President of Tanganyika and President Abeid Karume then President of the People's Republic of Zanzibar.[6]Tanzania's total population stood at 61,741,120 during the 2022 Census with 59,851,347 people living on the mainland and 1,889,773

[2] Article 24(2) Constitution of the United Republic of Tanzania 1977
[3] Article 4(4) Constitution of the United Republic of Tanzania 1977
[4] Article 62(2) Constitution of the United Republic of Tanzania 1977
[5] Article 63(3) Zanzibar Constitution 1984 as amended 2010
[6] Shivji, I.G. (2008) *Pan-Africanism or Pragmatism? Lessons of the Tanganyika-Zanzibar Union*, p. 261

in Zanzibar .National Bureau of Statistics in 2022 terms of land area Zanzibar spans roughly 1,650 to 2,000 square kilometers, whereas Tanzania Mainland covers approximately 945,000 square kilometers making it one of East Africa's largest territories.[7]

The incumbent Zanzibar President, Honorable Dr. Hussein Mwinyi has stated that any person may occupy land in Zanzibar but under different conditions depending on their status. Zanzibaris must prove Zanzibari citizenship by birth to own land, while non-Zanzibaris may only acquire land through investment, typically by registering a company in Zanzibar since such a company as a legal person incorporated in Zanzibar may then apply for and be granted land. This mirrors the position on the mainland where the right to own property is in principle open to any Tanzanian but ownership is limited to leasehold terms of 33, 66 or 99 years. Non-Zanzibaris are not permitted to own land directly in Zanzibar for this reason. As President Mwinyi has explained, a Mainlander wishing to acquire land in Zanzibar needs only register a company and obtain a business permit the company may then apply for land on the investor's behalf.

Because land is not included in the First Schedule list of Union matters, it remains a non-union matter and falls under the exclusive jurisdiction of each part of the union mainland Tanzania and Zanzibar respectively.[8] This constitutional arrangement has far-reaching implications although there is a single Union Constitution the regulatory frameworks for land ownership administration and dispute resolution differ significantly between Tanzania Mainland and Zanzibar.

The Union Government has no legal competence to legislate on land matters in Zanzibar and vice versa. Consequently, the minister for lands in the union government is responsible only for land matters on the mainland while a separate ministry handles land issues in Zanzibar under its autonomous government structure.[9] In Zanzibar the ministry of lands and housing development currently under minister hon. Rahma Kassim Ali was established through legal notice no. 137 of 2020 by Hon. Dr Hussein Mwinyi President of Zanzibar and Chairman of the Revolutionary Council. This ministry was established under the 1984 Zanzibar Constitution[10] to oversee and advance the land and housing sectors for societal development. Historically, the ministry originated from the public works department (pwd) founded after the 1964 Zanzibar revolution it became the ministry of land, construction and housing between 1975 and 1984 and was officially restructured

[7] National Bureau of Statistics. (2022). *The 2022 Population and Housing Census: General Report. Ministry of Finance and Planning, United Republic of Tanzania*.

[8] First Schedule, Constitution of the United Republic of Tanzania 1977

[9] Peter, C.M. (1997) *Human Rights in Tanzania: Selected Cases and Materials* p. 153

[10] Article 1, Zanzibar Constitution, 1984 as amended 2010

in 2021 as the ministry of land and housing development.[11] On the mainland the ministry of lands, housing and human settlements development, currently under minister hon. dr Leonard Akwilapo is responsible for policy formulation and for ensuring the execution by ministry officials of functions connected with the implementation of the national land policy.[12]

The Articles of Union signed in 1964 established this dual governance framework, separating governmental authority into Union and non-Union matters. This distinction is essential to understanding the jurisdictional limits of both the Union Government and the Revolutionary Government of Zanzibar. The foundation of both the Constitution of the United Republic of Tanzania 1977 and the Zanzibar Constitution of 1984 is the Articles of Union of 1964 signed on 22 April 1964 by the founders of the Union the late Mwalimu Julius Kambarage Nyerere and the late Sheikh Abeid Amani Karume. Following the Union, Mwalimu Nyerere became the first President and Sheikh Karume became the first Vice-President. The Articles of Union were later incorporated into the Interim Constitution of 1965 of the United Republic of Tanzania under which eleven matters were agreed to fall under the authority of the Union Government. On 25 April 1964, the Tanganyika Parliament passed a ratifying statute, the Union of Tanganyika and Zanzibar Act[13] which under its Article 1 may be cited as the Union of Tanganyika and Zanzibar Act 1964.

The structure of the Union has established various organs for the exercise of executive, judicial and legislative functions. The Constitution of the United Republic of Tanzania 1977 declares that Tanzania is one sovereign state and a United Republic whose territory comprises the entire land mass of Mainland Tanzania and Tanzania Zanzibar together with the surrounding waters. The Articles of Union clearly stipulate that the United Republic is to be a single sovereign state and the principles of statehood set out in the Union agreement include the requirement that the United Republic represent the people and serve as the image of the nation before the international community.

The Laws Providing Protection of Property Rights (Real Property)

The right to property particularly real property land and interests permanently attached to land is among the fundamental rights guaranteed under the Constitution of the United Republic of Tanzania 1977. Article 24(1) of the Constitution provides that every person is entitled to own property and has a right to its protection, while Article 24(2) prohibits the arbitrary deprivation of such property unless this is

[11] https://whoiswhotanzania.co.tz/company/ministry-of-lands-and-housing-development-51
[12] Section 8 Land Act Cap 113 RE 2023
[13] Act No. 22 of 1964

done in accordance with the law and accompanied by fair and adequate compensation.[14] This constitutional safeguard reflects Tanzania's commitment to protecting individual ownership and promoting legal certainty in property relations. It should be noted that the constitution does not itself create substantive property rights it merely affirms and protects rights that arise under ordinary law.

In mainland Tanzania the Land Act Cap 113 RE 2023 and the Village Land Act Cap 114 RE 2023 form the legal backbone of land ownership and regulation. These Acts recognize the President as trustee of all land on behalf of the citizens and classify land into general, village and reserved categories. The rights granted are typically rights of occupancy or customary rights of occupancy both of which are enforceable through the judicial system.[15]In contrast, Zanzibar maintains an independent legal system governing land administration through specific statutes, including the Land Tenure Act of 1992 and the Registered Land Act of 1994.

These statutes structure land rights predominantly as leaseholds derived from the Revolutionary Government of Zanzibar. Unlike the Mainland, Zanzibar's land administration also integrates Islamic legal concepts such as *waqf* (endowed land), making the framework religiously and culturally distinct. This duality introduces inconsistencies in the substance and enforcement of property rights across the Union, notwithstanding the Constitution's purported guarantee of uniform protection. For instance a Zanzibari citizen owning property in both Zanzibar and the Mainland must navigate two distinct legal regimes each overseen by different authorities with separate rules for land acquisition, registration, and dispute resolution.

The principal Zanzibar land statutes are the Land Tenure Act 1992, the Registered Land Act 1990 and the Land Adjudication Act 1989. Consistent with the Mainland approach all-natural land in Zanzibar whether occupied or unoccupied is deemed public land vested in the President as custodian for the common benefit of the people. This shared ideological foundation regarding ultimate land ownership is notable despite land being a non-Union matter.

The principal statutes governing land in Zanzibar are therefore the Land Tenure Act 1992 which serves as the primary legislation governing land ownership use and the rights attached to land in Zanzibar, the Registered Land Act 1990 which provides the framework for the registration of land and interests in land regulates dealings in registered land and establishes land registries and the Land Adjudication Act 1989 which governs the adjudication and initial registration of rights and interests in land with a view to formalizing and securing land tenure.

[14] Article 24(1) (2) Constitution of the United Republic of Tanzania 1977
[15] Cap 113 and Cap 114 RE 2023

The Issue of Unified Protection of Property Rights

In the Tanzanian unified protection implies that all citizens of the Union, regardless of whether they reside in Zanzibar or on the mainland should enjoy equal protection and equal remedies for their property rights particularly as guaranteed under Article 24 of the Constitution of the United Republic of Tanzania. The realization of this constitutional ideal is complicated by the existence of two distinct legal systems arising from the structure of the Union.

On the Tanzanian Mainland property ownership is primarily established through granted rights of occupancy under the Land Act and Village Land Act rights that enjoy full constitutional recognition and judicial enforcement. In Zanzibar long-term leaseholds granted under the Land Tenure Act are the dominant form of land holding. This leasehold system which reflects the continued ownership by the government of Zanzibar of all land creates legal expectations and entitlements that differ from those on the mainland. Such substantive differences reflect not merely legal plurality but the absence of a genuinely unified protection mechanism for real property rights within the Union.[16]

This fragmentation can generate confusion and legal uncertainty particularly for individuals or entities who own property in both jurisdictions. For example, a dispute over land ownership in Zanzibar may not be resolved using the same legal standards or procedures as an equivalent dispute on the mainland. Furthermore, there is no central judicial or administrative institution with authority over land matters in both jurisdictions, which makes it difficult to resolve cross-jurisdictional property disputes effectively. Consequently, the constitutional protection under Article 24 risks becoming largely symbolic unless it is supported by a harmonized or cooperative institutional framework. The challenge is compounded by the absence of intergovernmental coordination mechanisms to facilitate the mutual recognition of land titles, the enforcement of court judgments and the sharing of land information systems between Zanzibar and the Mainland.

II. THE UNIFIED PROTECTION OF REAL PROPERTY IN MAINLAND TANZANIA AND TANZANIA ZANZIBAR

A. Constitutional Real Property Rights

In Mainland, Tanzania

The Constitution of the United Republic of Tanzania 1977 is the supreme law of the land providing the overarching legal framework for governance and individual rights across both Tanzania Mainland and

[16] The Land Tenure Act 1992 and Registered Land Act 1994

Tanzania Zanzibar. Article 24 headed Right to own property unequivocally declares that every person is entitled to own property.[17] This provision further stipulates that the deprivation of a person's property is unlawful unless it is explicitly authorized by law and such law must also provide for fair and adequate compensation.[18] The formal incorporation of this property right into the bill of rights was a significant development introduced in 1984 through a substantial constitutional amendment following an earlier period in which such explicit guarantees were absent.

Although Article 24(1) constitutionally guarantees the right to own property it is important to understand how this guarantee is interpreted within the Tanzanian legal system. The constitutional guarantee of ownership is not interpreted as absolute freehold ownership in the sense familiar in many other jurisdictions instead, it is realized principally through the concept of a right of occupancy which functions as a substitute for freehold title. This distinction signals a potential divergence between the abstract constitutional promise of property ownership and its concrete realization given that ultimate ownership of land remains vested in the President as trustee. This nuanced interpretation of ownership is a key consideration in assessing the practical application of the constitutional protection.

The leading authority on the constitutional status of land rights is *Attorney General v Lohay Akonaay and Joseph Lohay*.[19] In that case, the respondents held land under customary law in Kambi ya Simba village, Mbulu District. After they successfully recovered the land through the courts, Parliament enacted the Regulation of Land Tenure (Establishes Villages) Act 1992, which purported to extinguish customary rights in land without compensation and to oust the jurisdiction of the courts. The Court of Appeal of Tanzania held that a customary or deemed right of occupancy although in essence only a right to use and occupy land nonetheless constitutes property protected under Article 24 of the Constitution and that any other conclusion would reduce most Mainland Tanzanians to the status of squatters in their own country. The impugned provisions of the 1992 Act were accordingly declared unconstitutional, null and void. This decision remains the foundational authority for the proposition that both granted and customary rights of occupancy fall within the constitutional definition of property on the mainland,

In Tanzania, Zanzibar

Zanzibar as a semi-autonomous part of the United Republic possesses its own distinct constitutional and legislative framework governing real property rights. The Zanzibar Constitution of 1984 as

[17] Article 24(1), Constitution of the United Republic of Tanzania 1977
[18] Article 24(2), Constitution of the United Republic of Tanzania 1977
[19] Civil Appeal No. 31 of 1994 (1995) TLR 80

amended in 2010 contains explicit provisions on the right to own property Article 17 specifically guarantees protection from deprivation of property.[20]

This constitutional framework aligns with broader human rights principles, affirming fundamental freedoms and directing the state to adhere to international treaties on human rights and good governance. The fact that Zanzibar possesses its own constitution and that this constitution also enshrines property-rights provisions is significant it theoretically reinforces the overall protection of property rights within the United Republic as a whole.

At the same time, this dual constitutionalism raises important questions of consistency, and of potential conflict with the Union Constitution particularly given the explicit non-Union status of land. The interaction and potential divergence between these two constitutional frameworks are central to understanding the unified protection of real property rights across the Union.

B. The *Concept of Land Vested in the President as Trustee*

In Mainland, Tanzania

Tanzanian land law is deeply rooted in a historical and ideological context in which private land ownership was regarded as foreign to society. Instead, ultimate ownership of all land across the United Republic is vested in the President, who acts as trustee on behalf of all citizens for the public good. This principle is a direct inheritance from the colonial era, specifically the Land Ordinance of 1923, which declared land to be public land while vesting ultimate ownership and control in the Governor of Tanganyika.

This concept was explicitly retained and re-asserted in the legal framework most notably in the Land Act 1999. The President's extensive powers as trustee are delegated to various ministry officials and land administration bodies for the management and allocation of land. This trusteeship although designed to serve the public good inherently concentrates immense power in the executive branch. In practice, this concentration of power has sometimes resulted in state authority not being exercised judiciously or in the broader public interest potentially undermining individual security of tenure.

This tension is particularly evident in the context of eminent domain and compensation where the state's power to acquire land in the public interest can clash with individual land rights. This historical continuity of state ownership, sometimes described as a colonial fiction that simply replaced the Governor with the President[21]establishes a fundamental tension with the constitutional

[20] Zanzibar Constitution as amended 2010
[21] Section 4 of Land Ordinance

right to property since the state's role as ultimate owner can easily overshadow and at times diminish the practical security of individual rights.

Under the current law, all land in Tanzania remains vested in the President as trustee on behalf of all citizens. The President is accordingly said to hold the *dominium directum* superior or radical title of all land in Tanzania while citizens hold the *dominium utile* that is the beneficial right to use and enjoy the land.[22]

In Tanzania, Zanzibar

Under the Land Tenure Act No. 12 of 1999 all-natural land within the islands of Zanzibar whether occupied or unoccupied is declared to be public land, deemed to have been so declared from March 1964. Public land is vested in and at the disposal of the President to be held by him for the use and common benefit direct or indirect of the people of Zanzibar.[23] Subject to the directions of the President, public land is administered by the minister who may control and make dispositions of public land and exercise the powers and duties conferred by the Act on behalf of the President. Zanzibar's land laws largely mirror the mainland approach by vesting all land in the President as trustee or custodian for the public good the specific implementing legislation, administrative structures and procedures in Zanzibar differ from those on the mainland. This setup naturally leads to real operational headaches and complications when trying to protect property rights.

C. The System of Rights of Occupancy

In Mainland, Tanzania

A right of occupancy means title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of such citizens using or occupying land in accordance with customary law.[24] The right to occupy land may be held by a citizen or by a group of two or more citizens whether or not formed into an association as a granted right of occupancy.[25]

The primary form of land tenure on Tanzania Mainland is therefore the right of occupancy, defined as title to the use and occupation of land. This is essentially a leasehold framework issuing rights of occupancy for terms of 33, 66 or 99 years and allowing the holder to use the land for purposes such as farming, housing or commercial activity.[26]In mainland Tanzania granted of right of occupancy

[22] Section 4(1) (2) Land Act Cap 113 RE 2023
[23] Section 3(1)(2) The Land Tenure Act, No. 12 of 1999
[24] Section 2 Land Act Cap 113 RE 2023
[25] Section 19(1) Land Act, Cap. 113 RE 2023
[26] Section 34 Land Act Cap 113 RE 2023

are granted by the commissioner for land and issue certificate of occupancy to that person in that certificate issued the name of the President of United Republic of Tanzania and shall be prescribed form in that certificate can be signed by the commissioner and sealed by president[27] and registered according to the Land Registration act[28] define registered land mean land which estate has been registered.

In Tanzania, Zanzibar

A right of occupancy means the exclusive right to the use and occupation of land.[29] In Zanzibar citizens do not hold absolute ownership of the land itself but are granted a right of occupancy representing a right to use or hold an interest in the land. These rights are generally reserved exclusively for Zanzibaris aged 18 and above and that holder of right shall have exclusive right to occupy and use land[30].In Zanzibar right of occupancy executed if signed by minister of land and is necessary registered under the Registered land Act or registration of documents decree and get a certificate of right of occupancy. government leases for rights of occupancy are typically granted for terms of between 33 and 99 years with provision for renewal provided the land continues to be used for the permitted purpose.[31]

For land that is not surveyed or formally registered ownership can still be established through traditional means such as inheritance or private purchase. This recognition of traditional forms of tenure coexists with the formal right-of-occupancy system. The adoption of a right-of-occupancy model in both Mainland Tanzania and Zanzibar represents a conceptual commonality between their land tenure frameworks providing a degree of underlying philosophical unity notwithstanding land's non-Union status.

D. Foreign Ownership and Investment

In Mainland, Tanzania

On the Tanzania Mainland foreign nationals and companies with majority foreign ownership are generally restricted from directly owning land[32]. They may instead acquire derivative rights of occupancy for terms of up to 99 years specifically for investment purposes approved by the Tanzania Investment Centre now operating alongside the Tanzania Investment and Special Economic Zones Authority (TISEZA). Such rights require TISEZA registration and compliance with prescribed

[27] Section 30(1)(c) and (2)(3) Land Act RE 2023
[28] Section 2 of land registration Cap 334 RE 2023
[29] Section 2 The Land Tenure Act No. 12 of 1999
[30] Section 8(a)(b) The Land Tenure Act, No. 12 of 1999
[31] Section 8(1)(d) The Land Tenure Act, No. 12 of 1999
[32] 20(1) Land Act Cap 113 RE 2023

investment thresholds so as to ensure economic benefit to the nation. For the foreign investor when come in Tanzania and want to invest or if a joint venture the minimum investment capital is not less than Tanzanian shillings equivalent to five hundred thousand US dollars US$500,000.[33]

A person or a group of persons whether formed into a corporate body under the Companies Act or otherwise, who is or are non-citizens including a corporate body the majority of whose shareholders or owners are non-citizens may only obtain[34]

(a) *a right of occupancy for purposes of investment approved under the Tanzania Investment Act*; or

(b) *a derivative right for purposes of investment approved under the Tanzania Investment Act, or issued under the Export Processing Zones Act*.

The case of *Emmanuel Marangakis as Attorney of Anastasias Anagnostou v The Administrator General*[35] considered whether a non-citizen can inherit property in Tanzania. The High Court, per Fauz Twaib, J., held that although a non-citizen cannot directly own land, a non-citizen may nonetheless inherit land through transmission upon the death of the original holder. Foreign investors who wish to develop hotels, plantations or industrial projects on the mainland routinely proceed by first registering a locally incorporated company and then obtaining a derivative right of occupancy through the Tanzania Investment Centre framework rather than seeking a right of occupancy directly since the latter route remains closed to non-citizens.

In Tanzania, Zanzibar

In Zanzibar, the law provides that foreigners cannot be directly granted a right of occupancy through acquisition or purchase. A Zanzibari who holds an interest in land is however, permitted to sell, lease or bequeath that interest to any person including a foreigner. This indirect mode of acquisition is a key feature of the Zanzibar approach.

The Condominium Act No. 10 of 2010. This Act give property rights allowing both locals and foreign investors to hold secure, separate title deeds for apartments or villas in Zanzibar the unity owner has right to lease his unit and also mortgage the property.[36] it provides a specific avenue for both Zanzibaris and non-Zanzibaris to purchase units in approved condominium projects, granting a 99-year renewable lease with full ownership rights over the unit itself. Foreign businesses acquiring land for investment in Zanzibar are subject to minimum capital requirements for example,

[33] Section 2 investment Act Cap 38 RE 2023
[34] Section 19(2) Land Act Cap 113 RE 2023
[35] High Court of Tanzania at Dar es Salaam, Civil Case No. 1 of 2011
[36] Section 24 and 26 The Condominium Act No. 10 of 2010

USD 2,500,000 for hotel and real estate projects and must be registered and authorized by the Zanzibar Investment Promotion Authority (ZIPA). Non-citizens may acquire derivative rights of occupancy on this basis meaning that land may only be acquired for an approved investment purpose.[37]

E. Conditions Attached to the Right of Occupancy

In Mainland, Tanzania

a) Payment of premium on grant of right of occupancy

The Minister may require payment of a premium when a right of occupancy is granted, payable in one or more instalments. In fixing the premium the Minister must consider things like the permitted land use, comparable market sales or leases, government auction prices, tender values, unexhausted improvements and a registered valuer's assessment. Failure to pay the premium on time counts as a breach of condition that can trigger revocation.[38]

b) Length of term of right of occupancy

A right of occupancy can be granted for up to 99 years or with or without an option to extend still capped at 99 years total or on a year-to-year shorter basis. Once a fixed term is granted the Commissioner cannot shorten it without the occupier's agreement. When a term expires the occupier who has complied with conditions should generally be offered renewal before the land is offered to anyone else though government can still redevelop the land instead without owing compensation for the lost expectation of renewal.[39]

c) Rent

The holder must pay annual rent determined with regard to the land's area permitted use comparable market values, and any premium already paid. The Commissioner can revise rent every three years or more, may waive rent for land used purely for worship or burial may charge nominal rent for charitable use, and can grant rent relief for poverty, infirmity or disaster. Unpaid rent for six months accrues 1% monthly interest[40]

d) Conditions

Every right of occupancy is granted subject to this section and to any development or other prescribed conditions, which the Commissioner may add to, subtract from, or vary. Key conditions

[37] https://zipa.go.tz/home
[38] Section 33(1) Land Act Cap 113 RE 2023
[39] Section 34(1) of Land Act Cap 113 RE 2023
[40] Section 35(1) of Land Act Cap 113 RE 2023

include: If the grant is for construction the grantee must apply for planning consent and a building permit within six months of the grant. If the land includes people occupying under customary law, those customary rights must be recognized such occupiers can only be relocated as necessary for the grant's purpose with at least 180 days' notice, the chance to harvest existing crops, continued water-use rights until they move, and prompt full compensation for their loses. Existing conditions that predate the Act remain binding until new regulations replace them. Before adding or amending conditions on reserved land or land significantly affecting a local authority's services the Commissioner must consult the relevant body. The person who signs the certificate of occupancy is bound personally or on behalf of the entity they represent to comply with every condition. The Commissioner or authorized officers may enter the land to inspect compliance.[41]

e) Change of use

An occupier of land under a right of occupancy may apply to the Commissioner for a change or variation to the conditions of that right of occupancy so as to enable him to undertake a development on or a use of that land or a disposal of the whole or a part of that land in connection with a development on or a use of that land which is not permitted by the conditions subject to which the right of occupancy was granted.[42]also, Government Notice 77 of 2021 also make provision for such conditions.

In Tanzania, Zanzibar

A right of occupancy exists subject to the following conditions

(a) The holder of the interest be a Zanzibari over the age of eighteen

This means that nationality and age are fundamental statutory requirements for the ordinary right of occupancy under the Act. The provision was considered by the Court of Appeal in *Gharib Abdallah Juma v Kay Mlinga*[43] where the Court recognized section 8 as establishing legal conditions for exercising the right to own or hold land in Zanzibar.[44] Thus, the mere fact that a person is a citizen of Tanzania does not by itself, satisfy the specific statutory requirement in section 8 where the Act requires the holder to be a Zanzibari.

b) The holder of a right of occupancy has an exclusive right to occupy and use the land comprised in that right[45]

[41] Section 38(1)(4) of Land Act Cap 113 RE 2023
[42] Section 39(1) of Land Act, Cap 113 RE. 2023
[43] Civil Appeal No. 10 of 2001 TZCA 62
[44] Section 8(1)(a) The Land Tenure Act No. 12 of 1999
[45] Section 8(1)(b) The Land Tenure Act No. 12 of 1999

The significance of this provision is that the holder is legally entitled to possess and use the particular parcel of land against other persons, subject to the restrictions imposed by the Act and other applicable laws. The right is therefore more than mere physical occupation it is a legally recognized interest protected by the land registration system. However, the exclusive right does not mean that the holder has unlimited freedom to use the land for any purpose. The use of the land remains subject to statutory restrictions, planning requirements and the conditions contained in the grant.

(c) The holder of the right of occupancy has the right to dispose of the land or of other interests in it to any other Zanzibari

this provision recognizes that the holder's interest has economic value and can in appropriate circumstances be transferred. However, the right of disposal is not absolute. For example, the Act places restrictions on the disposal of certain categories of land including agricultural land and certain specially allocated plots. The provisions concerning disposal should therefore be read together with section 44 which regulates the sale or disposition of certain rights of occupancy[46]

(d) The interest be held in perpetuity, without a specific term, and be inheritable under the applicable provisions of Zanzibar succession law.

the interest is inheritable under the applicable Zanzibar law of succession. This means that the death of the holder does not automatically extinguish the right of occupancy. Instead, the interest may pass to the lawful beneficiaries or heirs in accordance with the applicable succession law. Consequently, a right of occupancy can provide long-term security not only for the original holder but also for his or her successors. This is particularly important in Zanzibar because land commonly constitutes a significant family asset.[47]

F. Meaning of Land

In Mainland, Tanzania

Land includes the surface of the earth and the earth below the surface, all substances other than minerals and petroleum forming part of, or lying below, the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under the land, and land covered by water.[48]In Tanzania mainland define land different from Zanzibar and all land in Tanzania mainland are govern by constitution of Tanzania and also land Act and village land Act

[46] Section 8(1)(c) The Land Tenure Act, No. 12 of 1999
[47] Section 8(1)(d) The Land Tenure Act, No. 12 of 1999
[48] Section 2 Land Act, Cap 113 RE 2023

In Tanzania, Zanzibar

Land includes land covered by water, all things growing on land, and buildings and other things permanently affixed to land, except trees, which may be specifically classified and owned separately.[49] The definition of land in Zanzibar is broad because it extends beyond the surface of the earth to include land covered by water, things growing on the land, and buildings or other structures permanently attached to it. This approach recognizes that land is not merely an empty physical space but also includes natural resources and permanent improvements associated with it.

However, the exclusion of trees that may be separately classified and owned demonstrates that not every item attached to or growing on land must necessarily form part of the landowner's interest. This distinction is important where disputes arise concerning ownership, transfer, occupation or use of land and the things attached to.*Floton Africa Ltd vs Shivo*[50]where the Court explained that a house forms part of land for purposes of the applicable land law and that disputes involving claims to occupancy or possession may fall within the jurisdiction of the Land Tribunal under section 13 of the Land Tribunal Act.

The definition of land in Zanzibar adopts a comprehensive approach by treating land as including the land itself, water-covered areas, vegetation and permanent structures. Nevertheless, the separate classification and ownership of trees create an important exception to the general rule that things growing on or permanently attached to land form part of it. This definition is significant in determining the scope of land interests the subject matter of land transactions and the jurisdiction of courts or tribunals dealing with land disputes.

III. CHALLENGES IN MAINLAND TANZANIA

a. Eminent Domain, Compulsory Acquisition and Adequacy of Compensation

The state on Tanzania Mainland possesses extensive powers of eminent domain, allowing for the compulsory acquisition of private property for public use. Both the Constitution and statutory laws including the Land Act 1999 and the Land Acquisition Act, mandate fair and adequate compensation for such acquisitions. In practice, however, the interpretation of public interest remains contentious and compensation is frequently reported as inadequate, delayed and inequitably distributed.

In *Tanzania Milling Company Limited v The Attorney General and the Commissioner for Lands*[51], the Court of Appeal held that a newspaper advertisement was not sufficient notice of revocation of

[49] Section 2 The Land Tenure Act, No. 12 of 1999
[50] Civil Case No. 87 of 2025
[51] Court of Appeal of Tanzania, Civil Appeal No. 98 of 2020

a right of occupancy and ordered compensation together with an alternative plot of land. The persistent and widespread reports of inadequate and delayed compensation reveal a significant and enduring gap between legal principle and practical implementation. This gap generates public dissatisfaction gives rise to numerous legal challenges and undermines confidence in the land administration system. While cases such as this establish the judiciary's role in enforcing procedural fairness even where the state's underlying power of revocation remains intact they also highlight the ongoing struggle to secure genuinely equitable outcomes for affected landholders.

b. Limited Formalization of Land Rights

The processes for formalizing land rights on Mainland Tanzania including the issuance of Granted Rights of Occupancy and Customary Certificates of Right of Occupancy (CCROs) are characterized by bureaucracy, high costs and lengthy processing times. This administrative burden creates what may be described as an informality trap which constrains economic potential.

Consequently, a significant proportion of the population including a large majority of rural Tanzanians and roughly half of urban residents, still lack formal title and instead rely on informal tenure. This limited formalization contributes directly to insecurity of tenure and acts as a disincentive to investment. Without formal title, landholders cannot readily use their property as collateral for loans, which severely limits access to credit and in turn hinders investment and development. The decision in *Attorney General v Lohay Akonaay*, discussed above is instructive here as well although it confirms that even informally held customary rights enjoy constitutional protection as property the practical difficulty of proving and formalizing such rights means that many landholders remain vulnerable in practice notwithstanding this doctrinal protection.

IV. CHALLENGES IN TANZANIA, ZANZIBAR

a. Adequacy of Compensation for Acquired Land

Despite constitutional provisions, Article 17 of the Zanzibar Constitution and statutory requirements under the Land Tenure Act 1992 for fair and adequate compensation in cases of land acquisition in practice compensation is frequently unpaid or deemed inadequate. This compensation crisis in Zanzibar strikingly parallels the challenges observed on the mainland. There are reported cases in Zanzibar where land was acquired for public purposes including the construction of hospitals, schools and forest reserves or for investment projects, but promised compensation or alternative land was never provided to the affected individuals. Examples include acquisitions at Chunga and Fuoni Kitongani for school development and at Makangale for an investment project where compensation remained unpaid for

years. In some instances, land was declared a reserve area without compensation even after courts had ordered payment.

V. REFORMS

a. Constitutional Reforms

The current oblique nature of the supremacy clause, and the broad limitations on fundamental rights permitted under Article 30(2) of the Union Constitution, undermine the effective enforcement of property rights. Reforms should aim to incorporate proportionality tests introducing explicit requirements of proportionality, justifiability and reasonableness when limiting fundamental rights including property rights. This would provide clearer judicial guidance and prevent arbitrary legislative curtailment of rights. Reforms should also strengthen judicial review, empower the special constitutional court or establish a clear mechanism for higher courts including the Court of Appeal of Tanzania to review land-related decisions from both jurisdictions against the Union Constitution's bill of rights particularly where fundamental property rights are at stake. This would foster a more unified constitutional interpretation across the Union.

b. Harmonization of Land Laws

Although land remains a non-union matter the core principles of property-rights protection should be harmonized to ensure consistency and predictability across the union. A permanent joint land policy commission, comprising legal experts, policymakers and civil society representatives from both the Mainland and Zanzibar could be established to review existing land laws and policies. Such a commission could identify areas for alignment particularly regarding the definition of acquisition, compensation standards, land valuation methods and foreign investment regulation.

c. Ensuring Equitable Compensation

Addressing the persistent compensation gap requires revising compensation frameworks, amending the Land Acquisition Act and related regulations in both the Mainland and Zanzibar to ensure that compensation is consistently fair and adequate covering not only market value but also disturbance, loss of profits and resettlement costs. Independent valuation bodies should be established independent multi-stakeholder valuation committees or agencies whose assessments are binding and transparent to remove the perception of bias where government is the acquiring party. Strict timelines for compensation payments should also be mandated with penalties for delay and provision for interest on

outstanding amounts alongside mechanisms such as compensation funds to guarantee the availability of funds.

d. Enhancing Land Administration Efficiency and Accountability

Institutional overlaps and corruption should be addressed through the digitalization of land records accelerating the digitization of land registries and cadastral maps in both the Mainland and Zanzibar to improve transparency, reduce fraud and streamline land transactions. Robust oversight mechanisms and anti-corruption measures should be implemented within land administration bodies, including independent audits and public reporting, together with sustained investment in training and professional development for land administrators to improve their technical skills and adherence to legal procedure.

VI. CONCLUSION

The study has shown that the protection of real property rights in Mainland Tanzania and Zanzibar is guaranteed by their respective constitutional and legal frameworks. However, despite the constitutional protection of property rights under Article 24 of the Constitution of the United Republic of Tanzania 1977 and Article 17 of the Zanzibar Constitution differences in land laws and administration create challenges in achieving equal protection throughout the Union.

Therefore, the study recommends strengthening constitutional protection improving land administration, ensuring fair and timely compensation and promoting cooperation between the governments of Mainland Tanzania and Zanzibar. Although land remains a non-Union matter harmonizing the basic principles of property-rights protection would help ensure that all citizens enjoy effective and reliable protection of their property rights throughout the United Republic of Tanzania.