PROTECTION OF CUSTOMARY LAND RIGHTS IN TANZANIA

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A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAW IN LAND ADMINISTRATION AND MANAGEMENT (LLM-LAM)

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CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by the Open University of Tanzania a dissertation titled, *"**Protection of Customary Land Rights in Tanzania***" in partial fulfilment of the requirements for the award of Degree of Masters of Law in Land Administration and Management (LL.M LAM).

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I, **Zena M. Happe,** declare that, the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirement for the Degree of Masters of Laws in Land Administration and Management (LL.M LAM).

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Date

DEDICATION

This dissertation is entirely dedicated to my lovely family, let this study aspire my son to appreciate the value of commitment, determination and hardworking in his life.

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ABSTRACT

This study aimed at examining the protection of customary land rights in Tanzania. Despite the Constitutional and legislative guarantee on the recognition and protection of the customary land rights in Tanzania, customary land tenure suffers from inadequate legal protection, a situation that is analogous to that in the colonial and the immediate post – independence era. Section 18 (1) of the Village Land Act provides that, a customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy. However, in the contrary, section 34 (3) of the Land Act provides that, a customary right of occupancy can be uprooted in favour of the granted right of occupancy. Also, section 181 of the Land Act provides that, when granted right of occupancy conflicts with customary right of occupancy, the customary right of occupancy will be defeated. The study employed the doctrinal legal research to assess the protection of customary land right in Tanzania. The observations which were made in the course of this study revealed that, although majority of Tanzanians own their un-surveyed lands under customary right of occupancy, nevertheless, the land laws failed to serve the purpose of protecting the customary land rights against the granted right of occupancy. Thus, resulting to a total denial of the land rights of the majority of Tanzanians who own their lands under customary tenure. It is recommended that; the government should amend the laws which hinder the protection of the customary land rights in order to strengthen the protection of the customary land tenure in Tanzania.

Key words: *Protection, Customary Land Rights, Security of Land Tenure, Legal Protection, Tanzania.*

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LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
Cap	Chapter of the Law of Tanzania
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CL	Commissioner for Lands
CCROs	Certificate of Customary Right of Occupancy
CA	Court of Appeal
DCs	District Councils
DLHT	District, Land and Housing Tribunal
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
JALA	Judicature and Application of Laws Act
LRCT	Law Reform Commission of Tanzania
LA	Land Act
LDCA	Land Disputes Courts Act
MLHHSD	Ministry of Lands, Housing and Human Settlement Development
NLP	National Land Policy

TCPA	Town and Country Planning Act
TLR	Tanzania Law Report
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPA	Urban Planning Act
URT	United Republic of Tanzania
V	Versus
VA	Village Assembly
VL	Village Land
VLA	Village Land Act
VLC	Village Land Council
WT	Ward Tribunal

CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.0 General Introduction

Customary land rights refer to the rights to occupy and use land basing on communal system of land and resource ownership. Customary lands are such lands which used and maintained by communities including farms, forests, rangelands, and wetlands.[1] Customary land rights are regulating by the system known as customary land tenure. Customary land tenure is a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources. The term "customary land tenure" invokes the idea of "traditional" rights to land and other resources, the tenure usually associated with indigenous communities and administered in accordance with their customs, as opposed to statutory tenure which administered in accordance with statutes.[2]

Customary tenure is believed to govern approximately 90 percent of Sub-Saharan Africa's land.[3] However, despite its widespread use, customary tenure is often not adequately recognized in statutory law which weakens its effectiveness. The statutory tenure of most areas governed by customary rules is based on public or state land which is often the main source of land used in deals brokered by the government or elites to

[1] Pritchard,J. et al, *Securing Community land and resource rights in Africa: A guide to legal reform and best practices*. 2013, pp. 6. https://www.iccaconsortium.org/2015/08/legal. (Accessed 11 June 2022).
[2] USAID, *what is land tenure?* Land links, FAO. 2002. https://www.land-links.org/what-is-land-tenure. (Accessed 06 May 2023).
[3] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).

transfer land rights to external investors. Unfortunately, previous customary holders receive little or no compensation for the loss of their lands.[4] It is recommended that, true tenure security can only be attained by formalizing customary land rights and giving them the same legal status as registered rights. Accountability systems and oversight procedures must be put in place to safeguard the land rights of rural communities and implement the legislative intent of the law.[5]

In 1999, Tanzania enacted the Village Land Act[6] and the Land Act[7]. The land tenure system of the country constitutes the granted right of occupancy and customary right of occupancy;[8] the two types of land tenure form the right of occupancy; the Village Land Act[9] guarantees equal status and effect on both right of occupancy. However, in practice customary land rights have been treated vulnerable and inferior compared to the granted rights; many villagers and rural communities do not have security in their customary land.[10] This study seeks to make a thorough analysis of the current legal framework governing customary land rights in Tanzania. In particular, the study will find out whether the implementation of the law governing the protection of the customary land rights is effective.

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[4] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).
[5] Knight. S.R. Statutory Recognition of Customary Land Rights in Africa, 2010, pp.1. FAO Legislative study 105, ISSN 1014 – 6679. https://www.fao.org/publications/card. (Accessed 04 June 2022).
[6] Cap 114 R.E 2002.
[7] Cap. 113 R.E 2002.
[8] governed by the Village Land Act, 1999 and the granted right of occupancy governed by the Land Act, 1999
[9] Cap. 114 R.E 2002, s. 18 (1).
[10] Veit, P, *The Precarious position of Tanzania's village land,* 2019. https://gatesopenresearch.org/documents/pdf. (Accessed on 28 January 2022).

1.1 Background of the Problem

Historical background of the land tenure system in Tanzania can be categorized into three phases namely, Pre – colonial; colonial and Post – colonial eras. During pre – colonial era, landholding was based on customary laws of the 120 different tribes. The Bantu are the majority followed by Nilotic (Maasai, Datoga) Cushitic (Iraqw, Gorowa etc) and Khoisan (Sandawe and Hadza).[11] Traditions and customs of respective tribes formed the basis of land ownership and title. In this communal ownership system, land belonged to families, clans or tribes; administration of land was carried out by chiefs, headmen, and elders who acted as trustees for the community.[12]

During colonial era the land tenure system started by the introduction of the German and later British regime which declared all lands as crown and public lands respectively however, limiting the powers of land administration held by traditional authorities. The establishment of German East Africa was made in 1890 during the German rule at the end of the 19th century; the first colonial state that comprised the mainland of current Tanzania. German law-makers passed the Imperial Decree on Land Matters in 1895, creating the first dual system of land tenure.[13] All land, whether possessed or not, was designated as Crown Land.[14] Governor was given the authority to issue formal titles (Conveyances of Ownership) and leases during the German Kaiser. [15]

[11] Tenga, W.R and Sist, J. M., Manual on Land and Conveyancing in Tanzania, Dar Es Salaam: Law Africa, 2008. Publishing (T) Ltd ", 2008, pp. 34, 35.
[12] Tenga (n11) pp. 34.
[13] Tenga (n11) 52.
[14] The Imperial Decree of 1895, s.1.
[15] Tenga (n11) 52, 53.

During this era, native law and custom were recognized and applied to land that was possessed by native people. In order to have the record of official titles, a Land Registry was created and administrative frameworks were established. Plantation ownership titles held by the settlers made it simple for them to prove their ownership and ensure their tenure. However, indigenous people were only given permissive rights of occupancy as a result they were unable to establish their ownerships.[16] Under the Decree all land grants had to be made by the Government.[17] The Decree put some restrictions on the land holdings in Africa; without the Governor's approval transfers from an African to a non-African could not be valid...[18]

Later after World War I in 1918, the League of Nations placed the German Territory, which was later renamed Tanganyika, under British custodianship. The colonial administration established the basis of governance that still characterizes the Tanzanian system of government today. After Germany defeated in the World War I and in accordance with Article 119 of the Versailles Treaty of 1919,[19] Germany was forced to surrender all her foreign possessions including the colony of German East Africa. As a mandate and later as a trust territory, Tanganyika was placed and governed by the League of Nations. The British established a new system of land tenure which fit their requirements. Articles 6 and 7 of the Mandate Agreement, which were the same as Article 8 of the Trusteeship Agreement provides that, "…when creating laws relating to

[16] Tenga (n 11) 52.
[17] The Imperial Decree of 1895, s 2.
[18] The Imperial Decree of 1895, s 11.
[19] Signed on 28th June, 1919 at Versailles.

the ownership or transfer of land, the Authority shall take into consideration native laws and customs..."[20]

In 1923 the British government adopted the Land Ordinance. All lands whether possessed or not possessed were declared as public lands under Section 2 of the Land Ordinance, 1923. The section's proviso stated that, "... nothing shall affect the validity of the title or interest to land which had been lawfully acquired before the commencement of the Ordinance…" Furthermore, the right of occupancy, a new form of land tenure was introduced, it was defined as the entitlement to use and occupy land. The governor has the power to grant Certificate of occupancy for a maximum of 99 years. It was mandatory for a Registrar of Titles to register a granted right of occupancy of more than five years. Under native laws and customs of specific African communities, land occupied by the natives was merely "deemed" to be granted to the landholders as *usufructuary titles*.[21] This was also stated in *Mtoro Bin Mwamba v AG*.[22]

In 1928, the Land Ordinance was rectified to enable lawfully using or occupying land in accordance with native law and customs. However, this redefinition did not effectively protect native land rights against superior granted rights. Despite the amendment's inclusion of customary rights to the law, it was unable to guarantee security to the customary holders rather than a declaration with no assurance of security. The Governor had power to grant land to whoever he wanted for the public interest; land under native

[20] Gastorn, K, *Squatters' Rights and the Land laws in Tanzania*, Nomos Verlagsgesellschaft, 2010, Vol. 43, No. 3, pp. 349 – 365.https://www,jstor,org/stable (accessed 21 January 2022 & Tenga (n 11) 53.
[21] It is the right to use, harvest and profit from the use of a property. If the property in question belongs to another person, then there is an implied condition that the property itself remain uninjured through such use.' See, Leonard, R, and Judy, L, Land Tenure Lexicon - A glossary of terms from English and French speaking West Africa, IIED, London, 2000.
[22] [1953] 2 TLR 327.

rights was easily acquired in favor of granted rights. This established a dual policy on land tenure recognizing both granted rights and native/deemed rights; however, in practice, native rights were treated inferior against granted rights.[23]

During post – colonial era, the Land Tenure Ordinance (1923) together with its colonial-style of land administration, was reserved. Wherever the word 'governor' appeared in the Ordinance, it was changed to 'president'; all lands remained as public land. The President became the custodian of all lands on behalf of Tanzanians. The concept of land ownership was proceeded to be mysterious. The security of land held under customary right of occupancy was not given much consideration because the land laws and system of governing land were copied from the colonial administration. The Ordinance allowed the government to freely acquire land (mostly unregistered land) without requiring consent from land owners; the Ordinance may have been retained for technical reasons. Land acquisition by the government was made simple through the Land Acquisition Act 47/1967.[24]

Due to land tenure problems in the country, in 1992 a Presidential Commission of Inquiry into Land Matters was established to look into land issues and propose recommendations. Among the problems identified by the Commission[25] were conflicts between granted right and customary right.[26] Thus the National Land Policy was introduced in 1995. The aim of the National Land Policy is to make sure a secured system of land tenure in Tanzania was promoted and secured. Its specific objective is to

[23] Tenga (n11) 55.
[24] Tenga (n11) 63 – 64.
[25] Presidential Commission of Inquiry into Land Matters, 1992.
[26] Tenga (n11) 79.

ensure that existing land rights, particularly customary rights were recognized and protected by the law.[27] Therefore, the Land Acts were passed in 1999.

Although the purpose of the enactment of the Village Land Act[28] and the Land Act[29] was to ensure the customary land rights are recognized and protected by the law, in practice the position is quite different because the land Acts failed to guarantee security to the customary holders rather than a mere declaration with no assurance of security. Section 18 (1) of the Village Land Act[30] declare that, a customary right of occupancy is in every respect equal in status and effect to a granted right of occupancy. However, section 34 (3) of the Land Act[31] outlaws the mentioned position. Hence, the protection of customary land rights provided by the law[32] is more cosmetic rather than reality. It can be concluded that, section 34 (3) of the Land Act[33] has been enacted purposely to make easy for the government to forceful evict customary land holders in order to implement its projects.[34]

1.2 Statement of the Problem

Securing and protecting land rights is very important for the livelihoods of the landholders. Customary land rights have been treated inferior since colonial era. This situation remained the same even after independence as the colonial laws and style of

[27] Tenga (11) 80 – 81.
[28] Act no. 5 of 1999.
[29] Cap. 113 R.E 2002.
[30] *Ibid,* Act no. 5 of 1999.
[31] Act no 4 of 1999.
[32] Cap. 114 R.E 2002, s. 18 (1).
[33] *Ibid,* Act no. 4 of 1999.
[34] R.W James, *Op.cit* p.2.

land administration was retained. As a result, there are existing laws[35] which enacted to disregard customary land rights in Tanzania. One of the specific objectives of the National Land Policy[36] is to ensure the existing land rights, particularly customary rights are recognized and protected by the law. Consequently, the Village Land Act[37] under section 18 (1) also provide for recognition and protection of the customary land rights.

However, such recognition and protection of the customary land rights have been outlawed by the Land Act[38] which allows the customary land rights to be uprooted in favor of the granted rights. Also, the Land Act[39] hinder the protection of the customary land rights by giving a room for a customary right of occupancy to be defeated when conflicts with a granted right of occupancy. Hence, the recognition and protection of the customary land rights as provided by the Village Land Act[40]seems to be questionable as to whether it is effective and practically implemented in protecting the customary land rights.

Therefore, the aim of this study is to analyse the current legal framework which governs the customary land rights in Tanzania with the purpose of testing its effectiveness in protection of customary land rights.

[35] Land Act, Cap. 113 R.E 2002, s. 34 (3) & 181; Land Acquisition Act, 1967; Urban Planning Act, 2007.
[36] 1995.
[37] Cap. 114 R.E 2002.
[38] Act no. 4 of 1999, s. 34 (3).
[39] Cap. 113 R.E 2002, s. 181.
[40] *Ibid*, Act no. 5 of 1999, s. 18 (1).

1.3 Literature Review

This is a vital component of this study because it enables the researcher to see how other researchers have contributed to the subject matter and what they haven't covered which is the sole aim of this study. Most authors have written about the protection of the customary land rights in Tanzania, but they have not explained in depth on the customary land right against the granted right of occupancy.

Tenga, W.R and Sist, J.M,[41] in their joint work argue that, it is worth noting that a customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy[42]. It needs to be noted however that, although it would seem that the provision intended to cure the long-time conflict on the status between the two, that cannot be achieved because under section 34(3) of the Land Act a customary right of occupancy can be uprooted in favor of the granted right of occupancy. Also, the provisions on planning under the planning law such as the Town and Country planning Act still provide room for declaration of planning schemes in areas where customary rights exist.[43]

Due to the mentioned arguments of the authors above, it can be stated that, the protection and recognition of the customary land rights in Tanzania has been outlawed by the law itself. Therefore, the protection and recognition of the customary land rights seems to be more cosmetic rather than reality.

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[41] Manual on Land and Conveyancing in Tanzania, Dar Es Salaam: Law Africa Publishing (T) Ltd, 2008.
[42] The Village Land Act, Cap. 114 R.E 2002, s 18 (1).
[43] Tenga (n 11) 110.

Komu, F[44] in his paper argued that, customary land tenure system has been a pinnacle of both rural and urban economies in all the African countries and yet the most vulnerable. Customary land tenure system is treated with partisan as a darling of the entire land holding system and yet a bastard in practice! Customary right of occupancy has no equal status as the granted right of occupancy. He further argued that, the law provides for existence of the customary right of occupancy in villages, its existence as its founding customary law is either non-existent or continuously being diluted and polarized by the infiltration of intermarriages, migrations and urbanization. It is to be reiterated that all laws do recognize customary tenure but not all accord it protection. As a result, the so-called customary right of occupancy is the most vulnerable and insecure land tenure.

Knight, S. R[45] pointed out that, in many developing countries, the majority of land is under customary tenure. However, customary – held land rarely enjoys adequate protection under national laws; any legal mechanisms to uphold land rights may be easily circumvented. Customary land rights must be recognized under the national law. To allow customary land systems to flounder in the realm of illegality deprives the poor of state sanction for and protection of their basic rights.

He argued that, true tenure security will only come from elevating customary land rights up into formal law, and making customary land rights equal in weight to registered rights. Accountability systems and oversight mechanisms must then be put into place to

[44] Customary and informal land tenure system in African cities: Polemics of sustainable urban Development. Paper presented at the 4th AFRES conference held at the University of Nairobi on 12 – 13th March, 2003.
[45] Knight. S.R. Statutory Recognition of Customary Land Rights in Africa, 2010, pp.1 - 7. FAO Legislative study 105, ISSN 1014 – 6679. https://www.fao.org/publications/card. (Accessed 04 June 2022).

ensure that the law is properly implemented, the land claims of rural communities are protected, and the legislative intent of the law is realized.

Veit, P[46] argued that, in 1999, Tanzania enacted the Village Land Act and the Land Act which recognize customary tenure and empower village governments to manage village land yet many villagers and communities still do not have security in their customary land. The laws have not been effectively implemented and enforced. Although the Village Land Act[47] provides that a customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy, however the customary land rights are not recognized and respected as equal to statutory rights.

He further argued that, the Village Land Act has the potential to provide villagers with security in their customary land, but the law has yet to be effectively implemented. Moreover, the Act contains some worrying provisions, including those that empower the government to transfer village land to general land without seeking and obtaining village government approval.

Quan J and Toulmin C[48] argue that since the mid-1990s African nations including Tanzania have developed a range of responses to the challenge of formalizing and securing customary land rights. These approaches are not mutually exclusive and can be combined in various ways, with different elements assuming greater prominence according to the circumstances. One option is for the law to protect customary rights that

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[46] *The precarious position of Tanzania's Village land,* 2019, p. 6 https://gatesopenresearch.org/documents/pdf (accessed on 28 January 2022).

[47] Cap 114 R.E 2002.

[48] Quan J and Toulmin C, *Formalizing and Securing Land Rights*, International Institute of Environment and Development, 2005, pp. 17.

are considered socially legitimate, independently of any specific registration or documentation process.

They also argue that, different countries adopt different approaches in regard to the protection of customary land rights. There are three school of thought that lay the basis for protection of customary land right namely conservative school, adaptation school and replacement school. Tanzania has adopted hybrid mode of land reform with the view to provide recognition of some of the customary laws govern land rights while abandoning customary law which are seems to be discriminatory and inconsistence with written law and justice. However, the existing legal framework seems to be not adequately protected the customary land rights in Tanzania.

Krants, L[49] argued that, majority of the poor in Sub-Saharan Africa live in rural areas and make a livelihood from agriculture and other land-based production activities. Secure tenure to land is thus of fundamental importance for these people. Yet even today very few of them have title to their land but get access to it through various informal customary tenure arrangements.

He further argued that, in those countries where customary tenure is not recognized in statutory law, there is a clear risk that land held under this system is not respected when land concessions for large investment projects are being granted. And even when customary tenure rights are recognized in the national legislation, it may still be difficult for local people to defend their land rights against such outside claims simply because

[49] Krantz. L, *Securing Customary Land Rights in Sub – Saharan Africa*. Working papers in Human Geography, 2015:1. https://gupea.ub.gu.se/gupea_2077_38215_1. (Accessed 11 June 2022).

their holdings are not demarcated and registered, and therefore not identifiable on maps and in official cadastral.

Pritchard, J *et al,*[50] argued that, land that is possessed, occupied and used by communities according to 'customary law' is the most common system of land and resource ownership in Africa. Customary law is the framework of rights, rules and responsibilities based on community customs and practices, governing ownership and management of a community's lands, territories and resources. Customary land includes all land areas used and managed by communities in this way, including farms, forests, rangelands and wetlands. Despite the prevalence of customary law, the land and resource rights of most communities are not adequately recognized or protected by national laws, they lack security of tenure. This insecurity was exploited by colonial administrations, and has yet to be properly addressed by many posts - independence governments in Africa.

Lawry, S[51] argued that, roughly 90 Percent of Sub – Saharan Africa's land mass is administered under customary tenure. Yet despite its pervasiveness as the principal institutional arrangement for providing access to secure land rights, customary tenure often has little or weak recognition in statutory law. The underlying statutory tenure of most areas administered under customary rules is founded on various forms of public or state land. Public lands are the principal source of land used in government-or elite

[50] Pritchard, J. et al, *Securing Community land and resource rights in Africa: A guide to legal reform and best practices*. 2013, pp. 6. https://www.iccaconsortium.org/2015/08/legal. (Accessed 11 June 2022).
[51] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).

brokered deals to transfer land rights to outside investors with little or no compensation to previous customary holders.

Persha, L[52] in his work argued that, "the Land Act[53] introduced sweeping reforms and protections for customary land use rights in Tanzania, including recognition of the rights of villages to hold and administer land according to customary law. Individuals who use or occupy Village Land have the right to obtain formal documentation of their use rights via a Certificate of Customary Right of Occupancy (CCRO), which is issued by local government. In practice, however, some of Microfinance institutions do not accept Certificate of Customary Right of Occupancy as collateral for loans.

Alden, W, L[54] in her work argued that, customary land rights need to be released from their historical subordination as occupancy and use rights on presumed unowned lands, and much of which land remains vests in governments as owner – custodians. The security of customary tenure should be increased by these rights to be registered so as to

Hungwe, M and **Rukuni, M,**[55] in their joint work argue that, practical solutions to increase security of customary tenure should be adopted in order to protect the land rights of majority Africans who own their lands under customary tenure.

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[52] *Impacts of customary land use rights formalization smallholder tenure security and economic outcomes: Midline results from a RCT impact evaluation of USAID's land tenure assistance activity in Tanzania,* Land governance in an interconnected World. Annual World Bank Conference on land and poverty, Washington DC, March 19-23,2018.https://landlinks.org/uploads/2018/04/pdf (accessed 04 March 2022).
[53] Cap. 113 R.E 2002.
[54] Transforming Legal Status of Customary Land Rights: What this means for women and men in Rural Africa, 2021, pp.169-181.
[55] Overview of Main Challenges with regards to Land Tenure in Africa: Factual and Legal Aspects, 2020, pp. 121-131.

Ige, V.O *et al,*[56] in their joint work argued that, the land titling is very important to the customary land holders to improve their economic efficiency and sustainable development hence eradicating poverty. In order to strengthen the security of customary tenure, customary rights should be formalized and the customary land holders should get tittle deeds for their lands.

Chitonge, H and **Harvey, R**,[57] argued that, when land governance processes are dominated by rent – seeking, corruption, and lack of accountability and transparency, it is often the poorest citizens who own their lands through informal arrangements under customary tenure are worst affected by the uncertainties surrounding their only asset and source of livelihood. Therefore, land should be governed efficiently to protect security of tenure to the customary land holders.

Kulwijira, R,[58] argued that land ownership in many African countries was and still characterized by dualism; which is the co-existence of large-scale commercial farms, owned by the elite and the powerful, and small customary holdings mainly owned by poor local peasants who constitute the majority in all African countries and contribute the bulk of domestic food, cash crop and livestock production. Customary law and practice govern most of the land owned by smallholder farmers.

[56] Sub-Saharan Africa's Customary Practices and Land Titling Policy Reforms: In achieving the Sustainable Development Goal Against Poverty in Developing Nations, 2024, pp. 25-39.
[57] Land Tenure Challenges in Africa: Current and Emerging issues, 2021, chapter 16.
[58] ,,Securing Right to land: A priority for Africa'', Research Report, International Institute for Environment and Development, 2005, p. 15.

He further pointed out that, customary ownership was not legally recognized during the colonial era and post independent Africa has done little to correct the situation. Consequently, land tenure remains a contentious issue and a challenge for the African member states including Tanzania.

Hayqal, F.F *et al*,[59] in their joint work argued that, the fact that, a large part of customary land is not registered causes indigenous peoples' control over customary land not to be based on rights that can be proven in writing. This causes the rights of many indigenous peoples over their customary land to be marginalized. Registration of customary land can minimize overlapping land disputes between indigenous peoples and private parties.

The, S. C *et al,*[60] in their joint work argued that, indigenous peoples have rights that must be recognized, respected, protected and fulfilled by every country where these communities are located in order to strengthen security of tenure to the customary land holders.

Claeys, P et al[61] in their joint work pointed out that, customary land tenure is a dominant form of land ownership in Africa in which land tenure mechanisms are not

[59] *Legal Certainty of Land Tenure of Customary Rights by Indigenous Peoples based on the Administration of Customary Land,* International Journal of Social Science Humanity and Management Research, 2023, Vol. 2 (7), pp. 615-620.
[60] *Legal Protection of Ulayat Lands of Indigenous Peoples Against the Threat of Land Commercialization,* International Journal of Multicultural and Multireligious Understanding, 2022, Vol.9 (12).
[61] Women's Rights to Communal Land in Tanzania, Pastoral Women's Council, Research Report Phase 1, 2023.

documented, this results to insecurity of customary land tenure because customary land holders lack Title deeds to protect their customary land rights.

1.4 Objectives of the Research

There are two major objectives in the research: -

1.4.1 General Objective

The general objective of the study is to assess the protection of the customary land rights in Tanzania.

1.4.2 Specific Objectives

i. To identify the existing laws applicable on regulating customary land rights in Tanzania
ii. To point out the existing legal gaps on the laws which govern the customary land rights in Tanzania.
iii. To identify the existing international instruments concerning the protection of customary land rights.

1.5 Research Questions

The research is guided by the following questions: -

i. What are the laws which regulate customary land rights in Tanzania?

ii. What are the existing legal gaps on the laws governing the customary land rights in Tanzania?

iii. What are the international instruments concerning the protection of customary land rights?

1.6 Significance of the Research

This research is of great importance to the country because it will create awareness to the government on the existing legal gaps in our legal framework concerning the protection of customary land rights. Also, it will assist the law-making organ, the Parliament to discover the areas of the current land laws and other laws which need to be amended in order to improve the protection of customary land rights in Tanzania. This study also will help researchers to open their minds on the legal gaps in the current legal framework concerning the protection of customary land rights in Tanzania.

1.7 Research Methodology

Research methodology is a science which contains different procedures and approaches that a researcher typically must take in order to investigate a research problem as well as the logic behind them.[62] This involves a study of methods as well as the justification and applicability of using particular research methods as well as the methods themselves.[63]

[62] Kothari C, R, Research Methodology: Methods and Techniques, 2nd Ed, New Age International Publisher, New Delhi,2004, pp 8.
[63] Vibhute, K & Aynale, F, Legal research methods: Teaching material, 2009, pp.26.

Legal research may be conducted using one or more of a number of different methodologies or techniques. Among these various methodologies are socio-legal methods, comparative law methods, empirical legal methods, and doctrinal research.[64] In this study, doctrinal legal research has applied in the analysis of legislative texts and jurisprudence of land laws regulating the protection of the customary land rights in Tanzania.

1.7.1 Doctrinal Legal Research

Doctrinal research comprises the use of both primary (legislation and case law) and secondary (reports, journal articles, text books, and other legal publications). Doctrinal research is most frequently applied on legal doctrine. Doctrinal research finds what the law is in a particular situation or issue. In order to critically assess the materials gathered in light of the research questions, this methodology comprise the application of a number of legal techniques, including the rules of statutory legal interpretations, inductive and deductive legal reasoning.[65]

The doctrinal research methodology was selected basing on two reasons: First, the primary data for the study will be found from legislation through reading the relevant source. Secondly, this methodology primarily used in legal research which emphasizes on what the law is rather than what it ought to be. A researcher's main goal according to

[64] Singhal, A.K & Malik, I., *Doctrinal and socio-legal methods of research: merits and demerits*, Educational Research Journal Vol. 2(7), pp. 252-256, July 2012. http://www.resjourn accessed on 20th April 2019.
[65] McGrath J.E., Methodology Matters: Doing Research in the Behavioural and Social Sciences, in R. M. Baecker *et al*., (eds), Readings in Human-Computer Interaction: Toward the Year 2000, Morgan Kaufmann Publishers, 1995, p. 153.

doctrinal methodology is to locate, gather, and apply the law (legislation or case law) to a specific set of material facts with the aim of resolving legal problem.[66]

In application of this methodology, the study is able to analyse the current legal system that governs the protection of the customary land rights and then consider how the system should be changed to address the legal problem relating to the protection of the customary land rights in Tanzania. This methodology is extremely beneficial in this study because of its potential in improvement of the development, continuity, consistency, and certainty of law. The researcher employs both primary and secondary data sources.

1.7.2 Primary Sources

In applying doctrinal methodology, the primary sources of data are used by analysing a number of local statutes and case laws in connection with the protection of customary land rights in Tanzania. In application of this method, the researcher identifies, assesses, and evaluates the efficacy of the current legal framework governing the protection of customary land rights. The objective is to draw attention on the strengths and deficiencies of the existing legal framework in order to fill the gaps that might exist.

1.7.3 Secondary Sources

The protection of customary land rights is discussed in reports, books, journal articles, theses, dissertations, and other publications[67] using a range of legal techniques,

[66] *Ibid,* McGrath, p. 154.
[67] Singhal, & Malik (n 64).

including rules for statutory interpretation, inductive and deductive legal reasoning in the context of the research questions. Secondary sources are considered to be very beneficial in the current study due to their potential in improvement of the development, continuity, consistency, and certainty of law. A research gap is successfully established by carefully examining and analysing the various pieces of literature relevant to the study with the aim of identifying what have been covered and what have not covered in the existing literatures.

1.8 Data Analysis

The data which have collected are used in analysing various legal techniques and methods. Thus, both inductive and deductive methods of legal reasoning and statutory interpretation have been used in the study. In this regard, various data have collected from general to specific and vice versa have analysed using inductive and deductive methods.

Inductive reasoning has been used in this study to develop the theory to guide this research, in this regard, systematic titling theory was selected as a theory to guide the study. Inductive reasoning enabled the researcher to make predictions and draw conclusions concerning the research problem. On the other hand, deductive reasoning has been used in this study to test and confirm the existing theory to develop hypotheses.

1.9 Scope of the Study

This study is limited to the country of Tanzania only. Since land is not a union matter, this study concerns with Tanzania Mainland with exclusion of Zanzibar. Customary land rights of as one of the types of the right of occupancy in Tanzania is the subject of this study with exclusion of the granted rights.

1.10 Chapter Outlines

This Research comprises Six chapters; the first chapter covers the introductory chapter which includes all the parts in the research proposal. The second chapter covers the Conceptual and Theoretical framework of the study. The third chapter covers International Instruments governing the customary land rights. Chapter Four covers the legal and institutional framework governing customary land rights in Tanzania. Fifth chapter is challenges facing the protection of customary land rights in Tanzania. Finally, in chapter Six is the conclusion and recommendations of the study.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK OF THE STUDY

2.0 Introduction

In the previous chapter, the research covered the introductory part of this research. In this chapter, different key concepts such as security of tenure; customary land tenure; and customary land rights which bring about the basis for the conceptual framework of this study are discussed and explained to its entirety. The main objective for conceptual framework is to define the main terms which are used in the study to which their explanation represents all the rational of perceptive process about the research topic and developing interest in defining its exactness.

This chapter also discusses about the Development of customary land rights; Scope of customary land rights; Nature of customary land rights; and the Rationale behind the protection of customary land rights. Moreover, the chapter covers on the indicators of legal respect for customary land tenure.

Also, the chapter discusses on the theoretical framework by mentioning and elaborating the key theories which enunciate this study. Three theories will be discussed and shown its relevancy to convey the idea of protection of customary land rights, these theories include; conservative, democratic and replacement theory and explain how they protect customary land rights in the country. Therefore, after discussing the mentioned theories in this chapter, the study will select one theory and the significances for its selection.

2.1 Definition of Key Concepts

The specific purpose of this part is to present the meanings of key concepts which are used in this study and how they provide the relevancy of this study. The rationale for the conceptual framework in this study is to lay a foundation and clarify the meaning of key legal terminologies as used in the study. Therefore, this part will elaborate among many other things, the meaning of customary land rights and customary land tenure as well as customary and granted right of occupancy.

2.1.1 The Concept of Security of Tenure

The concept of "tenure security" entails the legal, administrative, and social frameworks governing protection of individual or group rights to land, as well as acknowledged sets of rules, procedures, and systems that would support reliance upon such frameworks. Tenure security is a necessary element of successful social and economic strategies. The adverse of tenure security inevitably fosters vulnerability and economic marginalization, and causes conflict. By contrast, secure tenure entails various economic advantages, such as increased value of land and concomitant creditworthiness and investment and production possibilities. Secure tenure could result in efficient land transfer systems with lower transaction costs and reduced prevalence of disputes about land. Such benefits presuppose, however, that certain conditions are met. [68]

Security of tenure is the perception by people that their rights to land will be recognized by others as legitimate and protected in the event of specific challenges. People often feel secure when they have a full set of use and transfer rights of sufficient duration to

[68] Mostert, P. Customary and Statutory perceptions of tenure security in South Africa, 2011, p.9.

recoup any labor and capital they invest in land or property and when they are able to enforce those rights against the claims of others. Some people will refer to a "bundle of rights" in land and resources. This bundle is composed of various "sticks" each of which represents a right to use, manage or transfer the asset.[69] If tenure is secure, land holders and users are safeguarded against arbitrary interference with their rights or interests. Security of tenure implies that, absent an established legal procedure, holders of rights and interests to land cannot be divested of such. Formal legal protection, although protecting tenure significantly, is not always essential for achieving tenure security. Instead, strong social processes between beneficiaries of land *inter se* and as regards outsiders can also achieve security of tenure.[70]

Tenure security has become an essential part of a large programmatic push aimed at increasing inclusive investment in land, agricultural production, sustainable natural resource management, and the move toward market economies. Increasingly, efforts are focused on multiplying the effects of secure tenure and property rights from various sources. For several decades, efforts to provide secure tenure and property rights have specifically focused on land law, land titling and registration, land administration, and the redistribution or restitution of land. More recently, the development community has examined ways to expand secure land tenure and property rights by supporting efforts to recognize and respect customary rights use, manage and allocate rights to land and

[69] USAID: Land Links. What is land tenure? https://www.land-links.org/what-is-land-tenure. (Accessed on 14 July 2022).
[70] *Ibid*, Moster (n 62) 6.

resources as a means to contribute to both economic growth and sustainable natural resource management.[71]

2.1.2 The Concept of Customary Land Tenure

The term "tenure" derived its origin from the French word *"tenere"* which means to hold.[72] Tenure refers to the system of land holding which reflects the quality of a holder. Also, the term tenure signifies the relationship between tenant and lord, not the relationship between tenant and land.[73] It is also the legal right to live in a particular building or to use a particular piece of land during a fixed period of time.[74] On the other hand the term "land tenure" refers to the legal relationships pertaining to land. This term embodies the institutional and legal understanding of "how land and its associated natural resources are held and utilized". It denotes policy choices as to the governance of land holding and – use, the administrative structures employed, the ways in which rights and interests are recognized and conflicts between the holders thereof are mediated. In this sense, the concept of land tenure is primarily interested in the social processes of holding the land or rights thereto, rather than the legal status attributed to various ways of land holding.[75]

Therefore, customary land tenure refers to the set of norms and rules which governs the community allocation, usage, access, and transfer of land and other natural

[71] USAID: Land Links. What is land tenure? https://www.land-links.org/what-is-land-tenure. (Accessed 14 July 2022).
[72] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008.
[73] Wikipedia, the free encyclopaedia, Land tenure. https://en.wikipedia.org/wiki/land_tenure. (Accessed 14 July 2022).
[74] Collins English Dictionary. Tenure definition and meaning. https://www.collinsdictionary.com. Accessed on 22 August, 2023.
[75] Mostert, P. Customary and Statutory perceptions of tenure security in South Africa, 2011.

resources.[76]The term customary tenure differs with statutory tenure due to the fact that it has direct connection with indigenous communities, it is administered in accordance with the communities' customs and norms, unlike the later developed during colonial era.[77] Thus, customary land tenure can be defined as the ownership, possession and transfer of land which is primarily regulated by custom of the community.

The rationale behind customary land tenure system is to define who can hold and use resources, for what length of time, and under what conditions. This goes with economic efficient usage of land based on traditional, unwritten, and locally relevant rules about how to use and allocate land and resources within the community.

2.1.3 The Concept of Customary Land Rights

Customary land rights refer to the enjoyment of ownership of land which includes transfer and possession that arises from community's custom, norms, tradition and unwritten practice rather than through written codified law. Different communities have different ways of issuing land holding to its members through their norms, culture and customs.[78] These are patterns of long – standing community land and resource usage in accordance with indigenous peoples' and local communities' customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the State.[79]

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76 FAO, 2002.
77 *Ibid*, FAO, 2002.
[78] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. P. 42.
[79] UNDP. UN-REDD Programme. Customary rights. 2008. https://www.un-redd.org/glossary. (Accessed on 14 October, 2023).

Customary land rights must be protected and recognized by the law. True customary tenure security will be achieved from elevating customary land rights up into formal law and making customary land rights equal in weight to registered rights.[80]

2.2 Development of Customary Land Rights

Customary land rights came into existence even before the coming of the colonialists. They existed during the period where people of certain communities held land according to their customs, traditions and culture. This was that period whereby there were no codified laws or formal rules existed for the purpose of regulating the land holding tenures in African communities and more specifically the Tanganyika societies.[81] It is true that, colonial rule in Tanganyika through different policies was the main reason for both the active and inactivity of customary land rights, this is due to the fact that colonization only regards pursuit for land whose diverse undertakings requires the annulment and demotion of pre-existing properties and property relations as well as the creation of new, capitalist-oriented property regimes by way of land alienation systems.[82]

In order to fulfill their interests, the colonialists selected and strengthened only parts of customs which fit their interests. For instance, during colonialism, the colonialists claimed that since the Africans had no ownership of land by way of title deed hence their land could be taken freely. The colonialists started land administration by vesting powers

[80] Knight. S.R. *Statutory Recognition of Customary Land Rights in Africa,* 2010. FAO Legislative Study 105, ISSN 1014 – 6679. https://www.fao.org/publications/card. (Accessed 04 June 2023).
[81] Urassa J. A, (2020), Changing Customary Land Tenure Regimes in Tanzania, PhD Thesis, Ardhi University, p. 2.
[82] FAO, (2015) Statutory Recognition of Customary Land Rights in Africa,

p. 23.

to the governor and the only way to prove land ownership remained by way of title deeds, this affected majority of the natives since they had no documents to prove ownership of land.[83]

The colonialists executed traditional laws which were made upon collective ownership and overseen by the chiefs whereby the colonial rulers under the governor acted as a trustee for land. During this period the African leaders such as chiefs were made colonial puppets whereby forced to observe colonial policy against their will and against their fellow communities' members.[84]

Customary laws of many communities in Africa were massively affected by the colonial rule, the position was maintained until the end of the colonialism. The leaders who came into power soon after independence, they had a duty to create a new African system of land management and administration as well as enactment of different policies with respect to traditions, customs, and culture of African communities. In order to ensure land is properly secured, the African leaders nationalized land and made it as a public property vested to the President as trustee on behalf of all citizens. For instance, the government could forcefully obtain land freely or with less compensation from the land holders basing on the reason of public interest.[85]

Also, it was stated by the Late Mwalimu Julius Kambarage Nyerere that, "in Africa, land was communally owned by the community rather than by individual persons. The African's right to land was the right to use it and not otherwise, the land holders could

[83] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. P. 15.
[84] Urassa J. A, (2020), Changing Customary Land Tenure Regimes in Tanzania, PhD Thesis, Ardhi University, p. 2.
[85] *Ibid*, Tenga, p.16.

not claim ownership of land. Even a piece of family land was transferred to someone outside the family by way of transfer as loan, sale or gift. Therefore, the nature and strength of the social relationship between the two parties influenced and determined the nature of the rights transferred."[86]

It is argued that, 90 Percent of Tanzania's land mass is administered under customary laws. There are many ways whereby people obtain customary lands in Tanzania, these include borrowing and renting land rights. For instance, people who rent customary land are restricted to make long term investment which might create likelihood of property claim. Therefore, these practices which convey customary laws have been practiced with some modification till today.[87]

2.3 Scope of Customary Land Rights

Customary rights to land refer to patterns of long- standing community land usage in accordance with indigenous peoples' and local communities' customary laws, values, customs, and traditions.[88]Customary land rights can be issued to a person, a group of persons or a family unit recognized as such under customary law.[89] Customary land rights like granted land rights also are subjected to registration as well as issuance of Certificate of customary right of occupancy prior to registration.[90]

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[86] Daley, E. (2005a), *Land and social change in a Tanzanian village 1: Kinyanambo*, 1920s-1990. Journal of Agrarian Change, 5 (3), 363–404. P. 374.
[87] Daley, E. (2005b), *Land and social change in a Tanzanian village 2: Kinyanambo* in the 1990s. Journal of Agrarian Change, 5 (4), 526–572, p. 564.
[88] UNDP. UN-REDD Programme. Customary rights. 2008. https://www.un-redd.org/glossary. (Accessed on 14 October, 2023).
[89] The Village Land Act, 1999, s 22 & 25.
[90] Cap. 114 R.E 2002, s 25.

Customary right of occupancy may be granted for a term which may be indefinite or any length of time less than an indefinite time, however such length of time shall not exceed Ninety – Nine Years.[91] It is not mandatory for customary land rights to have certification, however, the registration of right of occupancy enables the holder to obtain the right to use his certificate of customary right of occupancy as a collateral for loan to the financial institutions.[92]

2.4 Nature of Customary Land Rights

Section 2 of the Village Land Act[93] defines customary right of occupancy as right of occupancy created by means of the issuing of a certificate of customary right of occupancy under section 2 of the Act[94] and includes deemed right of occupancy. Section 2 of the Act[95] defines deemed right of occupancy to mean the title of a Tanzanian citizen of African descent or a community of a Tanzanian citizen of African descent using or occupying land under and in accordance with customary law. It can be acquired under customary law through inheritance, clearing a virgin forest, purchase. Customary right of occupancy therefore includes land allocated by the village council and land acquired under customary law (for instance, through purchase, clearing forest, gift, inheritance) and held by villagers.[96]

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[91] The Village Land Act, s 27(1).
[92] USAID, Integrating Customary Land Tenure into Statutory Land Law: Property Rights and Resources Governance Project, U.S Agency for International Development, p.6.
[93] Act No. 5 of 1999.
[94] (Cap. 114 R: E 2002).
[95] *Ibid.*
[96] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. P. 109.

A customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy.[97] It is capable of being allocated by a village council to a citizen, a family or a group of two or more citizens, a partnership or a corporate body.[98] A customary right of occupancy may be granted subject to a premium and an annual rent which may be varied from time to time.[99] Also, it may be inheritable and transmissible by will.[100] Furthermore, the holder of customary land is entitled on prompt payment of full and fair compensation in case of acquisition by the State for public interest.[101]

A certificate of customary right of occupancy may be granted by the village council within ninety days after a contract for a grant of a certificate of a right of occupancy has been concluded.[102] However, the applicant is required to accept the offer in accordance with section 23 of the Village Land Act.[103] Therefore, the village land council has power to determine both, the land allocated by village council itself and the land acquired under customary law by either way of purchase, clearing of forests and shrubs as well as gifts and inheritance.

The customary rights are permanent and perpetual. The land holders who occupy land for a couple of years entitled to customary right of occupancy and eligible for registration of right and get the certificate of customary right of occupancy for indefinite durations.[104] Any customary land rights dealings is governed by customary law. This is

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[97] S. 18 (1) of the Village Land Act, 1999.
[98] *Ibid*, s. 18 (1) (a).
[99] Cap. 114 R.E 2002, s 18 (1) (f).
[100] Section 18 (1) (h) of the Act.
[101] *Ibid*, s. 18 (1) (i).
[102] Section 25 of the Village Land Act, 1999.
[103] Cap. 114 R.E 2002.
[104] Cap. 114 R.E 2002, s 25 (1) & 27 (1).

to say, every sale, lease, mortgage and disposition affecting customary land rights is administered by customary law of the certain community where the land is located.[105]

2.5 Rationale Behind the Protection of Customary Land Rights

It is stated that, majority of the poor in Sub-Saharan Africa including Tanzania live in rural areas and make a livelihood from agriculture and other land-based production activities. Secure tenure to land is thus of fundamental importance for these people. Yet even today very few of them have title to their land but get access to it through various informal customary tenure arrangements. In those countries where customary tenure is not recognized in statutory law, there is a clear risk that land held under this system is not respected when land concessions for such investment projects are being granted. And even when customary tenure rights are recognized in the national legislation, it may still be difficult for local people to defend their land rights against such outside claims simply because their holdings are not demarcated and registered, and therefore not identifiable on maps and in official cadastral.[106]

It is further stated that, recognizing and protecting customary land rights is a critical component of protecting and defending the land rights of the rural poor. It is founded upon the notion that, protecting and enforcing the land claims of rural Africans may be done by passing laws that elevate existing customary land claims up into nations' formal legal frameworks and make customary land rights equal in weight and validity to

[105] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. P. 109.
[106] Krantz. L, *Securing Customary Land Rights in Sub – Saharan Africa*. Working papers in Human Geography, 2015:1. https://gupea.ub.gu.se/gupea_2077_38215_1. (Accessed 11 June 2022).

documented land claims.[107] When land lacks adequate legal, institutional, and traditional or customary protection it becomes a commodity easily subject to manipulation and abuse. Weak governance leads to weak tenure systems, often depriving individuals and communities of essential rights and access to land and other natural assets and contributing to poor land and resource management which further degrades the limited resource base.[108]

It is a valuable fact that, the rationale for the emphasis of protected property rights in terms of granted rights (Certificate of Customary Right of Occupancy) offers avenues for investments by either way such as mortgages, and sustainable land resource management at both levels, individual and the government. Tenga[109] analyses further to the investment in land that, the African peasant who dwells in areas where its soil is very fertile and arable to allow crop cultivation but having densities with less population have no intention for investment into soil fertility unlike their focus in shifting cultivation. This stipulates that, in areas with no pressure for land, the peasants do not protect their land unlike areas with dense population where the need for land is high and land investment bears the foremost importance. Therefore, it is a common practice in most of African countries to protect only areas which are likely to create greater value and provide avenues for investments.[110]

[107] Knight. S.R. *Statutory Recognition of Customary Land Rights in Africa*, 2010. FAO Legislative Study 105, ISSN 1014 – 6679. https://www.fao.org/publications/card. (Accessed 04 June 2022).
[108] USAID. Land Links. Land and conflict. https://www.land-links.org. (Accessed 20 October 2023).
[109] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. P. 109.
[110] *Ibid*, Tenga.

Also, another important reason for protection of property rights is that, in its nature property is an asset, therefore assets need to be regulated in term of usage, and control. How these landed assets can be exchanged controlled held and used is very important to be conveyed in the essence of protection of property rights. Notwithstanding the above, it is significant to note that property to land is not always static regardless of the changes in response to vicissitudes in the economic and social environment.[111]

In Tanzania like other African Countries, the legislative guarantees the protection of customary land rights. For instance, one of the specific objectives of the National Land Policy[112] is to ensure the existing land rights, particularly customary rights are recognized and protected by the law. Consequently, the Village Land Act[113] also provide for recognition and protection of the customary land rights.[114]

2.6 Indicators of Legal Respect for Customary Land Tenure

Liz Aiden Willy in his report[115] titled *Reviewing the Fate of Customary Tenure* in Africa outlined several indicators of just legal respect of customary land rights those can be used in assessing the legal protection of customary land rights. Customary land interests are respected in national laws if they meet the following indicators:

a) *Legal status of customary land rights*:[116] Customary land rights are considered to be respected and protected if they are treated as equivalent in legal force to land

[111] *Ibid*, USAID.
[112] 1995.
[113] Cap. 114 R.E 2002.
[114] *Ibid*, s.18 (1).
[115] Willy L. A, The Status of Customary Land Rights in Africa Today Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa, 2011, - Brief #4 of 5, p. 15.
[116] Willy 2011, *op. cit* at page 32.

interests obtained through non-customary (usually introduced statutory) regimes; that is, accepted as an equitable form of private property. In Tanzania this is provided under the Village Land Act.[117]

b) *Certification and registration*:[118] They are respected if they are able to be certified or registered without first being converted into non-customary forms of landholding. Registration and certification of customary land rights is permissible under section 22 of the Village Land Act. They are registered without being converted to non-customary land holding. Nevertheless, issuance of certificate of customary right of occupancy has not done in most of the village land. Even those with certificate of customary right of occupancy are still subjected to compulsory acquisition of land and scheme of regularization that demise the customary land rights in favor of the granted rights.

c) *Recognition as Private Property without registration;*[119] Customary land rights are bound to be upheld as private property by government and the courts, even if they are not formally certified or registered to be considered as legally secured. In Tanzania, customary land rights are legally recognized and protected even if they are not certified or registered. They are recognized as deemed customary right of occupancy under the Village Land Act.[120] However, they are taken to be inferior to the granted right of occupancy. A mere recognition is not sufficient to protect against encroachment.

[117] Section 18(3) & *4*(1)(i) of the Village Land Act, 1999.
[118] *Ibid.*
[119] *Ibid*, Willy.
[120] Section 18(3) & 4(1)(i) of the Village Land Act, 1999.

d) *Capable of being owned by Individual person or group of persons:*[121] Customary land rights should be protected and respected to equal degree as property whether owned by families, spouses, groups, or whole communities, not just individuals. Customary land rights are capable of being owned by individual person or group of persons in term of joint ownership or occupancy in common. In Tanzania, an individual person or family or group of persons can apply for certificate of customary right of occupancy.[122] It is possible for a person to hold land under customary law either individually or in association with others. Customary land can be occupied individually or collectively as a common land for communal uses.

e) *Expressible in different bundles of rights:*[123] As an indicator of legal respect of customary land rights, it must be understood in the law as expressible in different bundles of rights, including, for example, the seasonal rights of pastoralists. Pastoral rights is legally recognized and protected under the Village Land Act except in few cases where such land is taken for public purposes. It is not easy to define what is un exhausted improvements in term of grazing land.

f) *Respect to unfarmed or unsettled land:*[124] One of the conditions for efficiency protection of customary land rights is the respect to unfarmed or unsettled land. Such kind of land should not be considered as an unoccupied land. In Tanzania both Village Land Act and Forest Act regulate forest. However, the other

[121] Willy 2011, *op. cit* at page 32.
[122] Cap. 114 R.E 2002, s. 22.
[123] *Ibid*, Willy 2011.
[124] Willy 2011, *op. cit* at page 32.

unfarmed or an occupied land such as forests, rangelands, and marshlands and grazing land can be subjected to unoccupied land. There must be a clear distinction between unoccupied land and land used for other purpose though is not de facto occupied to protect communal land and grazing land.

g) *Acknowledgement of above ground resources:*[125] As part of land, anything so permanently attached to the land is defined as land excluding petroleum and minerals. The above-ground resources such as trees and wildlife, and also to local streams and ponds, coastal beaches, and surface minerals that have been extracted traditionally for centuries, thus should be legally protected. These rights are legally recognized and protected in Tanzania under land laws and other legislation.

h) *Supremacy over non-customary commercial investment*:[126] In fact, customary land rights should be given primacy over non-customary commercial investment purposes seeking rights to the same land for effective protection. In Tanzania, the village council has no final say when the issue of foreign comes or investment in village land. However, the government can acquire customary land right for public interest or development purpose including investment. Therefore, the customary land right is not supreme over non-customary investment.

[125] *Ibid*.
[126] *Ibid*, Willy 2011.

i) *Democratic land administration:*[127] Administration of customary land rights should be locally institutionalized. It must be recognized as requiring legal support for community based, democratically formed land administration to be successfully and fairly regulated. In Tanzania, customary land rights are managed by village councils who are composed by people elected representative (village chairpersons and sub village/street chairpersons). The village council is required to report to the village assembly for review and approval. This is kind of democratic governance.

j) *Managed by Local level dispute resolution bodies*:[128] In general, village land council and ward tribunals are local level land disputes resolution bodies established and empowered under the Land Disputes Courts Act to mediate land disputes arising in their area of jurisdiction. Recognition and protection of customary land rights should be supported by the creation of local-level dispute resolution bodies, whose decisions carry force and whose rulings rely on just customary practices.

k) *Reined in legally where customary norms are unjust:*[129] It must be noted that in some instances, customary may be favorable to certain gender or group in the community. To avoid such unjust, customary law applicable to customary land rights should be reined in line with justice and other written laws to avoid unjust to ordinary community members (e.g. as a result of undue chiefly privilege) or to vulnerable sectors such as women, orphans, the disabled, hunter-gatherers,

[127] Willy 2011, *op. cit* at page 32.
[128] *Ibid*.
[129] *Ibid*, Willy 2011.

pastoralists, immigrants, and former slave communities. In Tanzania, customary law is only applicable where does not contradict with constitution or any other written law as it was stated in the case of *Bernado Efraim vs Holaria Pastory and Gervazi. Kaizilege.*[130]

l) *Protection when Expropriated by the state for public purposes*:[131] Customary land rights should be given the same protection as statutorily derived private properties when required for public purposes, as indicated by the extent to which the law requires the same levels of compensation to be paid and the same conditions to both forms of property to apply. The same protection is accorded; however, the Land Acquisition Act tries to diminish the essence of full, fair and prompt compensation as stipulated by the Constitution, Village Land Act and Land Act. Payment of un-exhausted improvements can not in itself suffice the legally protection of customary land rights unless they are fully compensated.

m) *Recognition of existence even where forest and wildlife overlaid in customary land rights*:[132] Customary land rights should be recognized and protected as existing even where forest and wildlife reserves have been overlaid on customary lands, so that due separation is made between land ownership and the protection status of those lands. This position is not clearly stipulated in Tanzania.

[130] (2001) AHRLR 236 (TZ HC 1990).
[131] Willy 2011, *op. cit* at page 32.
[132] *Ibid*.

2.7 Land Rights Theories

Land administration and cadastral systems development are influenced by land policy and land related theories. Land rights theories are important for they provide the rationale for understanding how land administration and land reform work to bring about the concept of protection of land rights. The theories develop philosophies, principles, and ideologies which are very crucial when protection of land rights and customary law is concerned. The coming of land administration, land reforms and the cadastral system which regulate the land setting was a result of different land theories which depict the enactment of different land policies.[133] This study will convey basic theories which critically facilitate the concept of land administration and the protection of customary land rights. These theories include; the democratic Adaptation theory, the replacement theory, and the conservative theory.

2.7.1 Democratic Adaptation Theory

Democratic theory is commonly known as Liberal or Adaptation theory. These theorists presuppose that, due to the overlay of colonial influence, modern customary tenure systems may carry little resemblance to pre – colonial customs. Current practices may be anti – democratic and unconstitutional. This theory highlights the need for democratization, justice, and accountability. They state that, the purpose of this theory is to clarify existing land nature relationships through respecting existing land rights that

[133] Hull, S. et al, *Theories of Land Reform and their impact on Land Reform Success in Southern Africa,* 2019, pp. 6-12 https://www.mdpi.com/htm (Accessed 17 June 2023).

are legitimate in African customary law; providing clarity on what these existing rights are; and providing land tenure security where customary tenure systems are weak.[134]

The liberals believe that, the state can regulate or limit the rights to correct a distributive pattern and further goals of inequality or liberty without affecting ownership so as to allow communities to access their rights to use, exchange, invest, own and make profit from their property as per the conventions developed by the communities.[135]

The democratic theory presupposes the inevitability to solidify customary land rights by recognizing the prevailing social and off-register land hold system which exist in the sleuth of the dominant legal system of property rights tenure. This is possible through determining the strength of existing customary tenure and some non-conflicting essentials of formal tenure concepts. Liberal asserts that, by implying anti-eviction procedures, democratic land administration and governance, gender equity in land allocation, and traditionally accepted evidence, the protection of land right holders against human rights abusers may be completed by community leaders who convey duties at the authority of the state.[136]

2.7.2 Replacement Theory

The replacement theorists consider living customary land tenure as a barrier to the development of land markets and modernization of the economy, and suggest to replace it with private property rights which is considered to be a better - suited tenure system.

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[134] *Ibid*, Hull.
[135] John C, (1994), the Myth of property (New York, Oxford University Press) p. 126.
[136] Lea D.R, (1998), *Aboriginal Entitlement and Conservative Theory*, Journal of Applied Philosophy, Vol 15(1): 1-14, P.2.

These theorists argue that, in order to solve land management and administration problems in Africa, titling and land registration are the best solution. This is perceived to foster successful land development, increase credit opportunities and development of land markets as well.[137]

The arguments of replacement philosophers concentrate on replacing titles which include collective freehold, individual freehold, limited real rights titles or records from customary land rights in order to ensure security of tenure.[138] Therefore, by using title the communally - owned land will be separated from individual - owned land hence modernization of the economy.

The pioneers of replacement jurisprudence derivate their idea on customary tenure system being on group rights gives access to insecure individual tenure which do not enable access for investment hence a barrier for development and modernization of economy. In order to improve the individual security of tenure it is essential to replace the same with titling structure. However, this theory has been severally criticized by different sub-Saharan scholars who prefer customary tenure to registration of titles system. These scholars use the unsuccessful market-oriented and state-imposed tenure reforms which were introduced in sub-Saharan Africa as well as the augmented relegation of the underprivileged and their exploitation of elites to criticize the replacement theory.[139]

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[137] Hull, S. et al, *Theories of Land Reform and their impact on Land Reform Success in Southern Africa*, 2019, pp. 6-12 https://www.mdpi.com/htm (Accessed 17 June 2023).
[138] *Ibid.*
[139] Hull, S. et al, *Theories of Land Reform and their impact on Land Reform Success in Southern Africa*, 2019, pp. 10-12 https://www.mdpi.com/htm (Accessed 17 June 2023).

The theorists argue that, special consideration goes to community-based solutions to tenure insecurity and a state-facilitated evolution of indigenous land tenure system rather than replacement to the customary land holding that prevail.[140] Considering the nature of many African countries especially Tanzania, one may found out that the titling registration is still a questionable approach to be adopted to overcome the problems of land rights in the communities provided also it is not an essential method to increase land investment.

2.7.3 Conservative Theory

Conservative theory sees living customary tenure as providing adequate tenure security because land acts as a social, political, and economic tie between kinship groups.[141] This point of view stem from multi-unction, multi-generational understanding of land from a broadly African perspective in which land forms the foundation of socio-economic, religious, and political systems.[142] John Locke believed same as the conservative pioneers and so does Robert Nozick who defended his ideas that, property rights are historical entitlements which generate natural claims, independent convention and social agreement.[143]

These theorists argue that, customary tenure systems are based on social legitimacy through kinship and ethnicity. Land titling programs in these sorts of contexts may fail because titling breaks down the social structure of rural communities. Hence, de jure

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[140] *Ibid.*
[141] *Ibid*, Hull.
[142] Bruce, J. Do Indigenous Tenure Systems Constrain Agricultural Development? In Land in African Agrarian Systems; Basset, T., Crummey, D., Eds.; The University of Wisconsin Press: Madison, WI, USA, 1993; pp. 35–56.
[143] Lea D.R, (1998), *Aboriginal Entitlement and Conservative Theory*, Journal of Applied Philosophy, Vol 15(1): 1-14, p.1.

tenure security may erode pre-existing, socially embedded de facto tenure security. Conservative theorists thus advocate for the recognition and record of de facto customary tenure systems.[144]

Conservatives believe that, historical entitlements (natural rights) are the one which create the structures of the community and the state forcing them to recognise the prevailing setting. They also believe that, the natural rights include right to practise, own, terminate, allocation and sale that the state cannot limit these rights without conciliatory the individual and his property. Conservatives argue that, ownership is necessarily a unified bundle of rights and anything less than the full bundle shall not be seen as ownership at all[145]

They also argue that, the role of traditional leaders is of crucial importance in conservative theory, because they are largely responsible for land allocation and administration. While a popular view of pre-colonial traditional leaders is that they were autocratic rulers who paid little heed to their subjects' wishes.[146] However, the nature of traditional leadership has changed considerably with the advent of colonialism, and many traditional leaders now live up to such a prejudicial view of them.[147] The theorists state that, there is no truly indigenous tenure and that modern versions of customary

[144] Hull, S. et al, *Theories of Land Reform and their impact on Land Reform Success in Southern Africa*, 2019, pp. 6-12 https://www.mdpi.com/htm (Accessed 17 June 2023)
[145] Lea D. R, *Aboriginal Entitlement and Conservative Theory*, Journal of Applied Philosophy,1998, Vol 15(1): 1-14, p. 3.
[146] Chanock, M. The making of South African legal culture, 1902-1936: fear, favour and prejudice; Cambridge University Press: Cambridge, UK; 2001; ISBN 0521791561.
[147] Delius, P. Contested terrain: land rights and chiefly power in historical perspective. In Land, Power & Custom: Controversies generated by South Africa's Communal Land Rights Act; Claassens, A., Cousins, B., Eds.; UCT Press: Cape Town, 2008; pp. 211–237.

tenure carry with them the stains of colonialism and, it is contended that, an associated feudal, anti-democratic version of customary land rights, tenure and administration.[148]

Unlike liberal and replacement theories, conservative theory may apply only in circumstances of sustenance agriculture and land copiousness.[149] Insecurity of tenure arises where the commercial farmers who hold land under customary tenure system are targeted as a source of wealth and power, this will see them as possible threat to traditional leadership. According to conservative theory, tenure insecurity may arise when traditional leaders abuse their powers as land administrators.[150]

2.7.4 Systematic Titling

This theory was developed by Hernando de Soto, a Peruvian economist who suggests that poverty is a matter of integrating the poor into a capitalistic system. This could be done by means of giving them legal property rights which will bring their 'dead assets' to life. Registering capital is believed by De Soto to bring forward increased production, investments, access to credits and economic progress. This in turn will lead to poverty alleviation.[151]

The theory advocates that no country can have a strong market driven economy without committing the people living in the state. Exclusion of certain communities and people in society shall lead to the existence of two different economies, 'the legal' and 'extra -

[148] *Ibid,* Delius.
[149] Lea D.R, (1998), *Aboriginal Entitlement and Conservative Theory,* Journal of Applied Philosophy, Vol. 15(1): 1-14.
[150] *Ibid,* Lea.
[151] Zandt, F.H.W. „Lifting the bell jar for poverty reduction: A clarification on the discussion around the development theory of De Soto. Radboud University Nijmegen, 2011".

legal economy'. The distinction between these economies, according to De Soto, is the difference in protection of assets and rights by the state. People involved in the legal economy are protected by the law, because they received 'statutory' rights over their properties. The people living in the extra-legal economy have no statutory rights and rely on 'customary rights', which often are not officially recognized and not protected by the state. Customary property rights have often a long history in the country and are used by for example, nomadic pastoralists. Both statutory and customary law may work next to each other in the same society. People living in the informal economy are often addressed to be poor and helpless, living in the shadows of the law, without any rights.[152]

De Soto recognizes that poor people often have assets held in informal systems. He calls these assets 'dead capital', because it cannot be sold or converted into money. According to De Soto this is the main cause of poverty. Formalizing property rights, turning customary rights into (individual) statutory rights, would turn these assets into 'living capital'. This makes it easier and safer for people to obtain access to credits, invest in houses and businesses and thus support the economy. This in turn, is expected to create wealth.[153]

2.8 Conclusion

The theories discussed above have direct impact as land theories in setting the conducive legal framework that will control and foster the protection of customary land rights. It is

[152] *Ibid,* Zandt.
[153] *Ibid.*

from the analysis of the above theories; this study lay its basis to analyse the existing legal frame work to integrate both rights of occupancy in order to strengthen the customary tenure security effectively. There are some areas in which these theorists agreed, however, there are other areas disagreed on what should be done to strengthen the protection of customary rights. Conservatives believe on historical entitlements (natural rights) are the one which create the structures of the community and the state forcing them to recognise the prevailing setting. They advocate that, customary land rights should be treated as natural rights as it was before colonialism and should not be subjected to Land Titling system. On the other hand, other theories advocate that, in order to achieve adequate protection of customary rights, land titling is important.

The most preferred theory to guide this study is the Systematic Titling Theory, this theory emphasizes on the land holders to have land titles in order to have security of tenure, the land titles can then be used as collateral for mortgage finance, stimulating economic development, and rapidly reducing poverty. This theory advocates that, in order to strengthen the protection of customary rights, customary rights should be formalized and the customary land holders should get tittle deeds for their lands. This theory is relevant to this study because the rights of the customary land holders are rarely protected due to lack of formal legal titles for their lands. For instance, in case of the large investments, the government could easily evict the customary land holders without paying them compensation because they lack legal title to protect their land rights. Therefore, land titling is very important for protection of the rights of customary land holders.

CHAPTER THREE

INTERNATIONAL INSTRUMENTS GOVERNING CUSTOMARY LAND RIGHTS IN TANZANIA

3.0 Introduction

In the previous chapter, this research discussed in detail on the conceptual and theoretical framework of the study. The chapter discussed on different key concepts which bring about the basis for the conceptual framework of this study. In this chapter, several international instruments governing customary land rights in Tanzania will be discussed.

Both International and National laws on customary land rights play a significant role in achieving the major goal of protecting customary land rights. Land rights are key human rights issue which constitute the basis for access to food, housing and development, and without access to land many people find themselves in serious economic difficulties. Nevertheless, internationally, no treaty or declaration specifically refers to a human right to land, these rights have not codified in international human rights law, however, they can be traced and applied through various rights which relate to these rights.[154]

However, the necessity of providing access to land in order to facilitate the realization of human rights has been considered in several international principles and interpretive documents. Land is not simply a resource for one human right in the international legal framework since no international right to land is explicit in the international arena. There

[154] Gilbert, J. Land Rights as Human Rights: The case for a Specific Right to land. https://sur.conectas.org/land-rights-human-rights. (Accessed on 15 April,2024).

are several international human rights instruments providing for the protection of property rights of an individual which in away encompasses customary land rights. Among other things, those International Instruments require state parties to enact and adopt appropriate measures to ensure that customary land rights are effectively and adequately protected.[155] The international instruments recognize and protect land rights including customary land rights are including but not limited to Universal Declaration of Human Rights, International Covenant of Social, Cultural and Economic Rights, African Charter on Human and Peoples' Rights and others. All these instruments are clearly discussed below:

3.1 Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR) is a milestone document that acts like a global road map for freedom and equality – protecting the rights of every individual, everywhere. The UDHR is considered as a milestone document due to its Universalist language which makes no reference to a particular culture, political system, or religion. It directly inspired the development of international human rights law, and was the first step in the formulation of the International Bill of Human Right, which was completed in 1966 and came into force in 1976. Although not legally binding, the contents of the UDHR have been elaborated and incorporated into

[155] *Ibid,* Gilbert.

subsequent international treaties, regional human rights instruments, and national constitutions.[156]

Land ownership being one of the fundamental rights recognized by the international community, should be well addressed by laws so that people including customary land owners can fully enjoy the resources of their Country. According to the Universal Declaration of Human Rights,[157] everyone (including customary land owners) has the right to own property and to not be arbitrarily deprived of that property on the other hand.[158] It is from the spirit of this provision where we find the genesis of right to own property in other subsequent instruments. The reference to right to property was altogether dropped in the two human rights Covenants adopted by the United Nations in 1966 such as International Covenant on Economic, Social and Cultural Rights (ICSECR), 1966 and International Covenant on Civil and Political Rights, 1966 (ICCPR). Nonetheless, the right to property is not explicitly mentioned in either of the two international covenants of human rights.[159]

3.2 International Covenant on Civil and Political Rights (ICCPR), 1966

International Covenant on Civil and Political Rights was enacted to enforce provisions of the Universal Declaration of Human Rights of 1948. Generally, ICCPR does not expressly provide for protection of customary land rights. There is no provision that directly protects customary land rights under the covenant. Nevertheless, protection of

[156] Amnesty International. Universal Declaration of Human Rights. https://www.ohchr.org (Accessed 06 March, 2024).
[157] UDHR, 1948.
[158] Article 17 of the UDHR, 1948.
[159] *Ibid*, Amnesty.

land rights has been implied form other rights recognized and protected under the Covenant. Among other things, the covenant provides for protection of land rights through article 17 of that compliments the right not to be forcefully evicted without adequate protection when it "protects against 'arbitrary or unlawful interference with one's home.[160] It also requires state parties to provide an effective remedy for persons whose rights have been violated, which includes "adequate compensation for any property. [161]

3.3 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The right to property was also perceived to be an important issue in the fight to eliminate discrimination against women. The CEDAW, 1979 affirms in its article 16 that, … "States should ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable considerable consideration".

3.4 Convention on Indigenous and Tribal Peoples, 1989

The Convention on Indigenous and Tribal Peoples, which was adopted by the International Labour Organization in 1989 is ILO Convention No. 169 on indigenous and tribal peoples is legally binding on States Parties and the only binding international instrument related to the rights of indigenous peoples. The Convention represents a

[160] Article 17 of the ICCPR, 1966.
[161] *Ibid,* Art. 2 (3).

consensus reached by ILO tripartite constituents on the rights of indigenous and tribal peoples within the nation-States where they live and the responsibilities of governments to protect these rights. It is based on respect for the cultures and ways of life of indigenous peoples and recognizes their right to land and natural resources and to define their own priorities for development.[162]

The Convention establishes the right of indigenous peoples in independent countries to "exercise control, to the extent possible, over their own economic, social and cultural development," in a number of areas. The Convention includes a provision on land rights, and requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights. Generally, the convention imposes duties to state parties to take in appropriate measures to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and to safeguard the right of the peoples concerned to use lands not exclusively occupied by traditional activities.[163] The Convention also requires the provision of legal procedures to resolve land claims, establishes rights over natural resources and protects against forced removal.[164]

3.5 Declaration on the Rights of Indigenous Peoples, 2007

Declaration on the Rights of Indigenous Peoples is a legally non-binding resolution passed by the United Nations (UN) in 2007. It delineates and defines

[162] ILO. Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169). https://www.ilo.org (Accessed on 06 March, 2024).
[163] Art. 14 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
[164] Art. 7 of the Convention No. 169.

the individual and collective rights of indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education, and other issues. Their ownership also extends to the protection of their intellectual and cultural property. The declaration "emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations.[165]

The Declaration on the Rights of Indigenous Peoples among other things states that "indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.[166] The Declaration, while not binding, states that indigenous peoples have the right to the own, occupy and use lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. They also have right to develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.[167]

The declaration further impose duty to state parties to give legal recognition and protection to these lands, territories and resources in accordance with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.[168] It also provides that, if state seeks to appropriate their land, indigenous peoples should be consulted before making such decision to appropriate their land. The need for free, prior,

[165] Wikipedia. The Free Encyclopedia. https://en.wikipedia.org.
[166] Article 8 of the UN Declaration of the Rights of the Indigenous Peoples, 2007.
[167] Article 26 of the UN Declaration of the Rights of the Indigenous Peoples, 2007.
[168] *Ibid*, Article 26(3).

and informed consent with respect to decision-making about lands occupied by indigenous peoples especially where the relocation of peoples from land is under consideration.[169]

3.6 Protocol No. 1 to the European Convention on Human Rights

The Protocol provides for protection of every natural or legal person to peaceful enjoyment of his possessions of the land. It further limits the deprivation of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.[170]Nevertheless, states are given the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

In this regard, article 1 of Protocol No. 1 comprises three distinct rules that are- The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers only deprivation of "possessions" and subjects it to certain conditions. The third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest.

[169] Article 10 of the UN Declaration of the Rights of the Indigenous Peoples, 2007.
[170] See Article 1 of the Protocol No. 1 to the European Convention on Human Rights, 1952.

3.7 The African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter). The African Charter on Human and Peoples' Rights is a set of rules, called Articles, guaranteeing certain human rights and fundamental freedoms for individuals. It also guarantees certain rights of entire peoples. The Charter is a human rights treaty. When a state ratifies a treaty, it becomes a state party to the treaty. It is then legally obliged to protect the rights specified in the treaty. It is also obliged to submit itself to scrutiny of its human rights record.[171]

The Charter provides that,[172] member States of the Organisation of African Unity parties to the Charter shall recognise the rights, duties and freedom enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them. Article 2 of the Charter provides that, every individual shall be entitled to the enjoyment of the rights and freedom recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The Charter provides for protection of the right to property by limiting the justifiable reason for encroachment. The right to property may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.[173] The Charter impose obligation to all state

[171] Amnesty International. A Guide to the African Charter on Human and Peoples' Rights, 2021. https://www.amnesty.org. (Accessed on 06 March, 2024).
[172] ACHPR,1990.
[173] Art. 14 of ACHPR,1990.

members to recognise the rights, duties and freedoms enshrined in the Charter and to undertake legislative or other measures to give effect to them.[174]

3.8 Conclusion

Conclusively, it can be said that, land rights are a key human rights issue as they constitute the basis for access to food, housing and development whereby without access to land many peoples find themselves in a situation of great economic insecurity. Nevertheless, despite of being very important on economic security to the land holders, however, no human rights treaty has recognised land rights as being a core human rights issue. In fact, strictly speaking there is no human right to land under international law. It is high time now for the international community to recognise and incorporate the land rights within the international human rights instruments.

[174] *Ibid,* Art. 1.

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING CUSTOMARY LAND RIGHTS IN TANZANIA

4.0 Introduction

In the previous chapter, the researcher discussed on the several international instruments governing customary land rights in Tanzania. In this chapter different legal instruments governing customary land rights in Tanzania will be presented. In Tanzania the legal system concerned with customary land rights are covered with various bodies of law, ranging from the Customary Laws, the Constitution of the United Republic of Tanzania, 1977, Land Act, 1999, Village Land Act, 1999, Land Disputes Courts Act, 2002, and the Judicature and Application of Law Act, Cap. 358 R.E 2019.

Also, this chapter will discuss on the Land Administration and Institutional framework governing the Customary land rights in Tanzania. These include the President; the Ministry responsible for Land; the Commissioner for Lands; the District Council; the Village Assembly; and the Village Council.

The mentioned bodies of laws, land administration and institutional framework can create contradictions and confusion in what customary land rights are and which ones should prevail when they conflict each other. Customary land rights regime needs to clearly define the meaning and nature of customary land rights, the rights and duties of customary land holders in relation to acquisition, maintenance, development, disposition of customary land and the procedures and mode of compensation in cases of the general and compulsory acquisition by the government. This part therefore seeks to assess the

laws, land administration and institutional framework to establish to what extent the existing laws, land administration and institutional framework regulate customary land rights in Tanzania starting from acquisition, ownership and management of the same and come up with the findings as to whether customary land holders in Tanzania enjoys the adequate protection of their customary land rights.

4.1 The Customary Laws

Customary law refers to the set of traditional conducts, customs values, cultural practices and beliefs that are acknowledged as compulsory rules of comportment by the villagers or indigenous peoples and local communities. Customary law forms an intrinsic part of their social and economic systems and way of life.[175] Also, customary law is the law applicable on any matter concerning customary rights and obligations of a person, or a right of group of persons occupying land under customary right of occupancy.[176] Customary law also means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African Community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance, and references to native law or to native law and custom shall be similarly construed.[177]

175 Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: An Overview (WIPO Publication No. 933), www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf at p. 1.
176 Cap. 114 R.E 2002, s. 20 (3).
177 See section 2 of the Interpretation and General Clauses Act (4/1996), Cap. 1.

The Village Land Act[178] also provides categorically that the law to be applied in determining a dispute on customary right of occupancy is customary law.[179] Upon application of such body of law which may include customs, traditions and practices of the community one must pay attention to the extent the custom tally with fundamental principles of the National Land Policy and any other written law.[180] Any rule of customary law or any such decision in respect of land held under customary tenure which contravenes such principles or a statutory law shall be void and inoperative and shall not be given effect by any village council or village assembly or any person or body of persons exercising any authority over village land or in respect of any court or other body. This means that the decision will be bad in law and cannot have effect in law unless it is made as per the law.[181]

Nevertheless, customary laws practically have toothless since they could not protect the customary rights of the customary land holders against the government from acquiring their unregistered land held under customary tenure freely without requiring consent from the customary land holders.[182]

4.2 Legal Framework Regulating Customary Land Rights in Tanzania

The rules, rights and obligations of companies, governments, and citizens are set forth in a system of legal documents called a legal framework.[183] Legal framework regulating

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[178] Cap. 114 R.E 2002.
[179] *Ibid*, s. 20 (3).
[180] s. 20 (2) of the Village Land Act, 1999.
[181] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 26.
[182] *Ibid*, Tenga, p. 125.
[183] Natural Resource Charter, Precept 1; The Natural Resource Governance Institute, NRGI Reader March 2015 https://resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf (Accessed on 29th September 2023).

customary land rights in Tanzania include constitution, legislation, policy, regulations and contracts which will be discussed in broad details. The Constitution of United Republic of Tanzania, Land Act (LA), Village land Act (VLA), Land Disputes Courts Act (LDCA), and the Judicature and Application of Law Act (JALA) form the basis of legal framework governing the customary land rights in Tanzania. It is important to make analysis of these laws in order to understand the context and scope of their effectiveness in regulating the protection of customary land rights in Tanzania.

4.2.1 The Constitution of the United Republic of Tanzania

The Constitution of the United Republic of Tanzania,[184] as amended from time to time, establish the principle of equality that, every citizen has equal access to the ownership of land and right to own properties.[185] It guarantees every person to equal right to own property and declares deprivation of property unlawful, unless it is authorized by the law providing for fair and adequate compensation.[186] The mentioned provision justifies constitutional right of every citizen to own property and deprivation of that right without fair procedure is unconstitutional. The mentioned position was also ruled by the Court in the cases of *Mwalimu Omari and Another v Omari A. Bilali*[187] and *Attorney General v Lohay Akonaay and Joseph Lohay*[188]that, pre-existing customary right of occupancy cannot be quenched by a successive grant of the right of occupancy on the same land property except where compensation was duly paid before the grant was made.

[184] Cap 2 R.E 2002.
[185] Article 24, Cap 2 R.E 2002.
[186] *Ibid,* Art. 24.
[187] Mwalimu Omari and Another v Omari A. Bilali [1999] T.L.R 432.
[188] Attorney General v Lohay Akonaay and Joseph Lohay [1995] T.L.R 80.

The Constitution[189] is the supreme law of all laws in the country whereby any law that contradicts with any provision of the Constitution[190] may be declared unconstitutional when challenged before the court. The Constitution guarantees equality and recognition of every person before the law,[191] and provides for protection against any discrimination.[192] It explicitly bars any sorts of discrimination based on their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior.[193] The rationale for every person to equally own property, protection of such property and the rule against discrimination aims at placing all people at the same level regardless of their origin, social status, tribes and their station in life, this touches automatically to the customary land holders who are also impliedly protected by the Constitution.[194] However, there is no provision in the Tanzanian Constitution[195] which expressly provides for the rights of customary land holders (indigenous people), this contributes to weaken the protection of customary land rights in Tanzania**.**

4.2.2 The Land Act (LA)

The Land Act [196] is one of the principal laws that regulates land in Tanzania Mainland. The Land Act [197] is the specific law to land matters other than village land, however, the

[189] Cap 2 R.E 2002.
[190] *Ibid,* Cap 2.
[191] Cap 2 R.E 2002, Article. 13(1).
[192] Art. 13 of the Constitution of the Republic of Tanzania, 1977.
[193] Article 13 (2), Cap 2 R.E 2002.
[194] Cap 2 R.E 2002.
[195] *Ibid,* Cap. 2.
[196] Cap 113 R: E 2002.
[197] Land Act of 1999.

LA[198] contains some provisions relating to customary land rights as stipulated in some aspects. The Land Act among other things, provides for procedures for transfer of general land to village land,[199] sell of mortgaged land in village land.[200] It should be noted that where there are conflicts on a particular matter in relation to land, the Land Act prevails.[201]

Nevertheless, the LA outlawed the principle under section 18 of the Village Land Act which provides for equal status and effect on both rights of occupancy as it allows the customary land rights to be uprooted in favour of the granted rights because it gives room for persons occupying the land under customary rights to be moved or relocated to other land where such land is subjected to granted right of occupancy.[202] This can be said that, the law gives the rights to the customary land holders by one hand and take it away through another hand, the mentioned provision of the LA[203] hinders the protection of customary land rights.

Also, the Land Act under section 34(3) (b) imposes some conditions to the government when wants to acquire the customary land for public purpose. The provision among other things provides that, before evicting the customary land holders from their lands, the government should pay them prompt payment of full compensation.[204] However, the practice is quite different with what has been provided by the law, in many occasions the

[198] *Ibid.*
[199] s. 5 of the Land Act. 1999.
[200] Cap 113 R: E 2002, s. 61.
[201] *Ibid,* s. 181.
[202] Cap 113 R: E 2002, s. 34 (3).
[203] *Ibid.*
[204] s. 34(3) (b) (iv) of the Land Act. 1999.

government forceful evict the customary land holders from their lands without fair, prompt and full compensation for their lands.

Furthermore, section 181 of the Land Act provides that, when the granted right of occupancy conflicts with the customary right of occupancy, the customary right of occupancy will be defeated. This provision provides *inter aria* that, "the LA which is the law governs the granted right of occupancy shall apply to all land in Mainland Tanzania and any provisions of any other written law applicable to land including the Village Land Act which governs the customary right of occupancy which conflict or are inconsistent with any of the provisions of the Land Act shall cease to be applicable to land or any matter connected with land in Mainland Tanzania". This clearly shows that, some of the provisions of the Land Act weaken the protection of the customary land rights, thus defeat the principle on equal status for both rights of occupancy as provided under section 18 (1) of the Village Land Act.

4.2.3 The Village Land Act (VLA)

This is also the principal law that regulates land in Tanzania Mainland. It is the main law which enacted for management and administration of the village land in the country.[205] The village land is held under the customary right of occupancy.[206] The VLA[207] established the principle under section 18 (1) for recognition and protection of the customary land rights, it provides *inter alia* that, "…A customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy…"

[205] s. 7 of the Village Land Act, 1999.
[206] *Ibid*, s. 14.
[207] Cap. 114 R.E 2002.

The Village Council is vested with exclusive powers to administer and manage all village land.[208] However, the Village Council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly.[209] The Village Council while executing its functions is required to consider the principle of trustee management property as a trustee on behalf of the beneficiaries, the villagers.[210]

Also, the VLA under section 3 (1) (g) requires the State to pay full, fair and prompt compensation to the customary land holder who his customary land right is revoked or otherwise interfered with to their detriment by the State or is compulsory acquired by the government. However, this is quite different with the practice as in most cases the customary land holders have been forceful evicted from their lands without payment of compensation as required by the law as it was stated in the case of *Attorney General v Lohay Akonaay and Joseph Lohay*[211] and *Victor Robert Mkwavi v Juma Omary*[212]respectively.

Furthermore, the Village Land Act gives power to the Village Council to issue the Certificate of Customary Right of Occupancy (CCRO) to the villagers who hold village land.[213] It provides that, after conclusion of a contract for a grant of a customary right of occupancy, a Village Council shall within not more than ninety days of that conclusion, issue a CCRO to the applicant who accepted the offer referred to in section 23 of the

[208]s. 8 of the Village Land Act, 1999.
[209]s. 8 (5) of the Act.
[210] *Ibid*, s. 8.
[211] [1995] TLR 80.
[212] Civil appeal No. 222 of 2019, CAT Mwanza (*Unreported).*
[213] Cap. 114 R.E 2002, s. 25.

Act.[214] Although, individuals who use or occupy village land have the right to obtain Certificate of Customary Right of Occupancy to strengthen protection of their land rights, in practice, however, some of Microfinance institutions do not accept CCROs as collateral for loans because they regard the Certificate of Customary Right of Occupancy to have less value and unsafe for loans compared to the granted right of occupancy.[215]

Also, it stated that, 80% of the Tanzanians reside in rural areas and occupy their lands under customary right of occupancy. Nevertheless, most of land holders do not have CCROs for their lands because in many villages, the land use demarcation and mapping that are required in order to issue the CCROs have not yet completed.[216] Therefore, the government should speed up the survey and registration of un-surveyed land in order to strengthen the protection of customary land rights in the country.

Therefore, it should be noted that, although the Village Land Act enacted since 1999 and came in force since 2001, the Act is to a large extent not properly or effectively implemented, it has done little to improve the security of customary land for poor rural population reside in the villages. The Village Land Act is complex, detailed and held in a technical language. There is a general lack of knowledge about the law and regulations (including the procedures and forms for various village land transactions) among local

[214] Cap. 114 R.E 2002.
[215] Elifuraha, E., „Access to loans in Microfinance Institutions by use of unsurveyed land as security: Analysis of the law and practice in Tanzania Mainland," LL.M Thesis, Mzumbe University, Tanzania, 2016. https://scholar.mzumbe.ac.tz/bitstream/handle (accessed 21 January 2022).
[216] Lauren P et all, Impacts of Customary Land Use Rights Formalization on Smallholder Tenure Security and Economic Outcomes: Midline Results from a RCT Impact Evaluation of USAID's Land Tenure Assistance Activity in Tanzania; Paper prepared for presentation at the "2018 WORLD BANK CONFERENCE ON LAND AND POVERTY" The World Bank - Washington DC, March 19-23, 2018, p. 2.

government officials and villagers. As a result, the Village Land Act has not substantively changed the way that most customary land in Tanzania is administered or governed.[217]

4.2.4 The Town and Country Planning Act (TCPA)

The Town and Country planning Act[218] which was established in 1967 gives mandate to the minister responsible for land after consultation with the local government authority to declare the area to be a planning area.[219] However, this study observed that, the mentioned declaration mostly affects the customary lands which in most cases is not surveyed, thus after the mentioned declaration the customary land rights will be extinguished upon payment of compensation. This hinders the protection of customary land rights as it has been revealed that, many land holders left homeless with little or no compensation for their lands.[220]

Also, the Town and Country planning Act provides that, compensation will be paid only for the developed land, this means no compensation shall be made to vacant land.[221] However, this study finds out that, the mentioned provision contradicts with the Land Act[222] which provides room for payment of compensation to vacant ground.[223]This clearly shows that, there is contradiction of the law on the mentioned provisions.

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[217] Veit, P, *The Precarious position of Tanzania's village land,* 2019. https://gatesopenresearch.org/documents/pdf. (Accessed on 28 January 2022).
[218] Cap. 355 R.E 2002.
[219] See s. 13 of the Act.
[220] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).
[221] *Ibid*, s. 15.
[222] Cap. 113 R.E 2002.
[223] See s. 3 (1) (g) & s. 34 (3) of the Land Act, 1999.

Furthermore, it has been revealed that, the TCPA further gives mandate to the President to acquire any area, including customary lands by using any law which relates to compulsory acquisition of land,[224] if the land holder is not willing to give possession of the land after such land has been declared as a planning scheme. Therefore, through the mentioned provision, the government could acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders.[225] Thus, the mentioned provision has been used by the government to weaken the protection of the land rights of the customary land holders.

4.2.5 The Urban Planning Act (UPA)

The Tanzania Urban Planning Act[226] provides that, the Minister for lands may, by order published in the Gazette, declare any area of land to be a planning area.[227] However, it has been revealed that, the mentioned declaration mostly affects the customary land which in most cases is not surveyed, thus after the mentioned declaration the customary land rights will be extinguished upon payment of compensation. This hinders the protection of customary land rights as many land holders left homeless with little or no compensation for their lands.[228]

Also, it has been observed that, the UPA provides that, a resolution by the relevant planning authority of intention to make a detailed planning scheme shall result to a

[224] Cap 355 R.E 2002, s. 45.
[225] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 125.
[226] Act No. 8 of 2007.
[227] See s.8 of the Act.
[228] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).

transfer of land from village or reserved land to a general land.[229] However, such transfer affects directly the customary land rights as the village land is held under the customary right of occupancy[230] and the customary land holders held their lands through customary tenure. Therefore, the transfer of village land to general land under the planning scheme has negative effects towards the pre-existing customary land rights.

4.2.6 The Land Disputes Courts' Act

The Tanzania Land Disputes Courts' Act (LDCA)[231] which came into force on 2002 was enacted for the main purpose of establishment of land disputes courts and the related matters. This Act establishes and gives power to the Village Land Council to mediate between and assist parties to arrive at a mutually acceptable settlement of the land disputes arising within the village jurisdiction.[232] Also, section 3 of this LDCA establishes the courts which have jurisdiction to hear land disputes to include; the Village Land Council, Ward Tribunals, the District Land and Housing Tribunals, the High Court, and the Court of Appeal of Tanzania.

4.2.7 The Judicature and Application of Laws Act (JALA)

The Village Land Act[233] provides that, the Judicature and Application of Laws Act is among of the laws applicable on any matter concerning customary rights and obligations

[229] s.26 of the Urban Planning Act.
[230] *Ibid*, s. 14.
[231] Act No. 2 of 2002.
[232] *Ibid*, s. 3 & 7; Cap. 114 R.E 2002, s. 62; and Cap. 113 R.E 2002, s. 167.
[233] Cap. 114 R.E 2002.

of a person, or a right of group of persons occupying land under customary right of occupancy.[234]

Also, the Judicature and Application of Laws Act [235] provides for applicability of customary law in courts.[236]Therefore, any decision made in respect of land held under customary tenure, must take into full consideration the customs, practices and traditions of the community concerned to the extent they are in accordance with section 9 of JALA.

4.3 Land Administration and Institutional Framework Governing the Customary Land Rights in Tanzania

Land administration and Institutional Framework Governing the Customary Land Rights in Tanzania is divided into two parts. The first is the adjudication institutions of land matters which include the Land Courts: - the Village Land Councils, Ward Tribunals, District Land and Housing Tribunals, High Court and the Court of Appeal of Tanzania.[237] The other part is the administration and management of land institutions such as the President, Village Councils/Village Assemblies, the Commissioner for Lands, District Council and the Minister responsible for land matters. Both institutions are regulated by the Land Laws, they are primarily established by the Village Land Act and each institution is vested with its power, jurisdiction and functions which relates to the management and administration of customary land rights. It is due to their

[234] No Act of the Parliament of the United Kingdom referred to in the JALO/JALA can apply to land held for a customary right of Occupancy or otherwise governed by customary law see section 20(3) of the Village Land Act.
[235] Cap. 358 R.E 2019.
[236] *Ibid*, s. 11.
[237] Act No. 2 of 2002.

importance in entire framework the reason why its analysis is important for the course of establishing their strength regarding the protection of customary land rights in Tanzania.

4.3.1 The Adjudication Institutions of land matters in Tanzania

The following are the courts with exclusive jurisdiction to hear and determine the land disputes in Tanzania: - the Village Land Councils (VLC); the Ward Tribunals (WT); the District Land and Housing Tribunals (DLHT); the High Court (HC); and the Court of Appeal (CA).[238]

4.3.1.1 The Village Land Council (VLC)

The Village Land Council is the first land court in the hierarchy which vested with distinct functions as follow; receiving of complaints from parties in respect to land, convene meetings for hearing of disputes from parties, and to hear and help parties to reach into mutually acceptable settlements of disputes on any matters concerning land within its jurisdiction.[239]

The Village Land Council is composed of Seven members of good standing and reputation, three of them are women and each member shall be nominated by the Village Council and approved by the Village Assembly.[240] The total administrative functions of this court are vested to the Registrar of the village.[241] The meeting of this court is constituted by four members of whom at least two are supposed to be women.[242]

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[238] See section 167 (1) of the Land Act, 1999; and section 3 (2) of the Land Disputes Courts Act, 2002.
[239] s. 7 of the Land Disputes Courts Act, 2002.
[240] See section 60 (2) of the Village Land Act, 1999; and section 5 of the Land Disputes Courts Act, 2002.
[241] The Land Disputes Courts Act, 2002, s. 6.
[242] The Village Land Act, 1999, s. 60 (2).

Also, the decisions made by this court are taken by simple majority vote, in case of equality of votes, the chairperson retains a casting vote as well as an original vote.[243] Members are required to serve for three Years subject to reappointment thereafter.[244] Advocates are not supposed to represent the parties before the VLC; the aggrieved party has a right to refer the matter to the Ward Tribunal.[245]

Although the Village Land Council established to mediate the parties to the land disputes in order to assist the parties to reach at amicable settlement, however, its members lack mediation skills to assist the parties to reach at mutual settlement because the law requires the members to be only with integrity and knowledge of customary land law as qualifications for a person to be a member of VLC.[246] This has negative impact to the protection of customary land rights as the Village Land Council established to settle land disputes of the villagers who own their lands under customary tenure could not assist them to resolve their land disputes in order to protect their land rights.

4.3.1.2 The Ward Tribunal (WT)

The Ward Tribunal is the second lowest land court in the land court system in Tanzania. It is established to mediate all land disputes arising in the areas of jurisdiction of the District Council in which it is established.[247] According to section 45 of the Written Laws (Miscellaneous Amendments),[248] the Ward Tribunal has no jurisdiction to hear

[243] See section 60 (10) of the Village Land Act, 1999.
[244] The Village Land Act, 1999, s. 60 (7).
[245] See section 9 of the Land Disputes Courts Act, 2002.
[246] Cap. 114 R.E 2002, s. 60 & Act No. 2 of 2002, s. 5 (2).
[247] See section 10 (1) of the Land Disputes Courts' Act, 2002; section 167 (1) of the Land Act, 1999; section 62 (2) of the Village Land Act, 1999.
[248] (No. 3) Act No. 5 of 2021.

and determine the land disputes, however, the WT has jurisdiction to mediate all land disputes arising in the areas of its jurisdiction.[249]

On the other hand, the District Land and Housing Tribunal is not supposed to hear any proceeding affecting the title to or any interest in land unless the WT has certified that it has failed to settle the matter amicably.[250] However, if the Ward Tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the Ward Tribunal.[251]

Section 11 of the Land Disputes Courts' Act provides that, the WT is composed of not less than four nor more than eight members of whom three are supposed to be women elected by a Ward Committee (WC). The Advocates are not allowed to represent the parties before the Ward Tribunal.[252]

Although the Ward Tribunal established to mediate the parties to the land disputes in order to assist the parties to reach at amicable settlement, however, its members lack mediation skills to assist the parties to reach at mutual settlement because the law requires the members to be only with integrity and knowledge of customary land laws as qualifications for a person to be a member of Ward Tribunal.[253] This has negative impact to the protection of customary land rights as the Ward Tribunal established to settle land

[249] See section 45 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021.
[250] Section 45 (4) of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021.
[251] *Ibid.*
[252] Section 8 of the Land Disputes Courts' Act, 2002.
[253] Act No. 2 of 2002, s. 12; s. 5 & 6 of the Ward Tribunals Act, 1985.

disputes of the villagers in the ward who own their lands under customary tenure could not assist them to resolve their land disputes in order to protect their land rights as a result the land disputes sent to the District Land and Housing Tribunal to be determined.

4.3.1.3 The District Land and Housing Tribunal (DLHT)

The District Land and Housing Tribunal is the third land court in the ladder which empowered to exercise its jurisdiction within the area in which it is established.[254] Section 23 (1) of the Land Disputes Courts' Act provides that, the coram of the DLHT is constituted by one chairman and not less than two assessors. The tribunal shall be dully constituted when held by a Chairman and not less than two assessors who required to give out their opinion before the Chairman reaches the judgment[255]. According to section 26 (1) of the Land Disputes Courts' Act, the District Land and Housing Tribunal is composed of not more than seven assessors three of whom are women, appointed by the Minister responsible for lands after consultation with the Regional Commissioner (RC).

According to section 33 (2) of the Land Disputes Courts' Act, the District Land and Housing Tribunal has and exercise original jurisdiction in proceedings for recovery of possession of immovable property; to proceedings in which the value of the property does not exceed Three Hundred Million shillings; and in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed Two Hundred million shillings. However,

[254] Section 22 (2) of the LDCA.
[255] See section 23 (2) of the Land Disputes Courts' Act, 2002.

the pecuniary jurisdiction of the Tribunal is unlimited in proceedings under the Customary Leaseholds (Enfranchisement) Act, 1968 and Regulation of Land Tenure (Established Village) Act, 1992. The DLHT has no jurisdiction on suits by or against the Government.[256]

In carrying out its functions the District Land and Housing Tribunal among others, is governed by the Regulations made by the Minister under section 56 of the Land Disputes Courts Act, 2002[257], which provides for rules of procedure and practice before the Tribunals. In cases of lacuna in the Regulations, the Civil Procedure Code, 1966 and the Law of Evidence Act[258] are applicable. Also, in all proceedings before the District Land and Housing Tribunal parties may appear in person or by an Advocate or other representatives[259]. Nevertheless, the District Land and Housing Tribunal is not supposed to hear any proceeding affecting the title to or any interest in land unless the WT has certified that it has failed to settle the matter amicably.[260] According to section 38 (1) of the Land Disputes Courts Act appeals from the DLHT lie to the High Court.

4.3.1.4 The High Court (HC)

The High Court is established by Article 108 of the Constitution of the United Republic of Tanzania, 1977. It is the fourth land court in the ladder.[261] The court empowered with original jurisdiction in all land cases including proceedings for recovery of possession of

[256] Act no. 2 of 2002, s 33(3).
[257] The Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002, G.N. No. 174 of 2003.
[258] Cap 6 R.E 2002.
[259] Act no. 2 of 2002, s 30.
[260] Section 45 (4) of the Written Laws (Miscellaneous Amendments) (NO. 3) Act No. 5 of 2021.
[261] See section 167 (1) (b) of the Land Act, 1999; section 62 (2) of the Village Land Act, 1999; section 3 (2) of the LDCA, 2002.

immovable property in which the value of the property exceeds Three Hundred Million shillings; and in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter exceeds Two Hundred million shillings.[262] The HC also, has jurisdiction to determine land appeals originating from the District Land and Housing Tribunal; also, it has supervisory and revisional powers over the District Land and Housing Tribunal.[263] Advocates are allowed to represent the parties to the court.[264] Appeals from the HC lie to the Court of Appeal (CA).[265]

4.3.1.5 The Court of Appeal (CA)

The Court of Appeal is the highest supreme court in the country whereby its decisions on all matters, including land, are final. A person who is aggrieved by the decision of the HC in the exercise of its original jurisdiction may appeal to the CA.[266]All matters originating from the High Court in the exercise of its revisional or appellate jurisdiction must be accompanied by the leave from the High Court and they must be in accordance with the Appellate Jurisdiction Act, 1979.[267] According to section 47 (4) of the Land Disputes Courts Act, the procedure for appeal to the CA are governed by the Court of Appeal Rules.

[262] Act no. 2 of 2002, s 37.
[263] Section 38, 41, 43 & part IV of the LDCA, 2002.
[264] See Act no. 2 of 2002, s 46.
[265] Section 47 of the LDCA, 2002.
[266] See Act no. 2 of 2002, s 47 (1).
[267] Section 47 (2) of the LDCA, 2002.

4.3.2 The Administration and Management of land Institutions

The administration and management of land institutions include the following: - the President, Village Council (VC)/Village Assembly (VA), the Commissioner for Lands (CL), District Councils (DCs) and the Minister responsible for land matters.

4.3.2.1 President

President is the Head of State, the Head of Government and the Commander – in – Chief of the Armed Forces in Tanzania.[268] All the executive functions of the Government of the United Republic of Tanzania (URT) discharged by officers of the Government shall be so done on behalf of the President.[269] Also the President have the authority to constitute and abolish any office in the service of the Government of the URT.[270]

Furthermore, the President is vested with the power to grant or revoke the existing rights of occupancy and to act as a trustee of all land on behalf of all citizens of the United Republic of Tanzania.[271] Thus, the president also can revoke the existing customary right of occupancy granted to a non-village organisation or a group of persons who are not villagers.[272]

Also the President may allow the transfer of any area of the village land to general land or reserved land for the sake of public purposes by directing the Minister responsible for Lands to proceed in accordance with the provision of the law.[273] In this case section

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[268] Cap 2 R.E 2002, Article 33 (2).
[269] See Article 35 (1) of the Constitution of the United Republic of Tanzania. 1977.
[270] *Ibid*, Article 36 (1).
[271] Cap. 113 R: E 2002, s. 4 (1); Cap. 114 R: E 2002, s. 44 (1) & Cap 2 R.E 2002, Article 33.
[272] See s. 44 (1) of the Village Land Act, 1999.
[273] *Ibid*, s. 4(1).

4(11) of the Act [274]gives power the president to direct compensation to be paid to the village or organisation whose land has been transferred to the reserved or general land provided that, the said land was granted the right of occupancy. The transfer of the village land to the general land or reserved land has a negative impact to the holders of the customary right of occupancy because after the transfer their land rights will be extinguished.

4.3.2.2 The Ministry Responsible for Land (MLHHSD)

The Ministry for Land, Housing and Human Settlement Development (MLHHSD) headed by the Minister who is responsible for land policy formulation and for ensuring the execution by officials in the Ministry of the functions connected with the implementation of the National Land Policy (NLP) and of the land law which are assigned or delegated to him by the President. [275] However, the Minister also is tasked to seek advice from any official in the Ministry and from other knowledgeable persons concerning the implementation of the NLP and the administration of land.[276]

It is the Minister's duty to give reasonable advice, guidance and directives to the officials in the ministry which will in his estimation be beneficial to the productivity, operative, reasonable, unbiassed and clear administration of land under both general and village land.[277] The Minister is also empowered to make regulations for better use of the purposes and provisions of the law. Among those regulations include the prescribed

[274] The Village Land Act, 1999.
[275] Cap. 113 R: E 2002, s. 8.
[276] *Ibid*, s.8.
[277] s. 8 of the Act

forms which will be used to ease the process of claiming compensation when the customary right is extinguished.[278]

4.3.2.3 The Commissioner for Lands (CL)

The Commissioner for Lands (CL) is appointed by the President. The Commissioner for Lands is a proven probity with qualifications skills and practical experience in land management or law in public or private sector.[279] The CL empowers to issue a Certificate of the village land to every village in respect of which the boundaries to village land have been demarcated or agreed in accordance with the law.[280]The Commissioner for Lands also is responsible to maintain a register of village land in accordance with such rules as may be prescribed.[281]Furthermore, the CL empowered to give advice to the village councils or to a specific Village Council on the management of village land which he considers necessary or desirable.[282]

Also, the CL is authorised to enter on land the subject of customary right of occupancy and inspect whether the conditions under which the customary right has been granted are being complied with.[283] However, a customary law remedy which requires that a person be deprived of his land, either for a stated period or permanently shall not take effect unless the Commissioner for lands has assented to that remedy.[284]

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[278] See s. 65 of the Village Land Act, 1999.
[279] s. 9 (1) & (2) of the Land Act. 1999.
[280] Cap. 114 R: E 2002, s. 7 (6).
[281] See s. 7 (10) of the Village Land Act, 1999.
[282] *Ibid*, s. 8 (7).
[283] s. 29 (4) of the Village Land Act, 1999.
[284] *Ibid*, s. 39(2).

The Commissioner for Lands also has authorised to give advice to the Village Council on the abandoned land held for a customary right of occupancy.[285] This can be observed in the case of *Abdi M Kipoto v Chief Arthur Mtoi*[286]whereby the Court of Appeal of Tanzania held that, it is fatal to declare abandoned land by the Village Council without first seeking the advice from the CL.

4.3.2.4 The District Councils (DCs)

The District Councils are vested with power to manage village land in their jurisdictions by issuing reasonable advice to the Village Councils. Provided that, the advice must be made in conformity with the provisions of the law and directives of the Commissioner for lands.[287] However, no advice and guidance given by a District Council shall contradict or conflict with any directive or circular issued by the Commissioner for lands.[288]

The District Councils are also vested with power to give recommendations to the Minister on the transfer of village land to general land or reserved land and vice versa where such transfer involves more than 250 hectares of land.[289] Therefore, for the Village Council to issue transfer of the said hectares of land, it must seek recommendations of the District Land Council. Also, the District Councils are vested with power to receive report from the Village Council on the management of the village

[285] s. 45 (2) of the Act.
[286] Civil Appeal No. 75 0f 2017 CAT, (*unreported*).
[287] See s. 9 of the Village Land Act, 1999.
[288] s. 9 (2) of the Act.
[289] Cap. 114 R: E 2002, s. 4 (6) (b).

land [290] Although, the Village Council is vested with exclusive powers to administer and manage all village land,[291] such powers are subject to some limitations from other government authorities such as the DCs, Commissioner for lands and the like.

4.3.2.5 The Village Assembly (VA)

In Tanzania the Village Assembly is one of the main organs or institutions of the village government. The Village Assembly is a legal organ established by the law.[292] It is a statutory village meeting headed by the village chairperson elected by the resident of the village after every five years tasked with discussing and approving all matters pertaining to village presented by the Village Council and government. Therefore, the VA is a controlling mechanism of the village government.[293] That is to say, through Village Assembly ordinary citizens are given a room to oversee village government for the matters affecting their lands.[294]

Furthermore, the Village Assembly vested with authority to approve allocation of land or grant of a customary right of occupancy by the Village Council.[295] The Village Assembly is also empowered to receive report from the Village Council on the administration and management of the village land.[296] That is to say, whatever is done by

[290] *Ibid* s. 8 (6) (b).
[291] *Ibid,* s. 8.
[292] See section 24 of the Local Government (District Authorities) Act no.7 of 1982.
[293] Kesale, A.M, *Selected Experiences of the use of the Village Assembly in the Governance at the Grassroots levels in Ludewa District Council in Tanzania*, Mzumbe University. Journal of Public Administration and Governance, 2017, Vol.7, no. 2.
[294] *Ibid,* Kesale (n) 244, p.4.
[295]Cap. 114 R.E 2002, 8(5).
[296] *Ibid,* s. 8(6).

the village government and its institutions concerning village land is reported to the citizens through VA.[297]

4.3.2.6 The Village Council (VC)

The Village Council is vested with powers to administer and manage all village land.[298] It is the supreme authority which governs on behalf of the Village Assembly on all matters of general policy making in relation to the affairs of the village. The VC also is the legal person, it can be sue and be sued.[299] However, the VC shall not allocate land or grant a customary right of occupancy without a prior approval of the Village Assembly.[300] The Village Council while executing its functions is required to consider the principle of trustee management property as a trustee on behalf of the beneficiaries, the villagers.[301] The Village Assembly also is required by the law to report to and take account of the views of the Village Assembly on the management and administration of the village land.[302]

Furthermore, the Village Council is responsible to maintain a register of village land and to grant a Certificate of Customary Right of Occupancy (CCRO) to the customary land holders.[303] Although, individuals who use or occupy village land have the right to obtain CCROs to strengthen protection of their land rights, in practice, however, most of customary land holders do not have CCROs for their lands because in many villages, the

[297] *Ibid,* Kesale (n) 244, p. 4.
[298] Cap. 114 R.E 2002, s. 8.
[299] JSTOR. The Village Council as future land manager. https://www.jstor.org. Accessed on 06 November, 2023.
[300] Cap. 114 R.E 2002, s. 8 (5).
[301] *Ibid*, s. 8.
[302] s. 8 (6) of the Act.
[303] Cap. 114 R.E 2002, s. 21 & 25 (1).

land use demarcation and mapping that are required in order to issue the Certificate of Customary Right of Occupancy have not yet completed.[304] Therefore, the government should speed up the survey and registration of un-surveyed land in order to strengthen the protection of customary land rights in the country.

It can be stated that, although the Village Council is vested with powers to administer and control all the village land, nevertheless, the Village Council is powerless since it could not make decisions concerning village land without approval or consent from the Commissioner for Lands. For instance, the Village Council could not even declare abandonment of the village land without seeking the advice from the Commissioner for Lands, otherwise the process will be nullified as stated in the case of *Abdi M Kipoto v Chief Arthur Mtoi.*[305]

4.4 Conclusion

Therefore, it has been analysed from both the legal and institutional framework governing customary land rights in Tanzania that, the issue of protection of customary land rights is still not effectively implemented in both frameworks. It has been revealed that, although the Land Acts as the principal laws constructed to provide the overall framework for the administration of the land rights, the Acts have several shortcomings, perhaps most problematic, they are not effectively implemented, as a result, they have

[304] Lauren P et all, Impacts of Customary Land Use Rights Formalization on Smallholder Tenure Security and Economic Outcomes: Midline Results from a RCT Impact Evaluation of USAID's Land Tenure Assistance Activity in Tanzania; Paper prepared for presentation at the "2018 WORLD BANK CONFERENCE ON LAND AND POVERTY" The World Bank - Washington DC, March 19-23, 2018, p. 2.
[305] Civil Appeal No. 75 0f 2017 CAT, (*unreported*).

done little to improve the security of customary land tenure for most rural populations in the country.

For instance, the Village Land Act has established the principle on the protection of the customary land rights,[306] however, some of the provisions of the Land Act[307] outlawed such principle which weakened the protection of the customary land rights. Also, the Village Land Act provides for the customary land holders to be issued with the Certificate of Customary Right of Occupancy to strengthen the protection of their land rights, however, in practice, the process is slow as most of the customary land holders do not have Certificate of Customary Right of Occupancy for their lands because in many villages, the land use demarcation and mapping which required in order to issue CCROs have not yet completed.

Furthermore, it has been revealed that, the Constitution of the United Republic of Tanzania[308] as the fundamental and supreme law of the country has no express provision which provides for the rights of the customary land holders. Since all laws including land laws derived from the Constitution,[309] this contributes to weaken the protection of customary land rights in the country. Moreover, it has been revealed that, there are some contradictions of the laws towards the protection of the customary land rights as provided by the Village Land Act. Those legislations include the Land Act, Land Acquisition Act, Country and Urban Act, and Urban Planning Act, those contradictions also hinder the protection of customary tenure.

[306] See Cap. 114 R.E 2002, s. 18 (1).
[307] s. 34 (3) & s. 181 of the Land Act, 1999.
[308] Cap 2 R.E 2002.
[309] *Ibid.*

Moreover, it has been disclosed that, even though the Village Land Act has established the principle on the protection of the customary land rights,[310] nevertheless, through the Land Acquisition Act[311] the government could easily acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders; the customary land holders have been deprived of their rights whenever the state thinks fit.[312] Thus, some of the provisions of the mentioned Act[313] have been used by the government to weaken the protection of the land rights of the customary land holders.

Therefore, in order to have effective protection of customary land rights in the country, it is recommended that, the Constitution[314] should be amended to include the provision which provides expressly on the rights of the customary land holders. Also, the land laws should be amended to comply with the provision of the Village Land Act.

[310] See Cap. 114 R.E 2002, s. 18 (1).
[311] Cap. 118 R.E 2002.
[312] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 125.
[313] Cap. 118 R.E 2002.
[314] Cap 2 R.E 2002.

CHAPTER FIVE

CHALLENGES FACING THE PROTECTION OF CUSTOMARY LAND RIGHTS IN TANZANIA

5.0 Introduction

In the previous chapter, the researcher discussed in detail on the legal and institutional framework governing the customary land rights in Tanzania. In this chapter, the researcher will discuss on various legal and non – legal challenges facing the protection of customary land rights in Tanzania.

The Village Land Act recognizes and protects the customary land rights by giving equal status and effect on both rights of occupancy.[315] Nevertheless, practically that is not the case as some provisions of the law favour the granted right of occupancy against the customary right of occupancy.[316] As a result, there are several legal and non - legal challenges which weaken the protection of customary land rights in Tanzania: -

5.1 Legal Challenges Facing the Protection of Customary Land Rights in Tanzania

The following are the legal challenges facing the protection of customary land rights in Tanzania: -

[315] See Cap. 114 R.E 2002, s. 18 (1).
[316] Cap. 113 R.E 2002, s. 34 (3) & s. 181.

5.1.1 Exclusion of the Customary Land Rights in the Constitution of the United Republic of Tanzania

It has been observed that, the Constitution of the United Republic of Tanzania,[317] as amended from time to time, guarantees every person to equal right to own property and declares deprivation of property unlawful, unless it is authorized by the law providing for fair and adequate compensation.[318] Nevertheless, there is no provision in the Tanzanian Constitution[319] which expressly provides for the land rights of customary land holders (indigenous people).

The position has been observed in the case of *Attorney General v Lohay Akonaay and Joseph Lohay*[320] where the government evicted the customary land holders without payment of fair, prompt and full compensation. The court stated *inter alia* that,

> "…*customary or deemed rights in land, though by their nature are nothing but rights to occupy and use the land, are nevertheless real property protected by the provisions of Article 24 of the Constitution of the United Republic of Tanzania and their deprivation of a customary or deemed right of occupancy without fair compensation is prohibited by the Constitution; Fair compensation is not confined to unexhausted improvements; where there are no unexhausted improvements but some effort has been put into the land by the occupier, that occupier becomes entitled to protection under Article 24(2) of the Constitution and fair compensation is payable for deprivation of property and land…"*

Therefore, The Constitution of the United Republic of Tanzania[321]should be amended to include the provision which will expressly provide for the land rights of customary land holders (indigenous people).

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[317] Cap 2 R.E 2002.
[318] *Ibid*, Article 24.
[319] *Ibid*, Cap. 2.
[320] (1995) TLR 80.

5.1.2 Deprivation of Customary Land Rights by some of the Provisions of the Land Act

Also, it has been observed that, the Village Land Act recognizes and protects the customary land rights by giving them equal status and effect on both rights of occupancy.[322]However, in practice the position is quite different as some provisions of the Land Act outlaw the protection of customary land rights.[323] This study finds out that, the protection of the customary land rights as provided by the Village Land Act is more cosmetic than reality.

5.1.3 Compulsory Land Acquisition

It has been observed that, the Land Act empowers the President of the United Republic of Tanzania to be the trustee of all land in the country.[324] Meanwhile, the Land Acquisition Act[325] allows the President to acquire any land for any term for public purpose.[326] This study finds out that, the government could compulsorily acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders.[327]

The position has been observed in the case of *Mulbadaw Village Council and 67 Others v National Agricultural and Food Corporation*[328] whereby the plaintiffs, a Village

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[321] Cap 2 R.E 2002.
[322] See Cap. 114 R.E 2002, s. 18 (1).
[323] s. 34 (3) & s. 181 of the Land Act,1999.
[324] *Ibid*. s. 4.
[325] Cap. 118 R.E 2002.
[326] Cap. 118 R.E 2002, s. 3.
[327] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 125.
[328] [1984] TLR 15.

council and 67 villagers of the same village sued the National Agricultural and Food Corporation (NAFCO) for trespass in a large tract of customary land in Hanang' District. It was held that, *the Mulbadaw villagers were lawfully possessing customary land and they could only be deprived of their land by due operation of law not by mere blessings of the government and party leaders. Since the provisions of the Land Acquisition Act were not followed in acquiring customary land belongs to Mulbadaw village council and Mulbadaw villagers, therefore such acquisition was unlawful.*

It has been revealed that the compulsory acquisition has been used by the government to take away the customary land from the land holders without or with little payments of compensation to them for justification of public interest,[329] hence deprives their land rights. It has been stated that, compulsory acquisition of land without providing an alternative resettlement area or paying full and fair compensation in areas occupied by the poor, is likely to make the livelihoods of many households more hazardous.[330]

Also in the case of *Victor Robert Mkwavi v Juma Omary*[331] the Court of Appeal emphasizes on the importance of payment of full, fair and prompt compensation before extinguishing the pre-existing customary right of occupancy by subsequent grant of right of occupancy on the same plot of land as provided under provisions of section 34(3) (b) of the Land Act.[332] It was held that,

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[329] Lawry.S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).
[330] Toulmin. C, (2009), Securing Land and Property Rights in Sub-Saharan Africa: The Role of Local Institutions; Land Use Policy, Vol 26(1) 10-19, p.15.
[331] Civil appeal No. 222 of 2019, CAT Mwanza (Unreported).
[332] Cap 113 R: E 2002.

> *"It is germane at this point to repeat what we stated earlier that a pre-existing customary right of occupancy cannot be extinguished by a subsequent grant of the right of occupancy on the same plot of land unless compensation was duly paid before the grant was made. Given that it is firmly established in evidence that the respondent received no compensation for the unexhausted improvements he effected on the property, we infer, as we must, that his anterior customary title was not extinguished. This conclusion renders the purported grant of title to the appellant ineffectual. He did not acquire any title to that property."*

5.1.4 Payment of Compensation to Unexhausted Improvements

It has been revealed that the Land Act[333] provides room for payment of compensation to vacant ground, it provides payment of full, fair and prompt compensation to be made to any person whose right of occupancy or customary use of land is revoked or otherwise compulsory acquired by the government. However, the Land Acquisition Act[334] restricts compensation to unexhausted improvements. This study has revealed that, the government has been used the provisions of Land Acquisition Act for easy acquisition without adequate compensation to the victims. This study finds out that, the government could acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders.[335]

The mentioned position can be observed in the case of *Attorney General v Lohay Akonaay and Joseph Lohay*,[336] whereby the court stated *inter alia* that, "…deprivation of a customary or deemed right of occupancy without fair compensation is prohibited by the Constitution; Fair compensation is not confined to unexhausted improvements;

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[333] S. 3(1) (g) & s. 34(3) (b) (iv).
[334] See S. 12 of the Act.
[335] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 125.
[336] [1995] TLR 80.

where there are no unexhausted improvements but some effort has been put into the land by the occupier, that occupier becomes entitled to protection under Article 24(2) of the Constitution and fair compensation is payable for deprivation of property and land; What is fair compensation depends on the circumstances of each case. In some cases, a reallocation of land may be fair compensation. Fair compensation however is not confined to what is known in law as unexhausted improvements."

Also, the position of the provisions of the Land Act[337] was affirmed by Nyerere's article[338] where it was stated, *inter alia* that, "…*when I use my energy and talent to clear a piece of ground for my use it is clear that I am trying to transform this basic gift from God so that it can satisfy a human need. By clearing that ground, I have actually added to its value and have enabled it to be used to satisfy a human need. Whoever then takes this piece of ground must pay me for adding value to it through clearing it by my own labour.'* On the basis of the above statement, the author's point is that, compensation should not base on unexhausted improvements alone it should also encapsulate instances where the victim has wasted his labour in working on the land.

5.1.5 Scheme of Regularisation or Declaration of an area to be a Planning Area

This study has observed that, the law allows the Minister for lands may, by order published in the Gazette, declare any area of land to be a planning area.[339] Also it has been observed that, the law provides that, regularisation of interests in land applies to

[337] Cap. 113 R.E 2002, s. 3 (1) (g) & s. 34 (3).
[338] Freedom and Unity', published by Oxford University Press, 1966.
[339] Act no. 8 of 2007. s. 8.

any land, whether that land is within the boundaries of a village as village land (customary land) or not.[340]

Further, it has been observed that, the law gives mandate to the President to acquire any area by using any law which relates to compulsory acquisition of land, if the land holder is not willing to give possession of the land after such land has been declared as a planning scheme.[341] Nevertheless, this study finds out that, the government could acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders.[342]

Also, this study finds out that, the mentioned declaration mostly affects the customary land which in most cases is not surveyed, thus after the declaration the customary land rights will be extinguished upon payment of compensation.[343] Therefore, deprives the customary land rights of the customary land holders, hence, hinders the protection of customary land rights as many land holders left homeless with little or no compensation for their lands.[344]

The position can be observed in the case of *Suzana Kakubukubu and others v Walwa Joseph Kasubi and the Municipal Director of Mwanza.*[345] The brief facts of this case is that, "the plaintiff held about 5 acres of land under the deemed right of occupancy. Due to poor health, she invited relatives to live on it while she was staying in Dar Es Salaam.

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[340] Cap. 113 R.E 2002, s. 56.
[341] See Cap. 355 R.E 2002, s. 45.
[342] Tenga, W.R and Sist, J.M., Manual on Land and Conveyancing in Tanzania, Dar es Salaam: Law Africa Publishing (T) Ltd, 2008. p. 125.
[343] Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022).
[344] *Ibid*, Lawry.
[345] [1988] TLR 119.

In 1984, a survey was done on the piece of land resulting in two farms. While farm 2 was allocated to the plaintiff, farm 3 was allocated to the first defendant. Compensation in respect of farm 3 was worked out and paid to those who were occupying it. It was held that, the 1st plaintiff has a deemed right of occupancy over the land in dispute in terms of section 2 of the Land Ordinance, Cap 113 before the survey, as she had inherited it from her father…a deemed right of occupancy was not extinguished upon an area being declared a planning area…"

This position also can be observed in the case of *Mwalimu Omari and another v Omari A. Bilali.*[346] The brief facts of the case is that, the appellant, Mwalimu Omari occupied un-surveyed area at Magomeni. It was later on surveyed and it formed two plots, plot No. 60 and No. 61. Plot No. 61 was given to Mwalimu Omari. Before the plot got surveyed Mwalimu Omari had given the area, now plot 60 to his in-law who in turn sold it to the first defendant. The first defendant however, occupied this un-surveyed land which had nothing except for a toilet and some cassava. Mwalimu Omari dissatisfied with allocation and went to the court.

It was held that, " …*once an area is declared an urban planning area, and land is surveyed and given plots, whoever occupied the land even under customary law would normally be informed to be quick in applying for rights of occupancy. If such person sleeps on such a right and the plot is given to another, the squatter would have to move away and in law strictly would not be entitled to anything…"*

[346] [1990] TLR 9.

5.1.6 Transfer of the Village Land to the General or Reserved Land

It has been observed that, the law empowers the President to be the trustee of all the land in the country.[347] Also the President has the power to transfer the village land into any of the reserved or general land.[348] Further, the law provides that, where the President is minded to transfer any area of village land to general or reserved for public interest, he may direct the Minister to proceed in accordance with the law.[349] This study finds out that, after the mentioned transfer, the customary land holders who reside in the village land left without alternative land with little or no compensation for their village lands.[350]

Also, it has been observed that, the law allows the customary land rights vested into the village land to be transferred or converted to general or reserved land subject to the payment of full, fair and prompt compensation to the customary land holders.[351]However, this study finds out that, in practice that is not the case because in most cases the payment of compensation to the customary land holders is insufficient, unfair and not prompt.[352]

Also, in the case of *Victor Robert Mkwavi v Juma Omary*[353] the Court of Appeal emphasizes on the importance of payment of full, fair and prompt compensation before extinguishing the pre-existing customary right of occupancy by subsequent grant of right of occupancy on the same plot of land. It was stated that, a pre-existing customary right of occupancy cannot be extinguished by a subsequent grant of the right of occupancy on

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[347] Cap. 114 R.E 2002, s. 4.
[348] *Ibid*, s. 4.
[349] *Ibid.*
[350] *Ibid*, Lawry.
[351] Cap. 114 R.E 2002, s. 4.
[352] See the case of *Attorney General vs. Lohay Akonaay and Joseph Lohay* [1995] TLR 80.
[353] Civil appeal No. 222 of 2019, CAT Mwanza (Unreported).

the same plot of land unless compensation was duly paid before the grant was made. Given that it is firmly established in evidence that the respondent received no compensation for the unexhausted improvements he effected on the property, his anterior customary title was not extinguished. This conclusion renders the purported grant of title to the appellant ineffectual. He did not acquire any title to that property.

5.1.7 Management and Administration of Customary Land Rights

It has been observed that, the Village Council is vested with powers to administer and manage all village land.[354] The Village Council is the supreme authority which governs on behalf of the Village Assembly on all matters of general policy making in relation to the affairs of the village. The Village Council while executing its functions is required to consider the principle of trustee management property as a trustee on behalf of the beneficiaries, the villagers.[355]

However, it has been found out that, although the Village Council is vested with powers to administer and control all the village land, nevertheless, the Village Council is powerless since it could not make decisions concerning village land without approval or consent from the Commissioner for Lands. For instance, the Village Council could not even declare abandonment of the village land without seeking the advice from the Commissioner for Lands, otherwise the process will be nullified as stated in the case of *Abdi M Kipoto v Chief Arthur Mtoi*.[356]Therefore, the Village Council in practice could

[354] Cap. 114 R.E 2002, s. 8.
[355] *Ibid*, s. 8.
[356] Civil Appeal No. 75 of 2017 CAT, (unreported).

not protect the land rights of the customary holders since it is powerless to implement its functions.

5.1.8 Exclusion of the Customary Land Rights Under the International Instruments

It has been found out that, internationally, no treaty or declaration specifically refers to a human right to land, these rights have not codified in international human rights law, however, they can be traced and applied through various rights which relate to these rights.

5.2 Non Legal Challenge Facing the Protection of Customary Land Rights in Tanzania

The following is the non - legal challenge facing the protection of customary land rights in Tanzania: -

5.2.1 Reluctance of some of the Microfinance Institutions to Accept the CCROs as the Collateral for Loans

It has been observed that, the Village Land Act gives power to the Village Council to issue the Certificate of Customary Right of Occupancy (CCROs) to the villagers who hold village land.[357] It provides that, after conclusion of a contract for a grant of a customary right of occupancy, a Village Council shall within not more than ninety days of that conclusion, issue a Certificate of Customary Right of Occupancy to the applicant

[357] Cap. 114 R.E 2002, s. 25.

who accepted the offer referred to in section 23 of the Act.[358] This study has found out that, although, individuals who use or occupy village land have the right to obtain CCROs to strengthen protection of their land rights, in practice, however, some of Microfinance institutions do not accept CCROs as collateral for loans because they regard the Certificate of Customary Right of Occupancy to have less value and unsafe for loans compared to the granted right of occupancy.[359]

5.3 Conclusion

Conclusively, it has been found out that, the current legal framework governing customary land rights in Tanzania is not effectively implemented in the country due to the above-mentioned challenges. For instance, it has been revealed that, although section 18 (1) of the Village Land Act established the principle which guarantees the recognition and protection of the customary land rights by giving them equal status and effect to the granted rights, however, in practice the position is quite different as there are various challenges which weaken the protection of customary land rights in Tanzania.

Therefore, this study found out that, the protection of the customary land rights as provided by the Village Land Act is more cosmetic than reality, therefore the study suggests that, some of the mentioned provisions of the land laws to be amended to enable them effectively guarantee the protection of the customary land rights in

[358] Cap. 114 R.E 2002.

[359] Elifuraha, E., „Access to loans in Microfinance Institutions by use of unsurveyed land as security: Analysis of the law and practice in Tanzania Mainland," LL.M Thesis, Mzumbe University, Tanzania, 2016. https://scholar.mzumbe.ac.tz/bitstream/handle (accessed 21 January 2022).

Tanzania. Moreover, the study suggests for the codification of the customary land rights to the international instruments to strengthen the protection of the customary land rights.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS OF THE STUDY

This part covers the summary of the research, summary of findings, conclusion together with the recommendations of the researcher.

6.0 Summary of the Research

This research dealt with the protection of customary land rights in Tanzania. The aim was to assess the effectiveness of the protection of the customary land rights holders, testing the current legal framework governing customary land rights through critical analysis as well as the suggestions for the enactment or amendment of the new land laws which will effectively protect the customary land rights in Tanzania.

The research has been organized in the following chapters: -

Chapter one covered introductory part of this research, it consists of the general introduction, back ground of the study, statement of the problem, literature review, objectives of the research, research questions, significance of the study, research methodology, data analysis, and scope of the study.

Chapter two touched the conceptual and theoretical framework underlying the protection of customary land rights in Tanzania. It consists of the definition of key concepts, development of customary land rights, scope of customary land rights, and nature of customary land rights. It also analyzed the rationale behind the protection of customary

land rights, indicators of legal respect of customary land rights, and the land rights theories.

Chapter three covered the international instruments governing customary land rights in Tanzania. It analyzed several international instruments in relation to the customary land rights. It was observed that, there is no international instrument which specifically provides for customary land rights. Therefore, the customary land rights should be codified in the international instruments to strengthen the protection of customary land rights.

Chapter four discussed about the Legal and Institutional framework on customary land rights in Tanzania. Also, the chapter discussed on the administration and management of land institutions in Tanzania. It was revealed that, the mentioned legal framework is not effectively implemented as there are some contradictions of the laws towards the protection of the customary land rights. Therefore, the legal framework needs to be harmonized in order to have full protection of the customary land rights in Tanzania.

Chapter five covered the challenges facing the protection of customary land rights in Tanzania. It categorized the challenges into legal and non-legal challenges; the legal challenges include but not limited to exclusion of the customary land rights in the Constitution of the United Republic of Tanzania, deprivation of customary land rights by some of the provisions of the Land Act, compulsory acquisition, payment of compensation to unexhausted improvements, and exclusion of the customary land rights

under international instruments. On the other hand, non-legal challenges include reluctance of the Microfinance institutions to accept the CCROs as the collateral for loans.

6.1 Summary of Findings

It has been observed by the researcher that, the law recognizes and protects the customary land rights by giving equal status and effect on both rights of occupancy. Nevertheless, the findings have revealed that, practically that is not the case as some provisions of the law favour the granted right of occupancy against the customary right of occupancy. Also, some provisions of the land laws contradict each other on the protection of the customary land rights as a result the mentioned protection as provided by the Village Land Act seems to be more cosmetic than reality, therefore the land laws need to be harmonized in order to have full protection of the customary land rights.

6.2 Conclusion

The study has clearly answered all research questions that were raised at the beginning of the study. The research was guided by the following questions: -

i. What are the laws which regulate customary land rights in Tanzania?
ii. Is the current legal framework sufficient enough to protect the customary land rights in Tanzania?
iii. What are the international instruments concerning the protection of customary land rights?

This study has clearly answered all three questions that were raised at the beginning of the study. Although, section 18 (1) of the Village Land Act established the principle on the recognition and protection of customary land rights by giving equal status on both rights of occupancy in Tanzania, however, this study identified several legal challenges which need special attention in order to give full protection to the customary land holders:

Customary land rights in Tanzania have been regulated by multiple land laws which in essence do not complement each other as the result they have failed to adequately provide full protection of land rights to the customary land holders. For instance, there is no provision in the Constitution of the United Republic of Tanzania which expressly provides for the land rights of customary land holders (indigenous people). Moreover, some provisions of the land laws contradict each other as a result they hinder the protection of the customary land holders, therefore the land laws need to be harmonized in order to have full protection of the customary land rights.

Although, the Village Land Act allows the customary land holders to have the right to obtain Certificate of Customary Right of Occupancy (CCROs) to strengthen protection of their land rights, this study revealed that, in practice, however, most of customary land holders do not have CCROs for their lands because in many villages, the land use demarcation and mapping that are required in order to issue the CCROs have not yet completed.

The Village Council has authorised by the Village Land Act to administer and manage all the village land, nevertheless, the Village Council is toothless since it could not make decisions concerning village land without approval or consent from the Commissioner for Lands. For instance, the Village Council could not even declare abandonment of the village land without seeking the advice from the Commissioner for Lands, otherwise the process will be nullified. Therefore, the law should give full power to the Village Council to administer and manage the village land without unnecessary intervention from the Commissioner for Lands in order to achieve full protection of customary land rights.

Furthermore, the Land Act allows payment of compensation to vacant ground, it provides payment of full, fair and prompt compensation to be made to any person whose right of occupancy or customary use of land is revoked or otherwise compulsory acquired by the government. However, the Land Acquisition Act restricts compensation to unexhausted improvements. This study has revealed that, the government has been used the provisions of Land Acquisition Act for easy acquisition without adequate compensation to the victims. This study finds out that, the government could acquire land, mostly unregistered held under customary tenure freely without requiring consent from the customary land holders.

Moreover, the Village Land Council and the Ward Tribunals established at the village or ward level to mediate the parties to the land disputes in order to assist the parties to reach at amicable settlement, however, the members of the mentioned land tribunals lack mediation skills to assist the parties to reach at mutual settlement because the law

requires the members to be only with integrity and knowledge of customary land law as qualifications for a person to be a member to the tribunal. This has negative impact to the protection of customary land rights as those tribunals established to settle land disputes of the villagers who own their lands under customary tenure could not assist them to resolve their land disputes in order to protect their land rights.

6.3 Recommendations

In line with the aforementioned weaknesses of the existing legal framework of the customary land rights, the researcher herein below recommends for the following measures: -

i. The provisions of the Land Act[360] which outlawed the principle established by the Village Land Act[361] on the recognition and protection of customary land rights[362] should be amended to support the mentioned principle in order to strengthen the protection of the customary land rights.

ii. The Constitution of the United Republic of Tanzania[363]should be amended to include the provision which will expressly provide for the land rights of customary land holders (indigenous people).

iii. The Land Acquisition Act[364] should be amended to differentiate the modes of assessing compensation on customary land, criteria to be used in paying

[360] Cap. 113 R.E 2002.
[361] Cap. 114 R.E 2002.
[362] See Cap. 113 R.E 2002, s. 34 (3) & 181.
[363] Cap 2 R.E 2002.
[364] See s. 12 of the Land Acquisition Act, 1967.

compensation and mostly the Act should consider paying compensation on customary land basing on the value of land rather than the so-called unexhausted improvement.

iv. The government should speed up the survey and registration of un-surveyed land, it should also complete the land use demarcation and mapping that are required in order to ensure all customary land holders are secured with the CCROs for their lands, hence strengthening the protection of customary land rights in the country.

v. The government should ensure that, the customary land holders are paid full, fair and prompt compensation when their customary land is transferred or converted to general or reserved land.

vi. The government should ensure that, the customary land holders are paid full, fair and prompt compensation when their village land is declared to be a planning area.

vii. The provisions of the Village Land Act which allow the powers of the Village Council to be intervened by the Commissioner for Lands should be amended to give full power to the Village Council to administer and manage the village land without unnecessary intervention from the Commissioner for Lands.

viii. The international community should recognise and codify the customary land rights within the international human rights instruments.

BIBLIOGRAPHY

Alden, W. L, Transforming Legal Status of Customary Land Rights: What this Means for Women and Men in Rural Africa, 2021, pp.169-181.

Alinda, S.R. Reformulation of the Laws on Customary Land in Uganda. https://cepiluganda.org. Accessed on 03rd February, 2024.

Amnesty International. Universal Declaration of Human Rights. https://www.ohchr.org (Accessed 06 March, 2024).

Bank of Tanzania, The Proposed Additional Financing for the Housing Financing for The Housing Finance Project in Tanzania, Dar es Salaam, 2009.

Bruce, J. The Variety of Reform: A Review of Recent Experience with Land Reform and the Reform of Land Tenure, with Particular Reference to the African Experience. In Institutional Issues in Natural Resource Management; Marcussen, H.S., Ed.; International Development Studies: Roskilde, Denmark, 1993; Volume 9, pp. 13–56.

Caruso G, *The Concept of "Best Practice": A brief overview of its meanings, scope, uses, and shortcomings*, International Journal of Disability Development and Education, 2011, 58(3), pp. 213-222.

Chalambo, J.J., The History of Land Law in Tanzania, Faculty of Law, University of Dar es Salaam, 2009.

Chitonge, H and Harvey, R, Land Tenure Challenges in Africa: Current and Emerging issues, 2021, chapter 16.

Claeys, P *et al*, Womens' Rights to Communal Land in Tanzania, Pastoral Women's Council, Research Report Phase 1, 2023.

Daley, E, *Land and social change in a Tanzanian village* 1, Journal of Agrarian Change: Kinyanambo, 2005, 5 (3), pp. 363–404.

Daley, E, Land and social change in a Tanzanian village 2: Kinyanambo in the 1990s. Journal of Agrarian Change, 2005, 5 (4), 526–572, p. 564.

Deininger, K., Selod, H. & Burns, A., (2012), *The land governance assessment framework: Identifying and monitoring good practice in the land sector*, Washington: World Bank Publications.

Delius, P. Contested terrain: land rights and chiefly power in historical perspective. In Land, Power & Custom: Controversies generated by South Africa's Communal Land Rights Act; Claassens, A., Cousins, B., Eds.; UCT Press: Cape Town, 2008; pp. 211–237.

Eberle, E.J, *The method and role of comparative law*, Washington University Global Studies Law Review, Volume 8 number 3, 2009.

Elifuraha, E., ,,Access to loans in Microfinance Institutions by use of unsurveyed land as security: Analysis of the law and practice in Tanzania Mainland," LL.M Thesis, Mzumbe University, Tanzania, 2016. https://scholar.mzumbe.ac.tz/bitstream/handle (accessed 21 January 2022).

FAO, *Compulsory Acquisition of Land and Compensation*. Land Tenure Studies, 2008, Volume 10, p. 5.

FAO, Land Tenue Studies. *Compulsory acquisition of land and compensation*, 2008, p. 30.

Gripps, *Compulsory Acquisition of Land, Powers, Procedure and Compensation* Hayuma & Conning, *Tanzania land policy and genesis of land reform sub-component of private sector competitive project,*1962*, p. 1*.

Hayqal, F.F *et al, Legal Certainty of Land Tenure of Customary Rights by Indigenous Peoples based on the Administration of Customary Land,* International Journal of Social Science Humanity and Management Research, 2023, Vol. 2 (7), pp. 615-620.

Hull S, Theories of Land Reform and Their Impact on Land Reform Success in Southern Africa, 2019, *Land* 8, no. 11: 172. https://doi.org/10.3390/land8110172.

Hungwe, M and Rukuni, M, Overview of Main Challenges with Regards to Land Tenure in Africa: Factual and Legal Aspects, 2020, pp. 121-131.

Ige, V.O, Sub-Saharan Africa's Customary Practices and Land Titling Policy Reforms: In achieving the Sustainable Development Goal Against Poverty in Developing Nations, 2024, pp. 25-39.

ILO. Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169). https://www.ilo.org (Accessed on 06 March, 2024)

Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: An Overview (WIPO Publication No. 933). www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf at p. 1

John C, The Myth of Property; New York, Oxford University Press, 1994.

JSTOR. The Village Council as future land manager. https://www.jstor.org. Accessed on 06 November, 2023.

Kesale, A.M, *Selected Experiences of the use of the Village Assembly in the Governance at the Grassroots levels in Ludewa District Council in Tanzania,* Mzumbe University. Journal of Public Administration and Governance, 2017, Vol.7, no. 2.

Kironde, L. M. J, Good governance, efficiency and the provision of planned land for or ferly development in African Cities: The case of the 20,000 planned land plots projects in Dar es Salaam, Tanzania. *Current urban studies,*2015, 3(4), p. 348.

Kimambo, A.J and Temu, A History of Tanzania: Published for the Historical Association of Tanzania, East African Publishing House, 1969 p. 16.

Komu F, Land Management at Crossroads in Africa: Impact of the Tanzania Village Land Act No. 5 of 1999 on the Fate of Customary Land Tenure, 1999, pp. 6– 10.

Kothari, C.R, *Research Methodology: Methods and techniques,* 2nd revised edition), New Delhi: New Age International (P) Limited, 2004.

Knight R. S, Statutory Recognition of Customary Land Rights in Africa: An Investigation into Best Practices for Law making and Implementation, Geneva, 2010.

Kurwijila R, ,,Securing Right to land: A priority for Africa'', Research Report, International Institute for Environment and Development, 2005, p. 15.

Kusiluka, M. M., Kongela, S, Karimuribo, E. D., & Kusiluka, L. J. (2011), 'The Negative Impact of Land Acquisition on Indigenous Communities' Livelihood and Environment in Tanzania, *Habitat International*, 66-73.

Lauren P *et al*, Impacts of Customary Land Use Rights Formalization on Smallholder Tenure Security and Economic Outcomes: Midline Results from a RCT Impact Evaluation of USAID's Land Tenure Assistance Activity in Tanzania; Paper prepared for presentation at the "2018 WORLD BANK CONFERENCE ON LAND AND POVERTY" The World Bank - Washington DC, March 19-23, 2018, p. 2.

Lawry. S, *In Sub – Saharan Africa it's time to recognize customary land Rights,* 2014. https://dai-global-developments.com/articles. (Accessed 04 June 2022)

Lea D. R, *Aboriginal Entitlement and Conservative Theory*, Journal of Applied Philosophy, 1998, Vol 15(1): pp. 1-14.

Lupala, J. & Chiwanga, P, *Urban expansion and compulsory land acquisition in Dodoma National Capital, Tanzania*. Land Administration in East Africa, 2014, pp. 206-223.

McGrath J.E., Methodology Matters: Doing Research in the Behavioural and Social Sciences, in R. M. Baecker *et al*., (eds), Readings in Human-Computer Interaction: Toward the Year 2000, Morgan Kaufmann Publishers, 1995, p. 153.

Martin, G. M, The Nature of Resistance and Conflicts on Compulsory Land Acquisition Process in Tanzania, Dar es salaam, 2010.

Martina L, *How come others are selling our land?' Customary land rights and the complex process of land acquisition in Tanzania*, Journal of Eastern African Studies, 2016, 10:3, 393-412, DOI: 10.1080/17531055.2016.1250890.

Marie, L. P, The Comparative Method in Legal Research: The Art of Justifying Choices, 2016, pp 11.

M, Tiernan. Customary law and Land Rights in South Sudan, 2012, p.13.

Natural Resource Charter, Precept 1; The Natural Resource Governance Institute, NRGI Reader March 2015. https://resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf [Accessed on 29th September 2023 at 1240 AM]

Ndjovu, C, *Understanding causes of dissatisfaction among compensate landowners in expropriation programs in Tanzania*, International journal of scientific and Technology research, 2016, 5(1), pp. 160-17.

Nyerere, J. K, *Freedom and Unity*, Megarrys Manual of the Law of Real Property, 1966, 8th Ed, London, Sweet &Maxwell Ltd.

Paris M. L, The Comparative Method in Legal Research: The Art of Justifying Choices, 2016.

Pritchard J *et al*, Securing community land and resource rights in Africa: A guide to legal reform and best practices, FERN, FPP, Client Earth and CED, 2013.

Quan J and Toulmin C, *Formalizing and Securing Land Rights*, International Institute of Environment and Development, 2005.

Samuel G, *An Introduction to Comparative Law Theory and Method*, London: Hart Publishing, 2014.

Singhal, A.K & Malik, I, *Doctrinal and Socio-Legal Methods of Research: Merits and Demerits*, Educational Research Journal, Vol. 2(7), 2012, pp. 252-256.

Tenga W. R & Mramba S. J, (2008), Manual on Land Law and Conveyancing in Tanzania, 2008.

The, S.C *et al*, *Legal Protection of Ulayat Lands of Indigenous Peoples Against the Threat of Land Commercialization,* International Journal of Multicultural and Multireligious Understanding, 2022, Vol.9 (12).

Toulmin C, Securing Land and Property Rights in Sub-Saharan Africa: The Role of Local Institutions; Land Use Policy, Vol 26(1), 2009, pp. 10-19.

Urassa J. A, ,,Changing Customary Land Tenure Regimes in Tanzania'', PhD Thesis, Ardhi University, 2022.

UNDP. UN-REDD Programme. Customary rights, 2008. https://www.un-redd.org/glossary. (Accessed on 14 October, 2023)

USAID, The Role of Property Right in Natural Resources Management, Good Governance and Empowerment of the Rural Poor, 2006.

Veit, P, *The Precarious position of Tanzania's village land,* 2019. https://gatesopenresearch.org/documents/pdf. (Accessed on 28 January 2022)

Vibhute, K & Aynale, F, Legal research methods: Teaching material, 2009, pp.26.

Willy, L, Customary Land Tenure in the Modern World Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa, 2012.

Wikipedia, the free encyclopedia. Land tenure. https://en.wikipedia.org/wiki/land_tenure. (Accessed 14 July 2022).

Zandt, F.H.W, Lifting the bell jar for poverty reduction: A clarification on the discussion around the development theory of De Soto. Radboud University Nijmegen, 2011.