

# Chapter 19

## Compensating Landholders in Tanzania: The Law and the Practice

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### ABSTRACT

*Most countries in Sub-Saharan Africa, including Tanzania, liberalized their land policies in the early 1990s because of the pressure from neo-liberal institutions such as the World Bank and IMF. The 1999 Tanzanian Land Laws are hailed to be the most progressive legislations in the Sub-Saharan region in terms of decentralization of land administrative powers and protection of customary tenure. However, they are still hampered with both policy weakness and implementation challenges. The standards used in compensation are still weak and unclear and subject to arbitrariness. Consequently, foreign investors or the government in cases of public interest acquisitions can acquire land without fully compensating the landholders. For land holders to get fair compensation in Tanzania there is need for both legislative amendments and change in practice. This chapter explores the compensation of landholders in Tanzania.*

### INTRODUCTION

The quest for land in Africa and particularly Sub-Saharan Africa has increased in the last two decades<sup>1</sup>. Population growth, market demands for food, biofuels, raw materials and timber are some of the drivers identified by studies for land rush in Africa and other parts of the world (Anseeuw et al, 2012; Odhiambo, 2011; FAO, 2012). Studies have also revealed that compensation is often

not paid to individuals, families, and communities whose land is taken. Where compensation is paid, amounts may not be enough to restore local livelihood (Odhiambo, 2011; Anseeuw et al, 2012; FAO, 2012). A problem relating to compensation, if one is to be reminded, has not augured well in Africa since time immemorial. Colonizers were very much aware of this. Sir Godfrey Lagden, the then Resident Commissioner in Lesotho said “nothing will compensate an African for the loss

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of his land” in an interview<sup>2</sup> with one Mr. Southey, the then chairperson of the then South African Land Commission.

Tanzania is located in Sub Saharan Africa, and is not free from land compensation problems. The Land holder in Tanzania, before the enactment of the Land Acts of 1999, was only compensated for unexhausted improvements made to his land when his land was acquired for the public interest<sup>3</sup>. Even after the bill of rights were accommodated in the Constitution of the United Republic of Tanzania of 1977 in 1984, it was still difficult for customary land holders to invoke the constitutional right to own and protect property to get adequate compensation. Courts of laws strongly defended a right to compensation as a fundamental human right but the government created impediments<sup>4</sup> to the realization of this right (Rwegasira, 2012).

The Land Act and Village Land Act, both of 1999, one of the products of neoliberal policies (FAO 2012, Shivji, 2009) are hailed for improving compensation package for land holders (Legal and Human Rights Center (LHRC), 2012; Nshala et al 2013; Tenga & Kironde, 2012; Rwegasira, 2012). Despite these developments there are still some grey areas that need improvement for the right to full, fair and prompt compensation to be realized. The practice on the ground reflects disappointment as it shows failure on the side of government to ensure that its people are adequately compensated (Rwegasira, 2012; Stockholm Environmental Institute (SEI), 2013; Land Rights Research and Resources Institute (LARRRI/HAKIARDHI), 2012).

This chapter attempts to highlight the strengths and gaps in the legal framework governing compensation of the land holder as established by Land Acts of 1999 and argues that lacunae need to be fixed. It shows some of the cases where land holders were not compensated in accordance with the law and argue for the tripartite role of government: to acquire the land, value the land,

and compensating the land holder be controlled. The chapter recommends the shift from monetary compensation to a partnership business model, among others.

The chapter addresses issues covering foreign land acquisition, land governance, land reforms and legal framework. These issues are one of the underlying sub-themes of this book. The chapter is important because it provides evidences at the country level on the determinants of large scale land acquisition and helps to understand the implications of such transactions at the community level.

## **TANZANIAN POLITICAL ECONOMY IN THE LIGHT OF FOREIGN LAND ACQUISITIONS**

Tanzania is mainly an agrarian country, with more than 70 per cent of Tanzanians residing in rural villages and over 80 per cent deriving their livelihoods from agriculture and pastoralism (Sulle & Nelson 2009). The majority of these rural farmers are poor and lack of food security is the most palpable dimension of their poverty (Havnevik et al., 2011). Changing present conditions are however a monumental task because Tanzanian agricultural production is faced with a multitude of challenges, including: unreliable rainfall, soil degradation, unseasonable floods and droughts, a multitude of pests, low access to and use of fertilizers and seeds, inappropriate storage facilities, fragmented road networks, high fuel costs, piecemeal availability/use of mechanized tools and vehicles, lack of access to land and financial credits, volatile staple crop prices and poor market information (Policy Forum, 2009; Wolter, 2009; Coulson 2010; Gabrielsson et al., 2013).

Against all odds most Tanzanian smallholders still manage to survive, but at a high cost. Women, in particular, are paying with their health and well being, by having to take the brunt of the

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