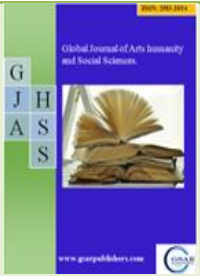


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CONSTITUTIONAL GAPS IN THE PROTECTION OF PUBLIC LAND OWNERSHIP RIGHTS IN TANZANIA

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Abstract

This article examines the constitutional protection of property rights in relation to public land ownership in Tanzania. It identifies existing legal and institutional gaps within the Constitution and related legislation, which tend to prioritize private property rights while inadequately safeguarding public land. Through doctrinal and analytical approaches, the study finds that the constitutional framework lacks explicit provisions ensuring collective ownership and sustainable management of public land. The article concludes by proposing legal reforms to strengthen public land protection within Tanzania constitutional and statutory regime.

Keywords: Public Land, Property Rights, Constitution, Legal Protection

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INTRODUCTION

Land is Tanzania's most important natural asset, not only as a source of riches but also as the foundation for social stability, cultural identity and political legitimacy.ⁱ Land control and ownership, particularly of state land, are paramount in national development, environmental protection and equitable access to resources. Public land, by definition, belongs to the State for the people and hence must be afforded strong constitutional and legal safeguard. The Tanzanian system of constitution, however, appears to concentrate more upon the protection of private property rights and is quite reserved on safeguarding as well as administering public land ownership.ⁱⁱ

However, Article 24 of the United Republic of Tanzania Constitution, 1977, gives a right to property and to protection of such property in accordance with law to every person. But the provision is narrow and is likely to be directed towards private ownership at the expense of collective or public interests. Accordingly, constitutional safeguards of property rights have been mainly crafted in the context of private ownership, with a constitutional lacuna in the protection of public land. This has pervasive implications for state responsibility, preservation of

resources sustainably, and protection of communal interests from misuse, illicit dispossession, or encroachment by political or private agents.ⁱⁱⁱ

Over various years, successive land laws such as, the Land Act and the Village Land Act have attempted to provide institutional arrangements for land management and control. However, these acts are in a constitutional environment that fails to clearly enshrine or accord paramountcy to public land ownership as a guaranteed constitutional right. This is weak constitutional anchorage, rendering public land protection unenforceable, limiting judicial intervention, and hindering the determination of state responsibility in instances of mismanagement or alienation of public land.^{iv} The issue of protection of public land thus raises fundamental constitutional questions: Should the Constitution explicitly recognize public land as a form of property that is also protected in a manner similar to private property? How can constitutional principles ensure the accountability of the public authorities in managing land resources for the benefit of citizens? These answers are crucial to helping Tanzania legal framework align with democratic governance, rule of law, and sustainable development.^v

Thus, this article examines the existing constitutional and legislative framework of property rights in Tanzania with a particular focus on their adequacy to protect the ownership of public land. It sets and addresses the constitutional loopholes that allow for ineffective institutional control and absence of accountability in the management of public land. The doctrinal and analytical approach to law, the article analyzes both the normative bases and actual-world consequences of these constitutional shortcomings. The ultimate purpose is to establish legal and policy reforms that can support the constitutional protection of public land so that it serves collective and intergenerational interests rather than exclusive or transitory private advantages.

CONCEPTUAL AND LEGAL FRAMEWORK

Land and Public Land Concept

Land has not been treated as a tangible object in law but has been given the meaning of encompassing the earth surface, the subsoil, the natural resources inherent thereon, and the space above. Land has been treated in jurisprudence as a bundle of rights rather than a tangible property. They include the right to use, possess, sell, and exclude others. According to the Tanzanian law, the definition of land is provided by section 2 of the Land Act, [Cap 113 R.E. 2023] and it provides that land encompasses the surface of the earth, things naturally or artificially affixed to it, and interests or rights in land.^{vi}

The public land is defined as land which is owned, controlled, or held by the State in trust for the benefit of the people generally. It is distinguished from private property, which is owned by individuals or groups with exclusive proprietary rights. Public land in Tanzania includes general lands not allocated to villages or private persons and forms part of the common national heritage. The Land Act classifies all land into three categories general land, village land, and reserved land which are all administered under the ownership of the President as trustee for all persons, in accordance with section 4(1) of the Land Act.^{vii}

From a conceptual standpoint, public land ownership implies that the State does not own land in the private sense but holds it in trust for the people. This doctrine of public trusteeship reflects the idea that sovereign power over land must be exercised for public benefit rather than for private accumulation or political favoritism. However, without strong constitutional guarantees, this trusteeship remains more theoretical than enforceable.^{viii}

Property Rights Concept

Property rights are the basis for economic and constitutional structures in the world. Property rights are legally established entitlements over control, utilization, and disposal of property, and they are protected to facilitate individual freedom, social stability, and economic development. Lockean theory of property believes that property rights are derived from a person's labor and the need for protection against arbitrary dispossession. In modern constitutional frameworks, the safeguarding of property rights is

also regarded as an inalienable human right, and that serves as a shield against state abuse of power.^{ix}

In Tanzania, property rights are constitutionally protected in Article 24(1) of the United Republic of Tanzania Constitution, where it is stated that "every person has the right to own property, and the right to have such property protected." Article 24(2) further provides that deprivation of property is possible only if it is in the public interest and with just and reasonable compensation.^x This is a provision that represents a liberal, individualist conception of property rights privately owned and one that does not include the collective basis of property as it relates to national resources, such as public land. Therefore, while the Constitution is very much in favor of protecting individuals against state intrusion, the State does not have an obligation of equivalent magnitude to hold and preserve public land against abuse, mismanagement, or corruption. This reflection of a very big constitutional loophole in conflict with the idea of collective ownership in the sense of a right of all citizens.^{xi}

Ownership and Trusteeship in Tanzanian Law

In the legal sense, ownership describes the highest interest anyone may have in property, consisting of rights of possession, use, and disposal. However, in Tanzanian land law, ownership is employed with a different meaning from that in the common law idea of freehold. All property in Tanzania is owned by the President as trustee for and on behalf of all citizens under section 4(1) of the Land Act and Article 4 of the Constitution. This arrangement means that nobody or institution owns land in absolute ownership but rather citizens hold rights of occupancy whether granted or customary and such shall be evidence of rights in use in land.^{xii}

This trusteeship model was previously guided by the 1967 Arusha Declaration that was socialist and emphasized collective ownership of property. The principle of the state trusteeship aimed at preventing land concentration among a few individuals and providing equal access. However, its application has been controversial. Since the President acts as trustee but simultaneously wields very extensive powers of land redistribution and distribution, this dual role can be susceptible to abuse, politicization, and lack of transparency in the use of public land. The Village Land Act and the Land Act provide procedural protection and institutional arrangements for land administration but are statute instruments below the Constitution. Inasmuch as the Constitution lacks explicit mention of public land as a protected category, legislative protection in these statutes remains vulnerable to the discretion of the executive. This is a pertinent constitutional and rule-of-law concern regarding accountability and separation of powers in land administration.^{xiii}

The Constitutional Dimension

The United Republic of Tanzania Constitution of 1977 does not explicitly declare the definition of public and private property. Article 24 broadly protects "property" without categorization or specific mention of land in public trust. Constitutional interpretation thus tends to favor individual rights rather than collective obligation. The courts have occasionally recognized the

right to property as a constitutional right, but there is limited jurisprudence that entitles the same to public or communal property. In addition, the Constitution does not provide for accountability of the government in misappropriation or alienation of public land. In contrast to countries like Kenya, where Article 62 of the 2010 Constitution specifically defines public land and subjects it to management by the National Land Commission, Tanzanian constitutional silence leaves protection of public land to statutory law, which can be readily modified without constitutional check.^{xiv}

This lack reveals a constitutional mismatch strong individual rights against weak collective safeguards. This skew undermines environmental justice, sustainable development, and equitable resource allocation, especially in a situation where land is the backbone of socio-economic existence.^{xv}

Legal Framework for Tanzania's Public Land Protection

The primary legal structures governing land ownership and protection in Tanzania include:

- (a) The United Republic of Tanzania Constitution, 1977, provides general protection for property rights (Art. 24) without particular reference to public land as a constitutional category.
- (b) The Land Act [Cap 113 R.E. 2023], prescribes principles of tenure over land, the trusteeship of the President, and administrative principles for the allocation and administration of land.
- (c) The Village Land Act [Cap 114 R.E. 2023], regulates customary land ownership and rural local government.
- (d) The Land Use Planning Act, 2007, provides principles for sustainable land use planning and environmental integration.
- (e) The Urban Planning Act, 2007, and Environmental Management Act, 2004, support protecting and managing public land resources in larger planning and ecological contexts.

Where these laws collectively regulate land use and management, their effectiveness is dependent on constitutional recognition of the obligation of the State in its constitutional obligation and duty of public trust to protect public land. In the absence of such constitutional anchor, statutory protection is always subject to executive arbitrariness and administrative abuse.

Constitutional Protection of Property Rights in Tanzania

Constitutional Basis of Property Rights

The Constitution of the United Republic of Tanzania, 1977, as amended, enshrines the right to property under Article 24. The provision is divided into two main subsections:

1. Article 24(1) states that "Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law."
2. Article 24(2) provides that "It shall be unlawful for any person to be deprived of property for the purposes of

nationalization, or any other purpose, without the authority of law which makes provision for fair and adequate compensation."

This constitutional provision recognizes the right to property as a fundamental right. However, the wording of the article "every person" reveals a strong individualistic orientation of property ownership. It implies that protection is accorded to private individuals or entities rather than to the collective ownership represented by public or state-held property. These Tanzanian Constitution, therefore, conceives property rights primarily as private entitlements that require protection from the State, rather than as public trusts that impose duties upon the State to safeguard national resources. This approach, while consistent with liberal democratic theory, has created significant constitutional imbalances in a country where most land is formally vested in the President and administered as public land.^{xvi}

The Public-Private Paradox in Constitutional Interpretation

The constitutional right to property in Tanzania exhibits what may be termed the public-private paradox. On one hand, Article 24 guarantees individual protection against unlawful deprivation by the State; on the other hand, the Land Act [Cap 113 R.E. 2023] vests all land in the President as trustee for all citizens.

As a result, the Constitution provides robust protection to private rights but weakens mechanisms to ensure accountability for misuse or alienation of public land. This imbalance effectively allows the State to act as both trustee and beneficiary, which contradicts the fundamental principles of public trust doctrine. In comparative constitutional theory, this omission contrasts sharply with progressive constitutions such as that of Kenya (2010), whose Article 62 explicitly defines and protects public land, and Article 40(3) restricts state power over all forms of property. The absence of such explicit recognition in Tanzania Constitution renders public land vulnerable to administrative discretion and political manipulation.^{xvii}

Judicial Interpretation and Constitutional Practice

The Tanzanian judiciary has occasionally addressed property rights in cases involving private land disputes or compulsory acquisition. However, very few judicial decisions have explicitly recognized public land as a constitutional category deserving protection. The general judicial trend reflects the dominance of individual ownership rights in constitutional jurisprudence. For instance, in *Attorney General v Lohay Akonaay & Another* [1995] TLR 80, the Court of Appeal affirmed that the right to property, including customary land, is protected under Article 24 of the Constitution. The Court held that any deprivation of such property without fair and adequate compensation is unconstitutional. While this case advanced protection for customary land, it also highlighted the Court's focus on individual property rights. The decision did not extend its reasoning to collective or public land ownership, leaving an interpretive gap in constitutional jurisprudence.^{xviii}

Similarly, in *Administrator General v Bibi Hawa Mohamed* [1983] TLR 32, the court reaffirmed that property rights must be respected and any deprivation must be lawful and compensated. However,

again, the case concerned private ownership and failed to address state obligations toward public property. The absence of case law on the protection of public land underscores the judicial reluctance or constitutional incapacity to expand Article 24 protection beyond private ownership. This limitation is partly rooted in the lack of constitutional clarity: courts can only interpret what is expressly or implicitly stated in the Constitution, and Article 24 does not explicitly recognize public land or collective ownership as a constitutional right.^{xix}

The State as Trustee and the Problem of Accountability

Under Section 4(1) of the Land Act, the President holds all land in Tanzania "as trustee for and on behalf of all citizens." The trusteeship doctrine implies a fiduciary relationship one based on accountability, transparency, and stewardship. However, in practice, this trusteeship has been weakened by the lack of constitutional mechanisms to hold the trustee (the State) accountable. In the Tanzanian context, the first two elements exist (the State as trustee, citizens as beneficiaries), but the third element the constitutional trust instrument is weak or absent. The Constitution neither defines the nature of the trust nor establishes mechanisms to ensure compliance with fiduciary obligations. Consequently, public land, though held "in trust," is vulnerable to political decisions, unlawful allocations and corruption without clear constitutional remedies. This weakness undermines the principle of public accountability and contradicts the ideals of democratic governance and sustainable development enshrined in the National Land Policy (1995) and Vision 2025.^{xx}

The Absence of Constitutional Remedies

While private property owners can invoke Article 24 and seek judicial redress when their property is unlawfully taken, there is no equivalent constitutional remedy for the public when public land is misused or alienated. The Basic Rights and Duties Enforcement Act [Cap 3 R.E. 2023] provides procedures for enforcing fundamental rights, but its applicability presupposes a clear constitutional right. Since public land ownership is not explicitly protected, its violation is not directly enforceable under this Act. This omission has practical implications. For instance, when public land is converted into private use through questionable allocations, affected citizens or civil society organizations lack a direct constitutional ground to challenge such actions. Their claims must rely on statutory law, which can be limited or overridden by executive authority. Hence, constitutional silence translates into legal invisibility of public land protection.^{xxi}

The Constitutional Gap and Its Implications

The gap in Tanzania constitutional framework concerning public land protection is not merely a theoretical deficiency it has tangible socio-legal consequences. The absence of explicit constitutional recognition of public land leads to:

Weak institutional oversight, as land management bodies operate without strong constitutional mandates, Limited judicial enforcement, since courts cannot expand Article 24 to cover unrecognized collective right, Increased vulnerability to corruption, illegal allocations, and misuse of land resources and erosion of

intergenerational equity, as public land may be alienated without regard to future citizens. These outcomes contradict Tanzania's commitments under regional and international instruments such as the African Charter on Human and Peoples' Rights (1981), which emphasizes the collective right of peoples to freely dispose of their natural resources.^{xxii}

INSTITUTIONAL AND PRACTICAL CHALLENGES IN THE PROTECTION OF PUBLIC LAND IN TANZANIA

Although Tanzania has a comprehensive legal and policy framework for land administration, the performance of these institutions in the protection of public land is highly questionable. The constitutional silence on the explicit protection of public land (as discussed in Section 3) has engendered institutional weakness, duplication of mandates, and weak accountability mechanisms. Accordingly, while the laws are broad on paper, their enforcement is undermined by political interference, capacity limitations, and the absence of constitutional anchorage. This chapter identifies and critically analyzes the key institutional and practical challenges that affect the protection and sustainable management of public land in Tanzania.

The Problem of Over centralization of Land Powers

One of the key institutional challenges is the over-centralization of land powers in the Presidency. Section 4(1) of the Land Act vests land in the President "as trustee for and on behalf of all citizens." While the provision was meant to promote equitable distribution, it has in practice created a highly centralized and discretionary land governance system under the executive. Such centralization undermines transparency and accountability, especially when decisions regarding public land allocation or conversion are made with insufficient public consultation. The President's trustee role, without constitutional checks or judicial review, has the consequence of reducing public land to a means of political patronage. Furthermore, the absence of a constitutional clause defining the limits of presidential powers over land has granted expansive administrative discretion, sometimes leading to questionable land allocations, revocations, or leases for personal gain in the guise of "public interest."

The Corruption and Political Patronage

Corruption is one of the most widespread problems frustrating the preservation of public land in Tanzania. The combination of centralized management and weak oversight provides fertile ground for corrupt land allocations, fraudulent titling, and use of public lands for personal benefits. Empirical study and reports from the Prevention and Combating of Corruption Bureau (PCCB) and Controller and Auditor General (CAG) have indicated cases where public land was given to private developers without following due process or compensating affected communities. These actions do not only undermine statutory procedures but also deplete the moral and legal basis of the public trust doctrine. The lack of constitutional guarantees also exacerbates the problem. Anti-corruption laws exist but operate in a fragmented manner and are not anchored in a clear constitutional mandate to protect public

resources. Consequently, enforcement of accountability remains weak and incoherent. This situation reflects what scholars have depicted as "legal opportunism" a phenomenon where government actors exploit legislative loopholes and constitutional silences to advance private or political interests in the name of legality.

Limited Public Awareness and Involvement

Another practical difficulty is the limited extent of public understanding of land rights and the doctrine of public trusteeship. The majority of citizens equate land ownership with private ownership, without being aware that public land is communally owned and that they have a stake in its management. This kind of ignorance perpetuates passive citizenship whereby illegal alienation of public land goes unchallenged. Public participation in land decisions remains limited despite the existence of statutory provisions for consultation under the Village Land Act and Land Use Planning Act. Land allocation and transfer decisions are, in practice, made by executive authorities without any meaningful community participation. Effective protection of public land requires informed citizen engagement, yet civic education on constitutional land rights has been weak. Without public pressure and oversight, government institutions lack accountability and hence continue to mismanage and lose public assets.

Weak Enforcement and Judicial Limitations

The judiciary in Tanzania plays a central role in the enforcement of property rights but exercises limited jurisdiction over public land. As the Constitution does not explicitly identify public land as a type of protected property, judges lack express constitutional authority to hear cases based on collective ownership or public interest. Further, procedural bars under the Basic Rights and Duties Enforcement Act [Cap 3 R.E. 2023] require petitioners to establish a direct violation of individual rights, which does not address public land abuse cases where harm is communal. This has impeded civil society and communities from pursuing public interest litigation to challenge unlawful alienations or environmental degradation of public lands. Institutional independence of the judiciary is also under siege from political interference and resource constraints, which further weakens its capacity to hold executive excesses in land matters in check.

Administration Weaknesses and Poor Record Management

Administration of land in Tanzania is marred by poor record keeping, outdated land registries, and lack of digitization. Such weaknesses create room for fraudulent allocations, double titling, and encroachment on public lands. Lands registries in the majority of districts are paper-based and thus vulnerable to tampering or loss and generally not accessible to the public. This sort of administrative opacity undermines transparency and abets corruption. In the absence of a centralized digital land information system, it is a laborious and inefficient task to locate, track, and protect public land. The government has initiated land reforms and pilot LIMS schemes, but there has been tardy progress due to financial and technical constraints. Without accurate data and records, even legal reforms, regardless of their intent, cannot ensure good governance of land.

Weak Constitutional Oversight Institutions

Unlike Kenya's National Land Commission (NLC) that has a constitutional mandate under Article 67 of the 2010 Constitution, there is no similar independent body in Tanzania with constitutional authority to hold and protect public land. Existing land institutions in Tanzania have statutory mandates and are therefore prone to political interference and revocation. In the absence of a constitutionally established land management institution, public land administration remains an executive discretion rather than an autonomous, accountable domain. Such institutional weakness limits the scope of checks and balances, thereby the persistent misuse of public land and concentration of authority in the executive branch of government.

RECOMMENDATIONS

The consequences of this study indicate that the Tanzanian constitution law provides ample protection to private property but remains insensitive to the protection of public ownership of land. This neglect has developed a pivotal constitutional deficiency that demeans accountability, transparency, and equitable administration of national resources. The security of public land in Tanzania cannot therefore be dependent on statutory law or administrative orders; it must be grounded in a strong constitutional framework. The following are recommended to strengthen the constitutional, institutional, and legal frameworks and policy frameworks governing public land in Tanzania.

First, there is an urgent need for constitutional reform to expressly provide that public land be declared a distinct category of property deserving of constitutional protection. The current constitutional terminology in Article 24 underscores the right of "every person" to property without placing any burden upon the State to protect land under public trust. Constitutional amendment to define public land would ensure that such land is not merely appropriated as a political commodity within the discretion of the executive, but as a shared heritage of all citizens. The Constitution would impose a fiduciary duty on the State to administer and preserve public land for the use of present and future generations, subjecting all decision-making in respect of public land to transparency, public participation, and sustainable development. In this regard, the Tanzanian constitutional process should take exemplary models such as the Kenyan Constitution of 2010, which sets out public land clearly and subordinates the administration of public land to public accountability.

Second, Tanzania must establish an independent and constitutionally entrenched Land Commission to oversee land management and provide for compliance with constitutional norms. Concentration of power in the hands of the executive, and particularly the office of the President, has been responsible for the politicization and misuse of land allocation. A constitutional Land Commission would provide a structural check on executive discretion through independent public land management, audit of improper allocations, and up-to-date and freely available land register. Its constitutional status would protect its autonomy,

exclude political interference, and ensure that its decisions are made solely on the rule of law and the public interest.

Inextricably linked to this is the imperative to codify and constitutionalize the Public Trust Doctrine. Though implied under the Land Act, its statutory form makes it feeble and vulnerable to being overridden by political or administrative determinations. The Constitution should now clearly state that certain resources, including land, forests, and water, belong to the State in trust for citizens. Codifying this doctrine into law would bring the moral concept of stewardship into a statutory obligation. It would enable courts to hold accountable public servants for misuse of trust every time public land is illegally transferred, diverted, or privatized for political or personal gain. This would give real substance to the concept of the State as trustee of public property.

Judicial enforcement must similarly undergo radical transformation. The current legal mechanism, namely the Basic Rights and Duties Enforcement Act, denies access to justice by confining constitutional petitions to cases of personal abuse of rights. This exclusionary practice excludes collective or public interest cases involving public land. The law should thus be amended to permit public interest litigation, which will enable citizens, civil society groups, and advocacy organizations to approach the judiciary in quest of judicial redress on behalf of the public when the public land is being alienated or misused. Such an extension of judicial jurisdiction would democratize access to justice and make protection of public land a governmental responsibility as well as a civic obligation. Also, the establishment of specialized land or environmental courts within the judiciary would optimize expertise and efficiency in disposing of such cases.

Coordination among institutions is the second important area that should be reformed. Tanzania's land management system consists of a number of institutions the Ministry of Lands, the National Land Use Planning Commission, and local land offices whose overlapping functions largely lead to duplication, inefficiency, and administrative competition. The government has to harmonize the mandates of these institutions and establish a central National Land Information System that brings together all land records and is transparent. Digitization of land registries, improved record keeping, and professional certification of land officers would diminish fraud, remove bureaucratic obstacles, and foster public confidence in land administration.

In addition, successful protection of public land depends on transparency and citizen participation. The government should institutionalize disclosure and public engagement in all major land allocation and planning activities. Public land leases and allocations should be advertised in the Government Gazette and on open-access online portals. Involvement of citizens, community groups, and local governments in decision-making would ensure that public land is developed in accordance with the public good and good governance. Implementing citizen oversight committees at the district and village levels can also help to monitor land use and report instances of misuse or illegal leasing.

CONCLUSION

In conclusion, this study has demonstrated that while the Constitution of the United Republic of Tanzania provides explicit protection for private property rights under Article 24, it fails to extend the same protection to public land ownership. This omission has created a profound constitutional gap that undermines the principles of accountability, equity, and sustainability in land governance. The doctrine that all land is vested in the President as trustee for the people, though noble in principle, has been weakened by the absence of clear constitutional duties and enforceable mechanisms to hold the State accountable for its stewardship. Consequently, public land has often been subjected to political interference, corruption, and administrative abuse, leading to loss of public trust and environmental degradation.

The study has further revealed that institutional fragmentation, weak judicial remedies, and limited public participation exacerbate these challenges. Therefore, effective protection of public land in Tanzania requires more than statutory reforms it demands a comprehensive constitutional and institutional restructuring that explicitly recognizes public land as a protected category of property. Embedding the public trust doctrine within the Constitution, establishing an independent land commission, strengthening judicial oversight, and enhancing public awareness are essential steps toward ensuring that public land is managed transparently and equitably for the benefit of present and future generations. Only through such reforms can Tanzania realize a constitutional order that reflects social justice, the rule of law, and sustainable development in the governance of its most valuable resource land.

END NOTE

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