



LAND AND RIGHTS POLICY

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1. DEFINITIONS AND ACRONYMS

ACRONYM	DESCRIPTION/MEANING
DLRRD	Department of Land Reform and Rural Development
DWS	Department of Water and Sanitation
EP	Equator Principle
ESMS	Environmental and Social Management System
IAPs	Interested and Affected Parties
IFC	International Finance Corporation
IPILRA	Interim Protection of Informal Land Rights Act
L&R	Land and Rights
L&R Plans	Project-Specific Land and Rights Execution Plans
L&R Section	A unit/function with the PMID, tasked with the day-to-day management of the land and rights processes.
PMID	Project Management and Implementation Division
PS	Performance Standards
PTO	Permission to Occupy State Land or any part thereof
TCTA	Trans-Caledon Tunnel Authority

2. TERMINOLOGY AND DEFINITIONS

TERM	DESCRIPTION/MEANING
Informal Rights Holders	Persons who are residents on State Land and have no formal tenure rights in respect of the land that they reside on
Directives	Ministerial Directives are issued periodically by the Minister responsible for Water and Sanitation, mandating TCTA to implement bulk raw water on behalf of the DWS.
Land and Rights Procedure	The document that sets out the standard process and procedure for the undertaking of land and rights activities across TCTA projects
Land and Rights Acquisition	The method by which TCTA obtains land and servitude rights, primarily through expropriation, agreements, and relevant legislation.
Policy	Land and Rights Policy
State Land	The South African Government holds the land through various government departments and agencies at both national and provincial levels. It includes land that falls under the custodianship of traditional authorities in communal settings.
Unregistered “Rights” Holders	Persons who lease land through some formalised arrangement (e.g., lease contracts that are short and are not registered against the title deeds of the subject land.

3. INTRODUCTION

TCTA plays a crucial role in helping the government fulfil its constitutional obligation to provide water through bulk raw water infrastructure projects on behalf of the Department of Water and Sanitation (DWS). A vital part of this role is acquiring the necessary land and rights for project implementation. This policy aims to streamline the processes for securing these assets.

This Policy is to be read in conjunction with the latest versions of the following TCTA policies, procedure and framework:

- Sustainability Policy
- Environmental Policy
- Project Compensation Policy
- Livelihoods and Resettlement Policy
- Land and Rights Procedure
- Social Management Framework

4. PURPOSE AND SCOPE

The purpose of this Policy is to provide the basis for initiating, managing, implementing, monitoring, and evaluating land and rights processes across all TCTA projects.

The scope of operation of this Policy applies to:

- All TCTA employees who are engaged in the management and implementation of the land and rights acquisition process.
- All TCTA employees who are involved in the planning, financing, and implementation of projects.
- All TCTA's contractors, consultants, or other specialists who, from time to time, are required to assist in the performance of mandated land and rights tasks under the supervision of the Land and Rights (L&R) Section.

5. POLICY STATEMENT

TCTA recognises the sensitivities of interested and affected parties arising from the acquisition of land and rights required for project implementation and is committed to minimising associated risks. Accordingly, this Policy provides a structured framework that enables the expeditious acquisition of land and rights in a lawful, reasonable, and procedurally fair manner.

Moreover, TCTA will endeavour to offer the affected parties fair and equitable compensation, which is market-related as provided for in section 25(3) of the Constitution.

6. PRINCIPLES

The following principles guide the land and rights acquisition process:

6.1 AWARENESS

Continuous gathering and appraisal of intelligence within the project area to better understand how to relate to individual, community, and project area dynamics.

6.2 CARE AND RESPECT

Treating interested and affected parties in a manner consistent with humility, respect, and dignity, regardless of an individual's circumstances and background, regardless of cultural or religious differences.

6.3 INTEGRITY

Adherence to ethical conduct, which underpins fairness, openness, and transparency.

6.4 CONTINUOUS IMPROVEMENT

As part of a continuous learning process, TCTA evaluates its processes to identify areas where improvements and enhancements can be made for incorporation into the Policy review process.

6.5 FAIR COMPENSATION

When TCTA acquires land and rights either through expropriation, agreement, or pursuant to the Interim Protection of Informal Land Rights Act (IPILRA) process, it offers affected parties just and equitable market-related compensation. The compensation is based on valuations undertaken by independent experts, including, but not limited to, valuers and agricultural economists.

7. POLICY OBJECTIVES

The key objectives of the Policy are:

- Standardisation of processes for acquiring land and rights across all TCTA projects.

- Adherence to South African legal prescripts, local and international leading practice standards, and codes.
- Compliance with guidelines and standards procedures set out in the L&R Procedure and project-specific L&R Execution Plans.
- Adherence to and advancement of TCTA values in all stakeholder engagements.
- Attainment of meaningful and lasting relations with interested and affected parties in the project areas.

8. REGULATORY FRAMEWORK AND STANDARDS

Acquisition of land and rights required for the implementation of TCTA projects is undertaken in accordance with the following regulatory framework, guidelines, and standards:

- South African Legislation (**Annexure A**)
- Local and International Best Practice, Standards and Codes (**Annexure B**)
- TCTA Policies and Procedure Codes (**Annexure C**)

9. APPROACH TO ACQUISITION OF LAND AND RIGHTS

The detailed land and rights acquisition process is fully set out in the L&R Procedure.

9.1 EXPROPRIATION

Due to the nature of TCTA's projects, the preferred method of acquiring land and rights is through expropriation, ensuring that fair and equitable compensation is provided. The authority to expropriate is derived from directives issued by the Minister of Water and Sanitation, which periodically mandates TCTA to implement bulk raw water infrastructure projects.

9.2 STATE LAND UNDER CUSTODIAN OF TRIBAL AUTHORITY

The IPILRA legislation enables the acquisition of land and associated rights from non-private landowners. The Department of Land Reform and Rural Development (DLRRD) functions as the primary custodian of State Land in various regions, where informal and unregistered rights holders reside. The DLRRD is responsible, among other things, for overseeing the acquisition processes between land developers, including TCTA, and the relevant tribal authorities involved.

9.3 UNREGISTERED RIGHTS HOLDERS

This group includes people leasing land through some formalised arrangement, such as lease contracts with registered landowners. Most of these leases are of short duration and are not registered against the title deeds of the subject property. The Expropriation Act requires that holders of these rights be compensated for any allowable financial losses incurred

9.4 INFORMAL RIGHTS HOLDERS

TCTA also recognises the rights that the law accords to Informal Rights Holders who reside on State Land. Included in this group are holders and non-holders of Permission to Occupy (PTOs). The people who fall under the above categories are deemed “owners” of the land or a portion of it that they occupy. Whenever encountered, these groups are afforded the same rights regarding the land they occupy as are owners of land held in the title.

9.5 ENGAGEMENT PROTOCOL

In keeping with the PAJA and IPILRA legislation, government directives, advice from DLRRD, and internal and external standards and codes applicable to the acquisition of land, TCTA will:

- Provide adequate notice of the nature and purpose of the administrative action.
- Undertake upfront extensive consultations and interactions (and maintain regular/ongoing contact with interested and affected parties).
- Allow the affected parties to review the information and the jurisdiction for administrative action.
- Offer the affected parties a reasonable opportunity to make representations.
- Respond promptly to queries from interested and affected parties.
- Offer support to the interested and affected parties to understand their rights and the legal and financial implications of the administrative action. For example, share information with interested and affected parties on a regular basis.

10. POLICY COMMUNICATION

Communication of Policy shall be effected in the manner below to enable the effective reach of targeted audiences:

- The signed Policy will be made available via SharePoint and the TCTA internet,

making it accessible to all internal and external stakeholders.

- As part of the engagement processes, the Policy will be made available to all interested and affected parties on request.
- The information-sharing session will be held with all employees of TCTA as part of the ESMS Awareness Programme.

The Policy shall be implemented in line with organisational strategic imperatives to ensure that the long-term objectives of the DWS in achieving water security for South Africa are fulfilled.

11. ROLES AND RESPONSIBILITIES

Functions	Roles and Responsibilities
TCTA Board of Directors	<ul style="list-style-type: none"> • Approve the Policy. • Approve any deviation from this Policy.
Human Capital, Social and Ethics Committee	<ul style="list-style-type: none"> • Ensure that the Policy complies with the applicable legislation. • Recommend any deviation from this Policy to the Board. • Recommend the Policy for Board approval.
Executive Committee	<ul style="list-style-type: none"> • Recommend the Policy for Board approval. • Approve project-specific L&R execution plans as per operational delegation of authority (ODOA).
Policy Committee	<ul style="list-style-type: none"> • Review the Policy and provide input. • Recommend the Policy to EXCO for consideration.
PMID Executive Manager	<ul style="list-style-type: none"> • Recommends the Policy for EXCO consideration. • Implement project-specific L&R execution plans within approved limits, including, but not limited to, expropriation approvals.
Senior Manager: Environment and Social	<ul style="list-style-type: none"> • Oversee effective management of the L&R Section, including implementation of this Policy. • Provide strategic direction for project-specific implementation of the Policy. • Guide land and rights activities.
Land and Rights Manager	<ul style="list-style-type: none"> • Oversee day-to-day management of the L&R Section, including implementation of this Policy.
Project Manager(s)	<ul style="list-style-type: none"> • Integrate L&R activities into the overall project programme. • Support the L&R Section as required.
Senior Manager: Legal	<ul style="list-style-type: none"> • Provide internal legal support for land and rights processes upon request from the L&R Section, including, but not limited to, drafting

Functions	Roles and Responsibilities
	<p>respective agreements and vetting of PAJA and Expropriation Notices.</p>
<p>Senior Manager: Procurement</p>	<ul style="list-style-type: none"> • Provide guidance and advice on procuring service providers for the L&R unit within the approved procurement policies and procedures framework. • • Ensure that all L&R procurement of service providers is conducted in accordance with the TCTA Procurement Policy and Procedure, National Treasury Instruction Notes, and prevailing procurement prescripts
<p>Compliance Officer</p>	<ul style="list-style-type: none"> • Participate in performance management processes and practices as set out in the Policy and Procedure. • Take accountability for implementing these performance management processes across the organisation. • Lead learning and developmental initiatives identified through the performance management process.

12. POLICY MONITORING AND REVIEW

This Policy will be evaluated during the annual ESMS management review process to ensure that it remains aligned with the organisation's goals, growth aspirations, commitments and needs. Interim revisions of this Policy will be done if the annual Management Review identifies a need for this. A comprehensive Policy revision will be conducted at least every three (3) years or on the date the President of South Africa declares the Expropriation Act 13 of 2024 operational. Revisions will ensure that the needs and interests of TCTA, its leadership, Stakeholders, and other interested and affected parties are accounted for.

13. EFFECTIVE DATE

This Policy shall become effective the following day after the Board's approval.

ANNEXURE A: DESCRIPTION OF PRIMARY LEGISLATION APPLICABLE TO LAND AND RIGHTS PROCESS

Key Legislations	Applicability
<p>The Basic Conditions of Employment Act, 75 of 1997 (BCEA)</p>	<p>Section 41 (severance pay) - An employee whose employment is terminated due to operational requirements changes is entitled to severance pay from their employer. Where 'TCTA's land takes renders redundant the work of an employee of the expropriated landowner, they assume the expropriated landowner's responsibility in terms of payment of severance pay.</p>
<p>The Communal Property Association Act, 28 of 1996 (CPA)</p>	<p>Provides an institutional framework for the registration and functioning of CPAs. The juristic persons are established to acquire, hold, or control property on behalf of and benefit specific communities. CPAs are juristic entities that have land assets, which TCTA may require for project implementation.</p>
<p>The Constitution of the Republic of South Africa Act, Act 108 of 1996 (Constitution)</p>	<p>Section 24 - Provides for the right to a safe environment that is protected in a manner that prevents pollution and ecological degradation, promotes conservation, and secures ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.</p> <p>Section 25 [property clause] provides for the expropriation of property, which may be expropriated only for (i) a public purpose or (ii) in the public interest, subject to payment of compensation.</p> <p>Section 33 [Fair procedure] - States that (1) everyone has the right to administrative action that is lawful, reasonable, and procedurally fair and that (2) everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. The PAJA legislation (below) gives effect to this constitutional provision.</p> <p>Item 28 (1) of Schedule 6 [Registration of immovable property owned by the state] provides for the intergovernmental transfer of immovable property through vesting. Involves the issuance of a "certificate" by (at present) the National Minister of Rural Development & Agriculture to enable the transfer of affected property through the deeds registry system.</p>
<p>The Deeds Registry Act, 37 of 1947</p>	<p>The transfer of land acquired by TCTA for project implementation is registered in accordance with the provisions of the Act. Some notable provisions applicable to the Act include Sections 31 and 32, which relate to the transfer of expropriated land and the registration of expropriated servitude rights, respectively.</p>

Key Legislations	Applicability
The Expropriation Act, 63 of 1975	<p>Provides mechanisms for the expropriation of property for “public interest and public purposes”. The Expropriation Act applies to land and rights matters in its entirety. Some notable provisions include:</p> <ul style="list-style-type: none"> • Section 8: The passing of ownership and exercising the right to use expropriated land. • Section 9: Duties of the expropriated landowner concerning acceptance or otherwise of the compensation offer. • Section 10: Final compensation offer made to affected landowners. • Section 12: The basis on which compensation is determined. • Section 13: Compensation for expropriated unregistered rights.
The Extension of Security of Tenure Act 62 of 1997(ESTA)	<p>Provides for measures to facilitate long-term security of tenure of certain groups of persons, “vulnerable persons” (e.g., the elderly and people living with disabilities) who live and work on the farms. The Act outlines regulations, among other things, to protect the right of residence of these persons. TCTA needs to be mindful of the rights afforded to these individuals under the Act, including the right to compensation for any household assets (including agricultural assets) that may be impacted by project implementation.</p>
Infrastructure Development Act No. 23 of 2014	<p>The act serves to facilitate and coordinate public infrastructure development, ensuring it is prioritised and aligned with the country’s development goals. This includes streamlining processes, improving project management, and promoting the efficient delivery of both social and economic infrastructure.</p>
The Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA)	<p>Provides for the (interim) protection of certain rights and interests of members of communities living on the land in respect of which they do not have formal tenure rights. Members of communities residing in this type of land, with or without PTO, are deemed the “land’s owners” and accorded all the appropriate rights.</p>
The Land Reform (Labour Tenants) Act, 3 of 1996	<p>Provides for the security of tenure of labour tenants and persons occupying and/or using land through their association with the first-named parties. Section 16 of the Act makes provision for labour tenants to acquire land and/or rights in respect of land they are already entitled to occupy or use. TCTA must be mindful of the rights accorded to these persons whenever they are encountered.</p>
The Land Survey Act, 8 of 1997	<p>The Act regulates land surveys in the Republic of South Africa. Therefore, land and rights acquired for TCTA projects must be surveyed in accordance with the requirements of this Act and its regulations, as this is a prerequisite for registering land and servitude rights.</p>
The National Water Act,36 of 1998 (NWA)	<p>The Act provides for, amongst other things, the protection, use, development, conservation, management, and control of water</p>

Key Legislations	Applicability
	resources. The most notable provision of the Act is Section 64, which authorises the Minister of Water and Sanitation to permit TCTA to expropriate land and rights required for implementing projects.
The Promotion of Administrative Justice Act, 3 of 2000 (PAJA)	<p>The Act gives effect to the right to administrative action that is lawful, reasonable, and procedurally fair, in accordance with the provisions of Section 33 of the Constitution. This applies to expropriation processes. TCTA is required, among other things, to:</p> <ul style="list-style-type: none"> • Follow fair procedure when making expropriation decisions. • Provide reasons for undertaking the process. • Afford the affected landowners a reasonable time to comment on the expropriation process and make representations.
The Property Valuation Act, 17 of 2014	Provides for the establishment, functions, and powers of the Office of the Valuer-General for regulating the valuation of property identified for land reform or any other reason (Section 12 (1) (b))
The Property Valuers Professions Act, 47 of 2000	Provides for the establishment of the South African Council for the Property valuers profession. TCTA appoints SACPVP registered valuers to conduct valuations for project implementation.
The subdivision of Agricultural Land Act,60 of 1970 (Act 70/70)	Subdivision of Agricultural Land Act, 70 of 1970 (SALA). The Act serves to control the subdivision of agriculturally useful land, preventing it from being fragmented into uneconomic portions. It does this by prohibiting the subdivision of agricultural land, save with the consent of the Minister responsible for agriculture.
Spatial Planning and Land Use Management Act (SPLUMA) No. 16 of 2013	To provide a uniform, effective, and comprehensive system for spatial planning and land use management in South Africa. This system aims to promote social and economic inclusion, ensure sustainable and efficient land use, and address past spatial and regulatory imbalances.

ANNEXURE-B: LOCAL AND INTERNATIONAL LEADING PRACTICE STANDARDS AND GUIDELINES

Guidelines	Requirements/Applicability
<p>Equator Principles III</p>	<p>The Equator Principles are a credit risk management framework for determining, assessing, and managing environmental and social risk in project finance transactions. It comprises the principles adopted by the Equator Principles Financial Institutions to ensure that the projects they finance are developed and implemented in a socially responsible and environmentally sound manner.</p> <p>Equator Principle 3, “Applicable Social and Environmental Standards,” requires that for all projecting countries not on the EP designated Countries List, project sponsors must adhere to the IFC PSs.</p>
<p>IFC’s Performance Standards on Environmental and Social Sustainability,2012</p>	<p>The IFC, a member of the World Bank Group, has adopted a set of PS focused on social and environmental sustainability. The IFC applies these standards to manage project-related social and environmental risks and impacts while enhancing development opportunities through its private sector financing. The IFC’s PS are widely regarded as international best practices concerning the impacts associated with significant project developments.</p> <p>PS 1-Assessment and Management of Environmental and Social Risk and Impacts: provides guidance on (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects, (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them, and (iii) the clients management of environmental and social performance throughout the life of the project..</p> <p>PS 5-Land Acquisition and Involuntary Resettlement: requires that if involuntary resettlement cannot be avoided, it should be managed appropriately through careful planning and the implementation of mitigation measures to minimise the socio-economic impacts arising from land acquisition or the restriction of land use. The use of negotiated settlements (compensation packages) that meet the requirements of this PS is encouraged to avoid expropriation and the use of government authority to enforce relocation. It further requires that livelihood restoration be undertaken.</p> <p>PS 7-Indigenous People: Aims to ensure that the development process fosters full respect for human rights, dignity, aspirations, culture, and natural resource-based livelihoods of indigenous People and requires the establishment of an ongoing relationship based on the informed Consultation and Participation (ICP) and achievement of Free Prior and Informed Consent (FPIC) of the Affected Communities of Indigenous People for the Proposed development.</p>

Guidelines	Requirements/Applicability
	<p>PS 8-Cultural Heritage: aims to protect cultural heritage from the adverse impact of project activities and support its preservation.</p>
<p>World Bank Environmental and Social Framework, 2017</p>	<p>Sets out the World Bank’s commitment to sustainable development through a Bank Policy and a set of ten Environmental and Social Standards designed to support projects, end extreme poverty and promote shared prosperity. The relevant Environmental and Social Standards (ESS) are:</p> <ul style="list-style-type: none"> • ESS 1: Assessment and Management of Environmental and Social Risks and Impacts • ESS 5: Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement • ESS 7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities • ESS 8: Cultural Heritage • ESS 10: Stakeholder Engagement and Information Disclosure
<p>World Bank Operational Policy 4.12: Involuntary Resettlement</p>	<p>Emphasises that involuntary resettlement should be avoided or minimised. Where it is not practical, the negative impact arising from there should be addressed through good faith, open and transparent consultations/negotiations. Restoration of livelihoods should be undertaken. This would include, without limitation, the provision of replacement housing/agricultural assets to ensure that the affected communities/individuals are not left in a worse position after resettlement.</p>
<p>International Bill of Human Rights</p>	<p>International best practice requires that companies respect and support the protection of human rights worldwide. Businesses should integrate sound human rights commitments into their company policies and decision-making processes and assess the actual and potential human rights impacts of their activities and relationships.</p>
<p>Global Reporting Initiative (GRI) Standards</p>	<p>Promotes sustainability reporting on the economic, environmental, social, and governance performance of businesses and governments, and expects companies to go beyond basic legal compliance.</p>
<p>King IV</p>	<p>The King IV Report on Corporate Governance requires, among other things, boards of companies to “ensure that the company is seen to be a responsible corporate citizen”. It proposes that boards have regard not only for the ‘organisations’ financial aspects but also for the impact business operations have on the environment and the society within which they operate.</p>
<p>Sustainable Development Goals (SDGs)</p>	<p>The SDGs require that countries achieve all 17 development goals by 2030. As such, TCTA will ensure that the following SDGs are considered when implementing projects:</p> <ul style="list-style-type: none"> • SDG-5: Inclusion of women when negotiating for land and rights

Guidelines	Requirements/Applicability
	<ul style="list-style-type: none"><li data-bbox="580 206 1487 282">• SDG-6: Ensure availability and sustainable management of water and sanitation for all.<li data-bbox="580 304 1487 477">• SDG-15: advocates for the protection, restoration, and promotion of sustainable use of terrestrial ecosystems, sustainable forestry, combating desertification, and halting and reversing land degradation and biodiversity loss.

ANNEXURE C: INTERFACE WITH OTHER TCTA POLICIES

Guidelines	Requirements/Applicability
Sustainability Policy (PMID-P-AD-1)	Supports TCTA’s business strategy in terms of commitment to improving livelihoods and contributing to the sustainability and transformation of the broader society.
Environmental Policy (PMID-P-AD-3 rev 2)	Commits TCTA to plan and implement its operations with due consideration of environmental sensitivity in a socially responsible manner and prioritising avoidance and limitation of negative impacts on the biophysical and social environment
Project Compensation Policy (PMID-P-AD-1-05)	Provides a standardised framework for determining compensation measures and options for different project-related losses to ensure equitable compensation to PAPs.
Resettlement and Livelihood Restoration Policy (PMID-P-AD-4)	Provides a standardised approach to avoid or mitigate the negative socio-economic impacts of involuntary resettlement and livelihood disruptions.

DIAGRAM 1: INTERFACE WITH OTHER TCTA POLICIES, PROCEDURES, AND FRAMEWORKS

