



Original Article

## Harnessing the Potentials of Free, Prior and Informed Consent in Tanzanian Legislation for Natural Resources Governance

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Free, Prior and Informed Consent (FPIC) is a necessary peace and harmony vessel in natural resource governance as it empowers communities to defend their resource rights in all resource-rich countries. Tanzania is a renowned, natural resource-rich country; hence, the exploitation of its natural resources is inevitable. The natural resource exploitation causes negative impacts on the lives of the people in which the resource exploitation projects are located. Embarking on FPIC in natural resource governance schemes is a dual gateway where communities safeguard their rights in respect of natural resources and investors get assured of a Social Licence to Operate (SLO). This paper examines the prevalence of FPIC rights internationally and whether internationally recognised FPIC can be ascertained and implemented in Tanzania to enable Project Affected People(s) (PAPs) to either “give” or “withhold” consent in pursuit of resource exploitation-associated rights. Doctrinal legal research methodology was employed to examine FPIC insights internationally and domestically, and to assess whether Tanzania can learn through the international FPIC platform in legislating for FPIC domestically. International and Tanzanian legal instruments were examined and pegged to determine the extent to which FPIC prevails in Tanzania. Content analysis and syllogism were used to analyse the contents. The results reveal that FPIC is internationally established and honoured. However, Tanzanian laws only gesture some FPIC principles; and the said FPIC gestures are not enshrined in any independent law. FPIC principles in Tanzania are just superficially and indirectly inferred in various law(s) related to natural resources. This paper recommends explicit legislated FPIC rights in Tanzania as they enhance good governance in the natural resource sector.

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## INTRODUCTION

The meaning of natural resources in Tanzania is legally founded. Legally established definition of natural resources entails national wealth, including all materials or substances occurring in nature, such as soil, subsoil, gaseous and water resources, flora and fauna, genetic resources, aquatic resources, micro-organisms, air space, rivers, lakes and maritime spaces. The ownership of Tanzanian natural resources is vested in all citizens of Tanzania, but the management is entrusted to the Government on behalf of the citizens; and the protection of natural resources is a compellable duty on all citizens (URT, 2017, s.3).

Principally, exploiting natural resources by a particular State is the State's right of sovereignty over natural resources; empowering the States and their people(s) to dispose of and/or exploit freely their natural resources. However, it is universally observed that natural resource-rich countries face some challenges related to balancing the right to development for all the people, usurped from the exploitation of natural resources and the rights of investors in the natural resource sectors. It is reported that the nature of natural resources exploitation projects often creates challenges when trying to balance the needs of the investors, the people and the environment (Sornarajah, 2004).

It is reported further that, whilst the investors are up to maximising profits from their investment projects, such projects attract large influxes of operations through which community land occupiers, usually the community's project-affected people(s) (the PAPs), encounter various harmful effects. Nevertheless, the governments

face no hindrances in exploiting natural resources, even when it takes grabbing land resources from the indigenous communities for the investments. As such, indigenous communities' environments are easily disrupted by investments in natural resources. Although the resource-rich host countries are made to believe that the admission of various investments in their territories creates a developed and prosperous economy with job creation and wealth generation, the PAPs suffer irreparably over matters which ought to have been mitigated through the implementation of FPIC (Bonephace, 2019; Sornarajah, 2004).

Development partners have gradually argued that resource-rich countries face a "resource curse", meaning that communities within the countries with abundant natural resources fail to fully benefit from their natural wealth, experience lower economic growth, experience higher rates of conflict and less political stability than countries with fewer natural resources (NRGI, 2018). Therefore, towards addressing the oppression against the PAPs over their rightful natural resources, the international community (development partners) have been gradually adjusting to developing "model" right-based guidelines which suit the needs of all the relevant parties in the exploitation of natural resources, *to wit*, the investors, host governments and the PAPs. It is already established internationally that, rights and obligations of the investors, host States and foreign investors should not impede the rights of indigenous communities' standards of protection, compensation for losses and limitations on requisition and expropriation of their land resources (Wang *et al.*, 2021). It is from that perspective that the international community is promoting FPIC as a tool of "balancing concerns."

## **The Meaning and Benchmark of Free, Prior and Informed Consent**

Free, Prior and Informed Consent (FPIC) is a set of human and business rights which need be exercised among and between the State, indigenous peoples and project implementers (investors) to make sure that the State admits investment projects whose repercussions are well known to the PAPs; and the PAPs are enabled to make free and informed choices about the development which is about to take place on their land (ADB, 2012). Free, Prior and Informed Consent are four-word clause. However, the three words qualify the last word “consent” as clearly explained herein under:

### ***The Meaning of Consent***

Consent refers to an agreement between the concerned parties, agreeing unanimously and at a scale of common understanding for something to take place (BSR, 2012). Therefore, on the word FPIC, the three words in the clause qualify the word “consent” in the light of *in situ* requirements for the consent to be free and prior informed. The details are as follows:

#### ***Free Consent***

For the consent to be “free”, it should be given without force, intimidation or manipulation. It is when the concerned parties agree to a common purpose in the same sense of mind or unison of mind, when the parties agree on a common purpose based on the same sense of understanding and on a common objective. Thus, when the consent is free, it must be ascertained to be granted free from coercion, fraud, misrepresentation, undue influence, and/or mistakes (Saleemi, 2012).

#### ***Prior Information for Purposes of Giving Free Consent***

For the free consent to be acquired and/or achieved, “prior” means that the consent is sought sufficiently in advance of any authorisation, implementation or commencement of project activities. The PAPs are informed on the intended investment project at early stages of developing

investment plans, and not only when the project is ripe.

#### ***Access to Information for Purposes of Giving Free Consent***

Lastly, when consent is obtained after the concerned parties are being properly “informed,” it means that, all the relevant information concerning the subject matter of the investment project is being availed and presented to the PAPs in a manner understandable, accessible and with possibilities of reversal; for them to demonstrate that they had time enough to be able to understand, debate and decide on the matters that affect their lives and to reach at suitable conclusions (Buxton, 2012).

#### **The Importance of FPIC**

In addressing why FPIC is essential in implementing natural resource investment projects, it is important to consider varying definitions of “natural resources”, the ownership of these resources, and the fact that every land-based project affects the area in which it is carried out. As discussed earlier, Tanzanian natural resources are owned and protected by its citizens, while the government is responsible for managing the exploitation on behalf of and for the benefit of the people. Similarly, citizens retain the right to be informed about how their resources are utilised and understand how to adapt to the resulting impacts. Some of the impacts irreparably impair the lives of PAPs, and thus upholding FPIC principles underscores the importance of the PAPs’ full involvement and their ability to voice their fate. According to (Buxton, 2012), the importance of upholding FPIC principles is as follows:

#### ***Ensuring Transparency and Accountability***

The FPIC process connects the PAPs with their government by informing the concerned PAPs on the prospective natural resource investment projects, plans and activities; and the extent to which such projects are likely to affect them both negatively and positively. Since the government acts on behalf of the citizens to make sure the

projects are implemented, it is equally bound to disclose the intended ventures so that the PAPs are aware and make their choices in respect of “surrender and receive” benefits accruing from the intended project activities.

### ***Peace Creation between the Host Governments, Projects Implementers and the PAPs***

Upholding FPIC serves to prepare a community’s mindset, perception and attitude towards benefiting and /or being aware of risks that may come along with the implementation of the intended investment projects. It ensures communities and indigenous peoples’ rights of participation in the decisions affecting their wellbeing. FPIC implementation assures that PAPs are genuinely involved in making decisions on their fate with respect to the consequences that natural resource investment projects bring on their land(s).

### ***Respect for Cultural and Traditional Sensitivity***

Considering FPIC in the implementation of investment projects empowers communities and indigenous PAPs to uphold their economic, social, and cultural rights by actively participating in decision-making and shaping development priorities to achieve their anticipated growth, *whilst* restoring their cultural values.

### ***Respect for the Community and Intergenerational Accountability***

Upholding FPIC principles manifests project implementers’ respect for local structures and the PAPs. International civilisation practices require a communal sense of ownership among the indigenous community. FPIC principles ensure that ancestral domains of the indigenous community’s ownership, which belong to all generations, are restored and sustained for future generations are not destroyed through investment operations.

### ***Harmonious Relationship between the Government, the Community and the Investors***

FPIC have tripartite effects. The prospective PAPs get access to sufficient information and

knowledge about the prospective investment projects so as to ascertain the extent to which they will be affected. If the prospective project involves grabbing land(s) and associated resources from the PAPs, they are likely to ascertain the associated consequences and resilience thereon. Implementation of FPIC is expected to enable the PAPs to make their informed decisions, whether to “give” or “withhold” their consent in respect of the prospective projects. FPIC also ensure peaceful implementation of the project as the investors acquire social licence to operate (SLO); and finally, by implementing FPIC, the government is commended for inclusive natural resource governance.

### **Objectives**

Examining the dimensions of FPIC in respect of natural resources governance, specifically:

- To explore the extent to which the FPIC set of rights prevailing internationally are also available in Tanzanian natural resources laws.
- To reveal the relevance of FPIC, provide insight into FPIC incorporation in Tanzania and recommend necessary measures with respect to FPIC incorporation in the Tanzanian legal regime.

### **Significance of the Study**

This study on FPIC is relatively new in Tanzania, and it reveals the extent to which Tanzanian natural resource laws lack FPIC aspects in respect of rights-based natural resource governance. It reveals a critical gap in respect of FPIC in the Tanzanian legal regime. Therefore, by examining the importance of FPIC as a cornerstone rights-based regime. This study serves to persuade Tanzania to align national practice with international human-rights norms, which improve community protection in respect of inclusive natural resource governance. This study maps where FPIC is redundant in Tanzanian natural resource-related laws and hence reveals the gap that has never been sported by any research in Tanzania. By revealing such gaps, policy and law

makers are properly guided towards necessary and targeted reforms in honour of FPIC in the Tanzanian legal regime. Again, the implementation of the findings of this study will strengthen safeguards for PAPs whilst promoting environmental justice and inclusive natural resource governance.

### Limitations of the Study

The FPIC study in Tanzania is a relatively new paradigm and a foreign aspect in the legal system. Therefore, being conducted in the field that has not been widely researched by many scholars within the country, it has suffered a limited body of literature to benchmark findings within the country, making it remain persuasive at the benchmark of international plane. The scarcity of prior research in Tanzania may be challenging in validating the conclusion and/or comparing the Tanzanian experience with broader regional and international contexts. The study has relied heavily on primary data, legal texts and limited case-specific evidence to persuade the importance of FPIC in natural resource governance. Thus, while the research contributes valuable new insights, its recommendations may face scepticism or require further empirical validation before influencing policy formulation, legal reforms and implementation.

### THEORETICAL PERSPECTIVES

Tanzania's richness in natural resources is obvious, and hence exploitation of these same is guaranteed for the development of the nation. Given the importance of FPIC, this paper underscores the existence of FPIC internationally, optimistic that, drawing from the existence of FPIC recognition internationally and the persuasion thereon, Tanzania ought to be persuaded to legislate for FPIC in Tanzanian natural resource laws. Therefore, this paper aims to investigate the extent to which Tanzanian natural resource laws contain FPIC promulgations as benchmarked by the international instruments; and to persuade Tanzania on the opportunities to learn lessons in respect of strengthening the laws and achieve *de jure* FPIC in the Tanzanian legal regime for natural resource good governance.

This paper reviews various researchers' views with respect to the prevalence of shortcomings in Tanzanian laws and their considered opinion on how the resource conflicts have occurred due to the said shortcomings of the laws. The summary of the reviewed literature is for making a case of this paper that, advancement of the legal regime by incorporating FPIC underscores opportunities to bring about a peaceful investment climate, a peaceful relationship between the government and its people and harmony among the PAPs and finally a harmonious relationship between the three parties.

**Table 1: A Summary of Literature(s) on Resource Conflicts in Tanzania**

Sn	Author	Investments Involved In Conflicts	Parties Involved In Conflicts	Place(S) Of Conflicts Reported In Tanzania	Author's Proposed Manner To Solve The Conflicts
1.	Mfugale, D. (2017)	Agribusiness Agriculture Tourism	Government Investors Communities	Mbeya Manyara Mtwara	Improve laws to confer definite land rights to communities.
2.	Masalu, L. (2022)	Agriculture Tourism Wildlife	Government Investors Communities	Kilwa	Shape land policies to reflect situations where the conflicting parties can act with agreements.
3.	Sulle, E. (2017)	Real Estate Tourism Agriculture Agribusiness Wildlife Mining	Government Foreign Investors Communities	Dar es Salaam Morogoro Arusha Manyara Tanga Mbeya	Improve land and Investment laws so as to make the whole process of land acquisition an inclusive process. Improve laws to ensure communities do not perceive investors as enemies.

Sn	Author	Investments Involved In Conflicts	Parties Involved In Conflicts	Place(S) Of Conflicts Reported In Tanzania	Author's Proposed Manner To Solve The Conflicts
4.	Kayera, H. (2024)	Agriculture	Government Investors Communities	Pwani Morogoro	Adopt international good practices which import safeguards of community natural resource rights.
5.	Kombe, W. (2010)	Real Estate Agriculture Agribusiness Tourism	Government Investors Communities	Pwani Dar es Salaam	Improve good governance and associated laws so that they would ensure inclusive and transparent in respect to rights over natural resources.
6.	Mwesiga, T.R., <i>et al</i> (2023)	Mining	Government Investors Communities	Geita	To have in place firm laws in place that will take on board the involvement of the community in major decisions affecting their livelihoods, enhancing communities' natural resources rights in their areas and transparency on natural resources decisions affecting their lives.
7.	Moyo, K.J., <i>et al</i> (2024)	Fisheries Wildlife Agriculture Tourism	Government Investors Communities	Reference to Tanzania without being specific on the region(s)	Since there is no recipe for resource conflict resolution in Tanzania, there should be designed new mechanisms for harmonious conflict resolution among relevant parties.

**Source:** *Author's Construction, 2025.*

## METHODS

This paper is a product of desk review, which is doctrinal legal research. It involved the systematic review and analysis of primary and secondary data sources. In legal research perspectives, laws are considered primary sources of data while other documents are secondary sources (Sandaerson, 2021). This method enabled the researcher to immensely explore international legal instruments and Tanzanian laws in respect of provisions relating to FPIC. This enabled the researcher to extract in-depth contextual insights on FPIC from international legal instruments, Tanzanian laws related to natural resources, various reports, published materials and textbooks.

A systematic review of documents was conducted. Peer-reviewed journal articles, Tanzanian laws, international legal instruments and relevant grey literature were accessed through academic databases such as Google Scholar, JSTOR, Research Gate and official websites of

government institutions, United Nations, in respect to rights attached to natural resource beneficial rights. The researcher employed targeted searches using terms like 'Free, Prior and Informed Consent', 'FPIC in natural resources exploitation', 'causes of resource conflicts' and 'citizens' ownership over natural resources' to identify relevant materials and ensure a broad and inclusive collection of sources. The inclusion criteria were as follows: (i) international (beyond Tanzanian borders) instruments addressing FPIC, (ii) Tanzanian laws relating to natural resources, (iii) availability of a text in the English language, (iv) credibility of sources (such as government published texts) and the objectives of this paper. About (100) documents were reviewed, but only (53) documents were key and relevant for this paper based on targeted inclusion and objectives. This selection process involved meticulous screening to confirm that each document directly contributed to understanding FPIC. The relevant,

selected and reviewed documents are presented in Tables 1 – 5.

The materials were analysed using qualitative content analysis and syllogism. Content analysis and syllogism refer to the abilities of the legal researcher to reason inductively and deductively so as to draw conclusions by weeding out unnecessary information and thus identifying key issues that answer the objectives of the study (Sandaerson, 2021). This approach allowed the researcher to engage deeply with the documents, identifying issues attached to FPIC for consideration in respect of the objectives of this paper.

## FINDINGS AND DISCUSSION

### FPIC Awareness and Acknowledgement Internationally

Bidding for the introduction and implementation of FPIC rights in Tanzania may be a relatively new paradigm. However, it should not be perceived as such, given cognition and persuasion

internationally through various instruments. Although some international legal instruments are legally binding on Tanzania and others are non-binding, nevertheless, even the non-binding serve as valuable persuasive tools in shaping legal doctrines (Buxton, 2012). Equally, this paper echoes the need to learn, acknowledge and “harness” the usefulness of FPIC from beyond Tanzanian “borders;” tap the lessons for strengthening the Tanzanian legal regime. Moreover, key international development stakeholders’ insights on FPIC are recommended for building a foundation for an affirmative multi-stakeholder process (MSP). The MSP is fundamental in respect of decision-making and an informative platform for sharing relevant information at all required levels for “affirmative actions” (Adam, 2017). Therefore, both compelling and non-compelling economic and political international legal instruments were reviewed, pegged with the Tanzanian legal regime to ascertain whether the FPIC principles embraced internationally exist in Tanzanian laws.

**Table 2: A Summary of Reviewed International Instruments**

S/N	Document	Year
1	International Covenant on Civil and Political Rights (ICCPR)	1966
2	The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)	1948
3	International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966
4	World Bank Guidelines	2016
5	International Labour Organization (ILO) Convention	1989
6	International Finance Corporation (IFC) Guidelines	2012
7	The Organisation for Economic Co-operation and Development (OECD) Guidelines	2011
8	Food and Agriculture Organization of the United Nations (FAO) Guidelines	2016
9	International Council on Mining and Metals (ICMM) Principles	2002
10	International Petroleum Industry Environmental Conservation Association (IPIECA) Toolbox	2018
11	United Nations Development Programme (UNDP) Principles	2009
12	The Extractive Industries Transparency Initiative (EITI) Declarations	2022
13	Economic Community of West African States (ECOWAS) Directives	2009
14	Southern African Development Community (SADC) Guidelines	1992
15	East African Community (EAC) Treaty	2000
16	International Conference on the Great Lakes Region (ICGLR) Principles	2008

**Source:** *Author’s Construction, 2025*

**Table 3: The Summary of FPIC Promulgation in the International Legal Instruments**

S/N	The Document (Year)	Findings
1	ICCPR (1966)	All people(s) have the right to self-determination, to freely pursue their economic, social, and cultural development, and to freely dispose of their natural wealth and resources <i>whilst</i> being secure in their means of subsistence.
2	UNDRIP (1948)	Indigenous peoples shall not be forcibly removed from their lands and/or territories, nor relocated for investment operations without their free, prior, and informed consent; the consent which shall be followed by just and fair compensation.
3	ICESCR (1966)	Since every individual human being has the right to an adequate standard of living, including the right to access adequate food, clothing and housing. No person shall be deprived of the means of living without the rights of being fully informed and adequate rights to say “yes” or “no” on matters which take place over own lands and resources.
4	World Bank (2016)	All World Bank-funded projects must ensure that Project-Affected Persons (PAPs) are fully consulted and their voices respected on the prospective projects on their land(s). Again, the Environmental Impact Assessments (EIAs) shall be conducted to ascertain potential project impacts for the purposes of restoring the livelihoods to acceptable standards.
5	ILO Convention (1989)	States must consult with indigenous PAPs and ensure the said consultations are undertaken in good faith, in a form appropriate to the circumstances and with the objective of achieving consent. The governments must enact procedures to effect fair and effective consultation procedures with PAPs.
6	IFC (2012)	IFC-funded investors shall ensure FPIC procedures are carried out exhaustively irrespective of the fact that the host government have no such procedures in their legal regime. The IFC-funded investors shall design and maintain the FPIC toolbox as a tool for acquiring SLO and managing risks.
7	OECD (2011)	All countries shall have in place policies and laws that foster prosperity, equality, opportunity and well-being for all people. Natural resource investors must respect human rights, exhaust FPIC requirements irrespective of a host State’s ability or willingness to fulfil their own human rights obligations.
8	FAO (2016)	In order to ensure food security for all people in the world and make sure that people have regular access to enough high-quality food for healthy lives, all FAO-supported projects shall be guided by FPIC principles put in place by FAO.
9	ICMM (2002)	All ICMM multinational members commit to engage and consult with indigenous PAPs in a fair, timely and culturally appropriate way throughout the investment project’s cycle. And where multinationals discover that the host governments have not fully embraced FPIC, they are at liberty to presume the absence of the SLO and rescind to proceeding with the prospective investments.
10	IPIECA (2018)	All IPIECA members shall promote environmentally responsible operations in natural resource sectors to advance protection of the natural environment, minimise and mitigate risks and acquire SLO in fairly possible manner.
11	UNDP (2009)	All indigenous peoples have the right to own, use, develop and control their lands, natural resources and territories that they have traditionally owned, occupied or otherwise used or acquired. Therefore, no project supported by UNDP will result in the forcible removal of indigenous peoples from their lands and territories without prior carrying out exhaustive FPIC rights.
12	EITI (2022)	In order to maximise transparency, accountability by the governments of all nations to their citizens and for the stewardship; no investment projects shall be carried out

S/N	The Document (Year)	Findings
		unless genuine and meaningful FPIC procedures are undertaken before concrete agreements to invest in the EI are concluded.
13	ECOWAS (2009)	Investor companies shall exercise FPIC procedures on local communities before exploration begins and keep records of FPIC agreement(s) throughout the mining cycle.
14	SADC (1992)	All projects which are implemented on traditionally Owned land(s) must be preceded by a continuous process of meaningful consultation and the participation of indigenous people. This includes carrying out meaningful FPIC procedures and making sure their relinquished traditional rights and privileges are taken away from them after their consent.
15	EAC (2000)	States shall manage the environment and natural resources in the EAC in accordance with the principles of public participation and the principle of free, prior and informed consent.
16	ICGLR (2008)	States shall avoid development-induced displacements, and when displacement is justifiable by the law(s), on compelling and overriding public interest for development(s), States shall undertake FPIC among the PAPs.

Source: *Author's Construction, 2025.*

### The Echo of FPIC International Standards in Tanzania

Drawing from FPIC standards internationally, Tanzanian laws are analysed to ascertain the level of FPIC prevalence in the Tanzanian legal regime. Parent Acts are considered in disregard of subsidiary legislation because the parent Acts

would contain signals of the presence of relevant regulations (if any) in respect of FPIC. Therefore, the fact that this paper has analysed only the parent Acts means that the parent Acts have not provided for any enabling subsidiary legislation in respect of FPIC, which would have been considered for a review.

**Table 4: Summary of Reviewed Tanzanian Natural Resource Laws**

S/N	The Document	Year
1	The Constitution of the United Republic of Tanzania	1977
2	The Forest Act (FA)	2002
3	The Wildlife Conservation Act (WCA)	2022
4	The Tanzania Investment Act (TIA)	2022
5	The Environmental Management Act (EMA)	2019
6	The Mining Act (MA)	2019
7	The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act (NWRRCRA)	2017
8	The Natural Wealth and Resources (Permanent Sovereignty) Act (NWRPSA)	2017
9	The Petroleum Act (PA)	2015
10	The Tanzania Extractive Industries (Transparency and Accountability) Act (TEITA)	2015
11	The Land Act (LA)	2019
12	The Village Land Act (VLA)	2019
13	The Land Acquisition Act (LAA)	2019

Source: *Author's Construction, 2025.*

## FPIC Signals in Tanzanian Laws

Table 5: Summary of FPIC Signals and Inference in Tanzanian Reviewed Laws (Acts)

SN	Reviewed Act	Relevant Signalling Section	Extent of Relevance on FPIC	Deficiencies
1.	The Constitution (1997) R.E 2023.	Art. 30: Directs all Tanzanian relevant laws to have provisions that ensure adherence to the principles of democracy, social justice and upholding the welfare of all the people without discrimination	FPIC Partially Inferred	It does not expressly mention which specific laws must exhaust the requirement of Article 30.
2.	The Forest Act (2002) R.E 2023.	S. 3(b): Promises to honour “active participation” of all “individual and community rights” in all stages of planning and management of forest resources.	FPIC Partially Inferred	It does not lay the foundation by “outlining” and “defining” the rights of individuals and those of communities for purposes of effective <i>de jure</i> FPIC rights.
3.	The Wildlife Conservation Act (2009) R.E 2023.	Ss. 3 & 5: Assures to promote and facilitate active “involvement” and “participation” of local and traditional communities in the sustainable management of wildlife resources in and outside the PAs and to make sure all indigenous people get tangible benefits accruing from wildlife resources.	FPIC Partially Inferred	The dimensions of “individual rights, community rights, the meaning of indigenous people and /or community for purposes of optimising <i>de jure</i> FPIC rights are not established.
4.	The Tanzania Investment Act (1997), R.E 2023.	Ss. 25&26: Directs the “Government” to ensure all investment operations in the country are carried out in a manner “legitimate” to social and economic rights.	FPIC Partially Inferred	It does not expressly provide the dimensions of “legitimate” social and economic rights that require FPIC rights, as far as the rights may be necessarily demanded in investment processes.
5.	Environmental Management Act (2004) R.E. 2023.	Ss. 81&89. Assures “public participation” of all the people in the environmental affairs affecting their lives, requires compliance, enforcement and implementation of international instruments on the environment. Require conducting EIA and SIA before effecting landed projects.	FPIC Partially Inferred	The promised “public participation” of all the people is not fully reflected in the procedures for conducting EIA and SIA to the extent required by FPIC.
6.	The Mining Act (2010), R.E. 2023.	s. 97: It recognises injuries which ought to be sustained by the PAPs in case minerals are to be extracted from the respective land(s).	FPIC Partially Inferred	Investors are the ones empowered to plan for PAPs reparation, such as compensation, relocation and resettlement.
8.	The Natural Wealth and Resources Contracts (Review	S.6: It requires all arrangements in which the exploitation of natural resources disfavours the		It does not provide for mechanisms and procedures in which

SN	Reviewed Act	Relevant Signalling Section	Extent of Relevance on FPIC	Deficiencies
	and Re-Negotiation of Unconscionable Terms) Act (2017), R.E. 2023.	citizens to be unconstitutional and dismantled accordingly. It declares all arrangements that disfavour the citizens to be “unconscionable”	FPIC Partially Inferred	citizens’ rights ought to be favoured. But rather empowers the National Assembly to declare all disfavouring sects unconscionable and expunged from the proposed arrangement.
9.	The Natural Wealth and Resources (Permanent Sovereignty) Act (2017), R.E. 2023.	Ss. 4 – 6: It bestows the ownership of natural wealth and resources on the citizens. It requires the interests of the citizens to be taken on board in all the procedures required to exploit natural resources.	FPIC Partially Inferred	It does expressly provide for what interests of the citizens must be taken on board and what procedures ought to be followed in honouring such interests.
10.	Petroleum Act (2015), R.E. 2023.	S. 212: It recognises the damage to the PAPs which ought to occasion in the petroleum extraction. It requires the investors to be responsible for the damage caused by investment operations.	FPIC Partially Inferred	It does not provide for avenues for the PAPs can pursue reparation in respect of damage caused by the operations of the investment projects.
11.	The Tanzania Extractive Industries (Transparency and Accountability) Act (2015) R.E 2023.	S.10: It requires that the benefits emanating from the EIs are verified, duly accounted for, and prudently utilised for the benefit of the citizens of Tanzania. It guarantees to promote effective citizen participation and awareness of EI companies and their contribution to the socio-economic development of the people.	FPIC Partially Inferred	It does not expressly provide for the meaning of “effective participation” of the citizens, and it does not specifically provide what ought to be “effective participation of the citizens” and the manner it should be pursued.
12.	The Land Act (1999), R.E. 2023.	Ss. (3, 6&22): It declares land rights to be exclusively “possessing,” “occupying”, and “using” as opposed to “owning. Nevertheless, it promises land rights holders full, fair and prompt compensation in case prospective investment operations require the dispossession of land rights.	FPIC Partially Inferred	It does not require land rights owners’ involvement in the processes, which may require the dispossession of their land rights.
13.	The Village Land Act (1999), R.E. 2023.	S.3: It promises that the villagers citizens must be enabled to participate in decision-making on matters connected with their occupation and/or use of land. It also assures to pay full, fair and prompt compensation to any person whose land rights is	FPIC Partially Inferred	It does not mention the applicable procedures to enable the villager citizens to exercise the said “participation.” The “public interest” which attracts payment of <i>full, fair and prompt compensation</i> to the

SN	Reviewed Act	Relevant Signalling Section	Extent of Relevance on FPIC	Deficiencies
		distinguished in whatsoever manner for public interests.		disposed land right owners is not defined.
14.	The Land Acquisition Act (1967), R.E. 2023.	S.4: It acknowledged the fact that there are prospective and potential PAPs in case the government carries out “public purpose projects.”	FPIC Partially Inferred	It does not provide for the manner required to make reparation on prospective and potential PAPs.

**Source:** *Author's Construction, 2025.*

## Towards FPIC Rights Incorporation in Tanzania

### *De Facto versus De Jure FPIC Rights in the Tanzanian Legal Regime*

It is keenly analysed that Tanzanian laws partially contain FPIC principles. To that effect, there are *de facto* FPIC elements as opposed to *de jure elements*. The hindrances towards *de jure* FPIC recognition in Tanzania include the following.

#### ***Lack of Relevant Policy and Law on FPIC***

There is neither a policy nor an express law in Tanzania providing for FPIC rights and procedures. As such, FPIC rights and procedures are “foreign terms” to be a subject in the Tanzanian legal regime. Since there is neither a policy nor a law to that effect, one cannot expect to witness *de jure* FPIC rights implementation in Tanzania.

#### ***Claw-back Clauses in the Constitution***

Claw-back clauses are provisions and expressions in the Constitution (and other laws) with the effect of limiting and /or denying the rights which are already being guaranteed by the same legal regime. Although the Constitution of Tanzania is tailored specifically to capture the Tanzanian context in respect of justiciable rights, it is not free from contentions due to its inadequate coverage of FPIC rights. All the promulgated rights in respect of all individuals suffer limitations by the operation of claw-back clauses that plague on all the laws of the land. In Tanzania, the Constitution has primacy; therefore, the limitations availed in the constitution impact all the laws of the land. Claw-back clauses have the effect of limiting

some rights from being justiciable, even if such rights are already legit in various laws of the land. For that reason, claw-back clauses are detrimental to the protection of all the rights, including FPIC rights.

#### ***The Rhetoric of Public Interest in Tanzanian Laws***

Public interest is not defined by any law in Tanzania. However, the constitution establishes a “public interest paradigm” to limit the rights and freedoms which are set out in the Constitution. The Constitution provides that, whatever rights are provided in the constitution shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of “the public interest.” The constitution outweighs justiciable rights and freedoms of the people if the same have the effects of prejudicing the interests of the public, irrespective of whether the same are eroding the rights and freedoms of individuals. The rights and freedoms which are hindering and/or delaying rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property of any other interests for the purposes of enhancing the public benefit are not justiciable in Tanzania (URT Constitution, Art. 30). Therefore, considering the seemingly FPIC rights which ought to be exercised under the legal regime in Tanzania, it is evident that they are seemingly paralysed by claw-back provisions of the constitution.

***Extinguished Ownership of Interests in Land***

FPIC rights ought to be guaranteed to land rights holders. In Tanzania, it is expressly provided that citizens do not fully own land rights. Community land rights are limited to occupying, possessing and using the land (s). Even the legal right to that effect, which is the Granted Right of Occupancy (the GRO) to the said possession rights, is granted in the name of the president. The president decides matters of land development on behalf of the citizens (URT, 1999). The president is at liberty to acquire any land and subject it to the usage which is presumed “for public interest.” Therefore, there are no avenues in the Tanzanian legal regime for consent to use land for development projects to be discussed and rather consent is to be sought from individual land right holders. When it comes to natural resources, land right holders are said to possess “surface rights” only. It is these surface rights that are compensated for loss, to the tune of “exhausted improvements,” if individuals vacate their land to permit the aforethought natural resource investment projects.

***Available Alternatives for Meeting the Needs of the PAPs***

Tanzanian legal regime on EI has a relatively similar approach to FPIC, which is used to mitigate the effects on PAPs. This is Corporate Social Responsibility (CSR), which is legally compelled on project developers. Insofar as the EI is concerned, investors are compelled on an annual basis to prepare a credible CSR plan, jointly agreed by the relevant local government authorities and the PAPs. Every local government authority where there is EI PAPs is required to prepare guidelines for CSR within their localities, oversee the implementation of the CSR action plan and provide awareness to the public as to the reasons for the activities. This arrangement may seem sufficient and equivalent to FPIC in Tanzania, but there is no “voice” of the real PAPs in the whole arrangement of CSR, and thus, the arrangement lacks the elements of *de jure* FPIC.

***Sovereignty of the State over Resources and the Rhetoric of Public Interest***

Much as there are relevant international persuasive FPIC procedures, the government enjoys international law principles on permanent sovereign rights over the State’s own natural resources and associated rights on exploring, exploiting and managing on behalf of the people. To that end, the government has considerable discretion in instituting compulsory actions in respect of exploiting its own natural resources in whatever manner, as long as the same is carried out for the benefit of the people. It is through the pursuit of “the State’s Sovereignty” that FPIC rights may be negated under the “shelter” of implementing developmental projects for “public purposes” and for the “public interests”, a matter which, according to the sovereignty of the State, must never be questioned by any governing body against the State owner of the natural resources. Until today’s existing legal regime in Tanzania, “the public interests” has no legal definition.

***Cost for Reparation of PAPs***

There is no express law in respect of shared responsibilities between the investors and the investment host government in respect of the reparation of PAPs when the need arises. Since FPIC rights implementations are costly, in terms of both time and pecuniary, challenges may rest on whether the responsibility for implementing FPIC rests on the government or the investors. This dilemma undermines FPIC rights to surface at their broader potentials in favour of PAPs in Tanzania.

***FPIC Green Lights in Tanzania***

Despite the deficiencies of FPIC rights in Tanzanian legislation, the East African Crude Oil Pipeline (EACOP) broke the yoke by signing an FPIC agreement with the PAPs in the Manyara region, Tanzania, in 2023. Signed between the EACOP and the Taturu Community of Mwamayoka, the said agreement was a result of more than six (6) years of engagements and consultations with PAPs by the EACOP project proponents (EACOP, 2023). According to the

agreement, EACOP honours the rights of the PAPs in respect of the effects of the project at the scale of recognisable human rights standards “internationally.” Analytically, FPIC agreement succeeded, not because Tanzania has a supporting legal regime in respect of FPIC, but because of the EACOP’s good policy on FPIC rights over the PAPs owed from an international recognition perspective.

## CONCLUSION

The Tanzanian legal regime has no exclusive and express legal instrument legislating for FPIC rights, principles and procedures. Nevertheless, some of the laws which are discussed in this paper revealed that FPIC principles are to some extent gestured in the Tanzanian legal regime. The available FPIC declarations in the law(s) are *de facto* FPIC principles in Tanzania, which signify that transforming to *de jure* FPIC in Tanzania is feasible.

Tanzanian legal regime neither bears express FPIC declarations nor hinders to full exhaustion of *de jure* FPIC rights implementation. It can be clearly drawn from the existence of the EACOP 2023 agreement. It was not “illegal” for the EACOP-FPIC agreement to be drawn between the respective parties. Moreover, lessons from the formation of the EACOP 2023 are to the effect that the presence of express FPIC rights and procedures would have saved time consumed in establishing it if it was an obvious procedure in the legal regime.

Therefore, FPIC implementation requires a series of manifested performances. Firstly, it requires informing the PAPs about what is about to take place in their land(s). In a language clear to the PAPs, they should be informed about both the negative and positive impacts of the intended projects. Secondly, when the respective PAPs are discovered to have particular barriers towards FPIC processes, there should be time for the PAPs to choose their mode of representation towards understanding the terms of the proposed impacts and respective intervention. Thirdly, there should be mechanisms to ensure that PAPs groupings:

(women, children, the disabled and all other forms of disadvantaged) have been able to understand the investors’ propositions in FPIC agreements; either directly or through “meaningful” representation; and decide their fate in respect of the proposed projects. Lastly, there should be “power balancing” mechanisms between the PAPs and the projects’ proponents, upon which the PAPs’ decisions to “give” or “withhold” consent in respect of their lands are respected. And when the consent is granted, there should be properly established *fora* and procedures through which the consent can be “withdrawn” by the PAPs when the terms of FPIC agreements have not been fulfilled.

Generally, *de jure* FPIC requires maximum engagement with the PAPs by providing avenues for PAPs, not being coerced, pressured or intimidated to consent freely and authorise development activities in their lands. Given the qualities of *de jure* FPIC, the current Tanzanian legal regime is redundant of basic FPIC elements and hence does not provide for exhaustive FPIC elements. Nevertheless, FPIC in its full meaning can be achieved through relevant reforms.

## RECOMMENDATION

Since relevant natural resource laws suffer particular deficiencies towards *de jure* FPIC, Tanzania should enact a particular law to exhaust FPIC requirements in respect of natural resource governance. FPIC implementation is essential and presents a myriad of benefits such as creating determinable prospects among the PAPs, investors and the government *whilst* executing natural resources investment projects. It lays the grounds for community empowerment and enhances their understanding of their rights and responsibilities in natural resource management, and is hence influential in the pursuit of harmony in natural resource governance. Lastly, since the Tanzanian legal regime already harbours some *de facto* FPIC, it is not a tedious step to advance into legislating for *de jure* FPIC for assured and inclusive natural resources good governance.

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