

# LAND ACQUISITION POLICY

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# 1. ACRONYMS AND DEFINITIONS

ACRONYMS	DESCRIPTION/ MEANING
DALRRD	Department of Agriculture, Land Reform, and Rural Development
DWS	Department of Water and Sanitation
ESMS	Environmental and Social Management System
IAPs	Interested and Affected Parties
IFC	International Finance Corporation
IPILRA	Legislation that provides for acquisition from Informal 'Rights' Holders and Unregistered 'Rights' Holders of land and rights situated on State Land
LA	Land Acquisition
LA Plans	Project-specific Land Acquisition Execution Plans
LA Section	A unit/function within PMID which is tasked with the day-to-day management of land acquisition processes
PMID	Project Management and Implementation Division
PTO	Permission to occupy State Land or any part thereof
TCTA	Trans-Caledon Tunnel Authority

### 2. TERMINOLOGY AND DEFINITIONS

TERM	MEANING
Informal	Persons who are resident on State Land and have no formal tenure
Rights	rights in respect of the land that they reside on
Holders	
Directives	Ministerial Directives are issued from time to time by the Minister
	responsible for Water and Sanitation, mandating TCTA to
	implement bulk raw water on behalf of the DWS
LA Work	The document that sets out the standard process and procedure for
Instruction	the undertaking of land acquisition activities across TCTA projects
Land and	Whole land take areas and servitude rights acquired for project
Rights	implementation
Policy	Land Acquisition Policy
State Land	The land is held by the RSA Government through government
	departments/agencies, whether at national or provincial levels. It
	includes land that falls under the custodianship of traditional
	authorities in communal settings
Unregistered	Persons who lease land through some formalised arrangement; for
'Rights'	example, lease contracts that are short and are not registered
Holders	against title deeds of the subject land

#### 3. INTRODUCTION

TCTA fulfils a vital mandate of supporting the government attains its constitutional obligation of water provision through implementation on behalf of the DWS of bulk raw water infrastructure projects. Critical to ' 'TCTA's performance of this mandate is the acquisition of land and rights required for project implementation. This Policy supports the effective and efficient execution of the processes to acquire the required land and rights.

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

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

#### 4. PURPOSE AND SCOPE

The purpose of the Policy is to provide the basis for the initiation, management, implementation, monitoring, and evaluation of land acquisition processes across all TCTA projects.

The scope of operation of this Policy applies to:

- All TCTA employees engaged in the management and implementation of the land acquisition process.
- All TCTA employees involved in the planning, financing and implementation of projects.
- All ' 'TCTA's contractors, consultants, or other specialists may, from time to time, be required to assist in the performance of mandated land acquisition tasks under the supervision of the LA Section.

#### 5. POLICY STATEMENT

TCTA recognises 'interested and affected parties' sensitivities 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 lawfully, reasonably, and in a procedurally fair manner.

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

#### 6. PRINCIPLES

The land acquisition process is guided by the following principles:

#### 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, be it cultural or religious differences.

#### 6.3 INTEGRITY

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

#### 6.4 CONTINUAL 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 by Expropriation with fair compensation or by negotiated Agreement, TCTA offers interested and affected parties market-related compensations based on the valuations undertaken by the independent valuers.

#### 7. 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 set out in the Land Acquisition Work Instruction and project-specific Land Acquisition Plans.

- **§** Adherence to and advancement of TCTA values in all stakeholder engagement processes.
- **§** 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 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 acquisition process will be set out in the land acquisition procedure.

#### 9.1 EXPROPRIATION

Due to the urgent nature of 'TCTA's projects, the preferred mode of acquisition of land and rights is expropriation with fair compensation. The powers to expropriate derive from the Ministry of Water and Sanitation directives mandating TCTA from time to time to implement bulk raw water infrastructure projects.

#### 9.2 STATE LAND UNDER CUSTODIAN OF TRIBAL AUTHORITY

IPILRA legislation provides for the acquisition of land and rights from non-private landowners. DALRRD in various regions, a custodian of State Land where Informal 'Rights' Holders and Unregistered Rights Holders are resident, is charged with overseeing acquisition processes between TCTA and parties involved.

#### 9.3 UNREGISTERED RIGHTS HOLDERS

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

#### 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 PTOs. The

people who fall under the above categories are deemed "owners" of the land or a portion of 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 DRDLR, 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 timeously 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 the interested and affected parties from time to time.

#### 10. POLICY COMMUNICATION

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

- The signed Policy will be made available to via SharePoint and the TCTA intranet, 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; and
- 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, RESPONSIBILITIES AND ACCOUNTABILITY

Roles	Responsibilities
TCTA Board of	§ The approval of any deviation from this Policy
Directors	§ The approval of the strategic policies including the LA Policy
Human Capital,	§ Ensure that the Policy complies with the current applicable
Social and Ethics	land acquisition legislation
Committee	Recommend any deviation from this Policy to the Board.
	Recommends the Policy for Board approval
Policy	Reviews and gives input
Committee	§ Recommend the Policy for submission to EXCO for consideration
Executive	§ Recommends the Policy for Board approval.
Committee	Approves project-specific LA Execution Plans as per
	operational delegation of authority (ODOA)
PMID Executive	§ Recommends the Policy for EXCO consideration
Manager	§ Executes implementation of project-specific LA Execution
	Plans within approved limits including, but not limited to,
	expropriation approvals
Head of	§ Oversees effective management of the LA Section, including
Environment	implementation of this Policy.
	§ Provides strategic guidance for implementing the Policy in
	project-specific cases.
	§ Provide strategic direction and guidance in managing and
	implementing land acquisition activities
Land Acquisition	§ Ensures the effective management, execution, and
Manager	implementation of land acquisition processes across TCTA
	projects, including staff supervision in the LA Section
Project	§ Integration of LA activities into the overall project programme.
Manager/s	§ Rendering support to LA Section on a variety of matters
	requiring assistance
Head of Legal	Provide, as and when requested by the LA Section, the requisite
	(internal) legal support for the effective execution of land
	acquisition processes. Typically includes:
	Rendering of ongoing legal support to help resolve landowner
	queries/problems.
L	

	§ Providing legal opinions.
	§ Preparation of PAJA Notices, Expropriation Notices.
	§ Preparation of LA service provider contracts (e.g., valuer
	SLAs), as may be required from time to time.
	§ Preparation of land acquisition agreements (SLAs) is
	recommended over expropriation, where negotiated
	agreements are recommended.
	§ Procuring and project managing specialist service providers
	(e.g., conveyancing attorneys) to deal with registration/transfer
	matters.
	Where warranted, procure services of external legal counsel to
	assist in the execution of land acquisition processes, among other
	things, regarding:
	Review of valuation reports
	§ Procuring of specialist services required to assist in the
	execution of land acquisition processes
	§ Procuring external legal opinions
Compliance	§ Responsible for Policy compliance, risk monitoring, and
Officer	reporting,
	§ Conduct compliance reviews on the implementation and
	management of the Policy, and
	§ Ensures Policy does not contravene any other applicable law
Senior Manager:	§ Provide guidance and advice in procuring services providers
Procurement	for LA within the procurement policies and procedures
	framework.
	§ Ensure that all land acquisition procurements of service
	providers are undertaken in line with the TCTA Procurement
	Policy and Procedure, National Treasury Instruction Notes,
	and prevailing procurement prescripts

### 12. POLICY MONITORING AND REVIEW

This Policy will be evaluated during the annual ESMS management review process to ensure that it still aligns with the organisational goals, growth aspirations, commitments, and needs. Interim revisions of this Policy will be done if the annual Management Review identifies the need for this. A comprehensive Policy revision will be conducted at least every three (3) years. Revisions will assure that the needs and

interests of the organisation, its leadership, key TCTA Stakeholders, and other interested and affected parties are accounted for.

# 13. EFFECTIVE DATE

The Policy will become effective on the date of approval.

# ANNEXURE A: DESCRIPTION OF PRIMARY LEGISLATION APPLICABLE TO LAND ACQUISITION PROCESSES

Legislation	Applicability
The Basic Conditions of Employment Act, 75 of 1997(BCEA)	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 take 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.
The Communal Property Association Act, 28 of 1996 (CPA)	Provides for an institutional framework relative to the registration and functioning of juristic persons " CPA" 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.
The Constitution of the Republic of South Africa Act, Act 108 of1996 (Constitution)	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.  Section 25 [property clause] provides for expropriation of property may be expropriated only for (i) a public purpose or (ii) in the public interest., subject to payment of compensation.  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.  Item 28 (1) of Schedule 6 [Registration of immovable property owned by the state] provides 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.

The Deeds Registry Act, 37 of	Transfer of land acquired by TCTA for project implementation is
1947	registered in terms of the provisions of the Act. Some notable
	applicable provisions of the Act include sections 31 and 32,
	relating to the transfer of expropriated land and registration of
	expropriated servitude rights, respectively.
The Expropriation Act, 63 of	Provides mechanisms for the expropriation of property for " public
1975	interest and public purposes". The Expropriation Act applies to
1973	land acquisition matters in its entirety. Some notable provisions
	include:
	§ Sect 8: the passing of ownership and exercising the right to
	use expropriated land.
	• Sect 9: duties of the expropriated landowner concerning
	acceptance or otherwise of the compensation offer.
	§ Sect 10: final compensation offer made to affected
	landowners.
	§ Sect 12: the basis on which compensation is determined.
	§ Sect 13: compensation for expropriated unregistered rights.
The Extension of Security of	Provides for measures to facilitate long-term security of tenure of
Tenure Act 62 of 1997(ESTA)	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 people under the Act, including the
	right of compensation for any household assets (agricultural
	assets included) that may be impacted by project implementation.
The Interim Protection of	Provides for the (interim) protection of certain rights and interests
Informal Land Rights Act, 31 of	of members of communities living on the land in respect of which
1996 (IPILRA)	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.
The Land Reform (Labour	Provides for the security of tenure of labour tenants and persons
Tenants) Act, 3 of 1996	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
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	the rights accorded to these persons whenever they are encountered.
The Land Survey Act, 8 of 1997	The Act provides for the regulation of land surveys in the Republic of South Africa. Therefore, land acquired for TCTA projects needs to be surveyed the requirements of this Act and its regulations, as it is the pre-requisite to registering land and servitude rights.
The National Water Act,36 of 1998 (NWA)	Provides for the protection, use, development, conservation, management, and control of water resources. The most notable provision of the Act is Section 64, by which the Minister of Water and Sanitation may authorise TCTA to expropriate land required for implementing projects.
The Promotion of Administrative Justice Act, 3 of 2000 (PAJA)	The Act gives effect to the right to administrative action that is lawful, reasonable, and procedurally fair, in keeping with provisions of section 33 of the Constitution. This applies to expropriation processes. TCTA is required, among other things, to:  § Follow fair procedure when making expropriation decisions.  § Provide reasons for undertaking the process.  § Afford the affected landowners the reasonable time to comment on the expropriation process and make representation thereof.
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 establishing the South African Council for the Property Valuers Profession (SACPVP) - a statutory body for the 'valuers' profession. TCTA appoints SACPVPs registered valuers to conduct valuation 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 to prevent 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.

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

Guidelines	Requirements / applicability
Equator Principles III	The Equator Principles is a credit risk management framework for determining, assessing, and managing environmental and social risks in project finance transactions. It comprises a set of 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.
	Equator Principle 3, "Applicable Social and Environmental Standards", requires that for all projects in countries not on the EP Designated Countries List, project sponsors must adhere to the IFC PSs.
IFC PS, 2012	The IFC, a member of the World Bank Group, has adopted a suite of PSs on social and environmental sustainability. The IFC applies these PSs to manage project-related social and environmental risks and impacts and enhance development opportunities in its private sector financing. The IFC PSs are widely regarded as international best practices concerning managing impacts associated with significant project developments.
	PS 1 - Assessment and Management of Environmental and Social Risks 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 'client's management of environmental and social performance throughout the life of the project.  PS 5 - Land Acquisition and Involuntary Resettlement: requires that if involuntary resettlement cannot be avoided, it should be managed appropriately, through careful planning and implementation of mitigation measures, to minimise the socio-economic impacts arising from the land acquisition or restriction of land use. Use of negotiated settlements (compensation packages) that meet the requirements of this PS is encouraged to avoid expropriation and use of government authority to

Guidelines	Requirements / applicability
	enforce relocation. It further requires that livelihood restoration be undertaken.
	PS 7 – Indigenous Peoples: aims to ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples and requires the establishment of an ongoing relationship based on Informed Consultation and Participation (ICP) and achievement of Free, Prior and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples for the proposed development.
	PS 8 – Cultural Heritage: aims to protect cultural heritage from the adverse impacts of project activities and support its preservation.
World Bank Environmental and Social Framework, 2017	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:
	<ul> <li>\$ ESS 1: Assessment and Management of Environmental and Socials Risks and Impacts</li> <li>\$ ESS 5: Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement</li> <li>\$ ESS 7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities</li> <li>\$ ESS 8: Cultural Heritage</li> <li>\$ ESS 10: Stakeholder Engagement and Information Disclosure</li> </ul>
World Bank	Emphasises that involuntary resettlement should be avoided or
Operational Policy 4.12: Involuntary Resettlement	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.

Guidelines	Requirements / applicability
International Bill of Human Rights	International best practice requires that companies respect and support international human rights protection. Businesses should integrate sound human rights commitments into their company policies and decision-making processes and assess their activities and 'relationships' actual and potential human rights impacts.
Global Reporting Initiative (GRI) Standards	Promotes sustainability reporting on businesses and 'governments' economic, environmental, social, and governance performance and expects companies to go beyond basic legal compliance.
King IV	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 'organizations' financial aspects but also for the impact business operations have on the environment and the society within which they operate.
Sustainable Development Goals (SDGs)	The sustainable development goals require that countries achieve all 17 development goals by 2030. As such, TCTA will ensure that the following SDGs are considered when implementing projects:  SDG-5: Inclusion of women when negotiating for land and rights  SDG-6- Ensure availability and sustainable management of water and sanitation for all.
	<b>SDG 15</b> advocates for the protection, restoration, and promotion of sustainable use of terrestrial ecosystem, sustainability managing forestry, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

# **ANNEXURE C: INTERFACE WITH OTHER TCTA POLICIES**

Policy	Requirements / applicability
Sustainability Policy	Supports TCTA's business strategy in terms of commitment
(PMID – P – AD –1)	to improving livelihoods and contributing to sustainability and transformation of the broader society.
Environmental Policy	Commits TCTA to plan and implement its operations with due
(PMID – P – AD – 3 rev 2)	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	Provides a standardised framework for determining
(PMID – P – AD –05)	compensation measures and options for different project- related losses to ensure equitable compensation to PAPs.
Resettlement and Livelihood	Provides a standardised approach to avoid or mitigate the
Restoration Policy	negative socio-economic impacts of involuntary resettlement
(PMID – P – AD – 4)	and livelihood disruptions.

#### **DIAGRAM 1: INTERFACE BETWEEN TCTA POLICIES**

