



Land-based Investments in Tanzania Legal Framework and Realities on the Ground

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Abstract

Beginning in the mid-1970s through to the 1980s, Tanzania experienced a severe socio-economic crisis. In an attempt to turn things around the abating economy and accelerate economic growth, the government embarked on a broad range of radical policy, legislation, and institution reforms, which opened doors for foreign direct investments (FDIs) and further initiatives have been taken to create an enabling environment for investments to flourish in the country. This paper provides highlights and an analysis of the legal framework governing investment in Tanzania, discusses the context of investment within the existing legal framework, provides an overview of land acquisition procedures, and gives analysis of some land deals. The findings show that mixed procedures, some of which are not guided by laws, are currently used to acquire land for investment in Tanzania. Moreover, no clear definition of what *public interest* insinuates is given either in the constitution or in the land laws. Information asymmetry is a critical problem in land deals in Tanzania. Land acquisition and compensation practices are currently poor and have serious flaws in the way community consultations are carried out, including political interference, lack of transparency, lack of affected parties' (individuals and local communities) awareness of the process, and lack of productive engagement between investors and local communities. Poverty and illiteracy of the local community has been used to the advantage of the local elites, politicians, and investors in negotiating land deals.

Keywords: land-based investments; land; legal framework; Tanzania

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Acronyms

ASDP	Agricultural Sector Development Program
BoT	Bank of Tanzania
CAADP	Comprehensive Africa Agriculture Development Programme
CDM	Clean Development Mechanism
DANIDA	Danish International Development Agency
EIA	Environmental Impact Assessment
EPZA	Export Processing Zones Authority
EU	European Union
FAO	Food and Agriculture Organisation
FDIs	Foreign Direct Investments
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GoT	Government of Tanzania
GRL	Green Resource Limited
GTZ	German Organisation for Technical Cooperation
IA	Irish Aid
IDA	International Development Association
IFAD	International Fund for Agricultural Development
JICA	Japanese International Cooperation Agency
LEAT	Lawyers' Environmental Action Team
LHRC	Legal and Human Rights Centre
NBTF	National Bioenergy Task Force
OI	Oakland Institute
REDD	Reducing Emission from Deforestation and Forest Degradation
RUBADA	Rufiji Basin Development Cooperation
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SAPs	Structural Adjustment Programmes
TIC	Tanzanian Investment Centre
TZS	Tanzania Shillings
UNFCCC	United Nation Framework for Climate Change Convention
URT	United Republic of Tanzania

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1 Introduction

At independence in 1961, the economy of the then Tanganyika (now mainland Tanzania) was at an early stage of growth, characterised by inadequate human capital and physical infrastructure, less established administrative institutions, and feeble private institutions with restricted capacity (Nyerere 1974). As a result, during the first half of the first decade after independence, there were concerted efforts to establish effective government institutions. The second half of the decade was characterised by a quest for a plan for national social and economic development (Nyerere *ibid*) which was commensurate with the Arusha Declaration of 1967, that committed Tanzania to a policy of socialism and self-reliance (Collins 1974). Because the new government had limited financial resources, foreign capital inflow was the most important means of building and developing the economy during the 1960s and the 1970s (Biermann and Wagao 1986).

Beginning in the mid-1970s through to the 1980s, Tanzania experienced a grave socio-economic crisis whose impact was manifested at both micro-and macro-levels. At the former level, the crisis resulted in a breakdown of the social structure and worsening living conditions, while at the latter level, it resulted into severe shortage of foreign exchange, balance of payment problems, and large budget deficits (Meena 1989). Overall, the 1960s and 1970s were epitomised by undue government borrowing and bad debts accumulated by commercial banks, and this was attributed partially to excessive government interference, in adequate supervision of financial institutions, and pursuit of multiple policy objectives, among others (BoT 2011).

In an attempt to turn things around and accelerate economic growth, the government embarked on a broad range of radical policy, legislative, and institutional reforms. These include the National Economic Survival Plan, Structural Adjustment Programmes (SAPs), Economic Recovery Programmes I (1986) and II (1989); the Economic and Social Action Plan and Priority Social Action Plan (1989) (Lugalla 1995). These changes were necessary because previous development initiatives were not commensurate with the ideology of market-led economy and progress in technology, which were taking part in the world. Through these and other reforms¹, doors were opened to FDIs and initiatives were taken to create an enabling environment for investment in response to the dynamics of the world and local economic conditions. The agriculture, energy, mining, tourism, and transportation sectors have experienced major policy, legislative, and institutional reforms. Most likely because of initiatives such as these, a number of both foreign and domestic investors have been attracted to and now operate in Tanzania in various sectors, including agriculture, agro-fuels, and agro-forestry, among others.

This paper highlights policy and legal frameworks that govern land-based investments in Tanzania. It undrapes and discusses some land deals and impacts of these investments in the context of poverty eradication in Tanzania. The paper tries to answer the following questions: Has the Tanzanian investment legal framework achieved its objectives? Are land deals in Tanzania guided by the free, prior, and informed consent principle? Is there a win-win situation in Tanzanian land deals? What should be done to make land-based investments work in Tanzania?

The paper provides an analysis of the legal framework governing investment in Tanzania post-independence, discusses the context of investment within the existing investment policy and legal

¹ For example, parastatal reforms were designed to diminish the dominance and monopoly of state-owned enterprises as part of wider structural adjustment initiatives. Reforms also included allowing the private sector to compete in marketing and processing cash crops in the increasingly liberalised market economic business environment. Revisions in the land law rules enable long-term leasehold property rights for up to 99 years for domestic and foreign investors. Financial reforms have enhanced the investment climate, enabling 26 licensed banks (foreign and domestic) to operate in the country (FAO 2012).

framework in Tanzania, provides an overview of land acquisition procedures, and analyses some land deals. However, at the outset, we want to put a disclaimer that, this paper draws on evidence from a number of studies conducted previously. Moreover, as a necessary preliminary, we acknowledge, as noted elsewhere (Locher & Sulle 2013) that availability of reliable up-to-date data on land deals is a major limitation in Tanzania. One main reason as identified by previous studies (Sulle & Nelson 2009; Makwarimba & Ngowi 2012) is the lack of coordination and transparency among government institutions and ministries responsible for investment in the country hence making it hard to have authentic data. Nonetheless, this paper aims to examine the realities of land investment in Tanzania despite the challenges.

2 Theoretical legal framework governing investment in Tanzania

2.1 After independence to 1967

After independence, the government of then Tanganyika, under President Julius Nyerere's leadership, dissented the inclusion of the Bills of Rights in both the Independent Government and the Republic Constitutions of 1961 and 1962, respectively. This was because it was believed that a Bill of Rights would assure private property ownership, which would hamper government development plans, and create conflict between the executive and judiciary, which was still under some foreign expatriates (Maina 1994; Maina & Mwakaje 2004).

The lack of a Bill of Rights in the constitution did not dissuade investors from investing in Tanzania, nor did it dissuade the government from pursuing investment in the public interest². The government showed its determination when it prepared and passed the Foreign Investment (Protection) Act, 1963, which aimed to provide a legal warranty for foreign investors so that they would be persuaded to invest in the country. The government also entered mutual arrangements with foreign governments to back-up, promote, and protect investment (Maina 1994).

2.2 Arusha Declaration and its aftermath

The heart of the social policy in Tanzania, which began by promulgating the Arusha Declaration in 1967, was to promote mass nationalisation (Court 1976). In this respect, to ensure that the objectives of the Arusha Declarations were met, various laws³ were enacted. The government guaranteed and compensated for the nationalised property (Maina 1994), but with inside and outside forces such as SAPs, the collapse of the Soviet Union, and the reign of the capitalist block, Tanzania failed to embrace the Arusha Declaration. In 1984, the fifth Constitutional amendment included the Bill of Rights, and in 1985 the ascendancy of the second phase of presidency necessitated an changed investment climate.

The enactment of the Investment (Promotion and Protection) Act in April 1990 marked the climax of economic liberalisation, which started in November 1985. The Act covered the investment promotion centre, application procedure, areas of investment, investment incentives, investment protection, dispute settlement, and transfer of foreign currency; it covers both foreign and local

² President Nyerere while addressing the meeting of the Association of Chambers of Commerce of Eastern Africa on 11 February 1963 said 'the government wishes to work with private investors for the development of Tanganyika'. Again on 11 February 1965 while laying the foundation stone for the ENI Oil Refinery at Kigamboni, Dar es Salaam he said: "The government of Tanzania is determined to have an oil refinery in Tanzania rather than continue to import the end products of crude oil, and therefore we have worked hard to interest those who might be able to undertake such an investment under conditions which would benefit Tanzania"(cited in Maina 1994).

³ Land Acquisition Act of 1967 (Act No. 47) also intends to make simplify the land acquisition process for public/ state interest.

investors, but excludes investment in petroleum and minerals from the scope of the Act. The Act is silent on investors' duties and provides procedures to avoid double taxation⁴.

2.3 Current investment legal regime

The third phase of presidency, starting in 1995, focused on scaling up the market-led economy through privatization, commensurate with SAP principles, i.e. transforming the state-managed economy into a market economy to promote economic growth⁵. The new investment regime saw the enactment of the Tanzania Investment Act, 1997⁶, which must be read together with the Financial Laws (Miscellaneous Amendments) Act, 1997⁷. The Investment Act, 1997 aimed to correct some aspects of the National Investment (Promotion and Protection) Act, 1990, which restricted potential investors from investing in Tanzania (Maina and Mwakaje 2004).

The Investment Act, 1997 provides more detail than its precursor about the investment process and investment opportunities in Tanzania, but has some shortcomings, including failure to spell out the duties of the investor, double taxation (Maina 1994; Maina&Mwakaje 2004), and two separate statutes to govern investment. The Act also has a weak dispute settlement mechanism, and only addresses foreign investors, not domestic investors (Maina&Mwakaje 2004).

2.4 Land investment laws

Land law reforms in the 1990s were internally driven by increased land conflicts and externally driven by the market economy and were funded by International Financial Institutions and donor communities (Tsikata 2003). The Village Land Act, 1999⁸ prohibits foreigners from owning land in Tanzania except for investment purposes under the Tanzania Investment Act⁹. Land to be designated for investment purposes must be identified, gazetted, and allocated to the Tanzania Investment Centre (TIC), which then creates derivative rights for investors¹⁰. However, the Village Land Act, 1999 allows the President to transfer village land to general land for public interest, including investment for national interest:

S.4 (1) Where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister to Transfer of village land to general or reserved land proceed in accordance with the provisions of this section.

(2) For the purposes of subsection (1), public interest shall include investments of national interest. [Emphasis added].

According to the Land Act, 1999, general land includes unoccupied or unused village land¹¹. The Land Acquisition Act, 1967 also allows the President to acquire land for 'public interest', which entails fair or a win-win land acquisition in the context of the laws, national development and poverty reduction

⁴Maina, op cit.

⁵ The literature disputes whether measures such as SAPs have led to quick economic growth or a decline in living standards in Africa (for example, Waters 1997), and regarding the effects of International Monetary Fund (IMF) programmes on economic growth and political independence (Pastor Jr. 1989).

⁶ Act No. 26 of 1997.

⁷ Amended laws include the Income Tax Act, 1973, Customs Tariff Act, 1976, Sales Tax Act, 1976, and Immigration Act, 1995.

⁸ Act No. 5, of 1999.

⁹ S 20 (1) of Land Act, 1999 (Act No. 4 of 1999).

¹⁰ S 20 (2) of Land Act, 1999.

¹¹ S. 2 of the Land Act, 1999 says general land means all public land, which is not reserved land or village land and includes unoccupied or unused village land.

initiatives. Unfortunately, *public interest* has never been satisfactorily defined either by the constitution or the by land registration regulations (Larsson 2006).

The Mining Act of 2010, which revoked and replaced the Mining Act of 1998, responds to some issues side-lined by its antecedent, such as allocation of areas for exclusive use of artisan and small-scale miners. The Act, like its predecessor requires the recognition of granted and customary rights of occupancy. In practice, however, owners' land rights are often disregarded due to simply an absence of data on village land, land occupants, and existing rights to mineral resources to inform the granting of concessions. Even if this information is accessible, it is ignored (Makwarimba & Ngowi 2012).

Other legislation relevant to land-based investment include the Export Processing Zones Act, 2002, which makes provisions to establish, develop and manage export processing zones; and Special Economic Zones Act, 2006, which makes provisions to establish, develop, and manage special economic zones to create an attractive environment for local and foreign investment.

3 Context of investment

3.1 Manifestation of external forces for investment in Tanzania

The Government of Tanzania, like many governments, seems to believe that investment could provide solutions to its economic problems. In this regard, the government created a favourable environment for foreign direct investment (FDIs) and created institutions to promote, coordinate, and facilitate investment into Tanzania, such as the Tanzania Investment Centre (TIC) and Export Processing Zones Authority (EPZA). A core function of TIC, for example, includes 'to identify investment sites, estates, or land together with associated facilities of any sites, estates, or land for the purposes of investors and investments in general'. On the other hand, EPZA is responsible for land acquisition, and putting in place all necessary infrastructure for investors to start business, among others. Such institutions work diligently to ensure investors are attracted to Tanzania. We briefly discuss hereunder investments in agriculture for food production, agro-fuels, agro-forestry, and mining with a view to providing an understanding of the extent of land-based investments in Tanzania in the context of the existing policy and legal framework. However, as discussed further below, unlike other sectors, the government allowed investments in biofuels and Reducing Emission from Deforestation and Forest Degradation (REDD) schemes without creating a policy and legal framework to guide investment in these sectors.

Agriculture for food security

Investment in agriculture for food production is growing. The Rufiji River Basin, which represents about 20% of all Tanzanian land, and which is under the authority of Rufiji Basin Development Cooperation (RUBADA)¹², is the area most eyed for investment in the agriculture sector. Tanzanian districts where many agricultural land acquisitions deals have been reported in the last decade include Kisarawe, Bagamoyo, Rufiji, Morogoro Rural, and Kilombero districts.

Both internal and external forces drive the quest for food security in Tanzania. Internally, the government had the Agricultural Sector Development Program (ASDP), which began in 2003 and has an agricultural transformation program from national to district level. Several international development partners joined hands with government in support of agricultural sector development, including the Danish International Development Agency (DANIDA), Japanese International Cooperation Agency (JICA), the European Union (EU), Irish Aid (IA), the International Fund for Agricultural Development (IFAD), and the International Development Association (IDA). This was

¹² RUBADA was established by the The Rufiji Basin Development Authority Act, 1975.

followed by the Kilimo Kwanza (Agriculture First) initiative in 2009, which intends to develop large, medium, and small-scale farmers. Funds have been allocated through Tanzania Investment Bank and farmers can access agricultural inputs. Despite these initiatives, poverty remains widespread in Tanzania, especially in rural areas. More recently, as part of implementing Kilimo Kwanza, Tanzania is developing the Southern Agricultural Growth Corridor of Tanzania (SAGCOT)¹³ — an agricultural partnership investment project, launched at the World Economic Forum Africa meeting in Dar es Salaam in 2010. It aims to increase agricultural productivity, food security, and livelihoods in Tanzania. Other initiatives include the Alliance for Green Revolution in Africa and Comprehensive Africa Agriculture Development Programme (CAADP), which are in the name of emancipating small-scale farmers through research on the best agronomy, seed development, soil fertility, and commercialising the agricultural sector¹⁴. Unfortunately, the government has laid a blueprint¹⁵ to strategically develop the areas known to be the granary of good production in Tanzania for commercial farming. Foreign investors are increasing in the country in search of good arable land and have been allocated thousands of hectares (Locher and Sulle 2013). This might seriously affect small-scale farmers if an alternative strategy from the farmers is not adopted.

While plans such as the SAGCOT may reflect the government's commitment to transform the agricultural sector and hence, contribute to realising the National Strategy for Growth and Reduction of Poverty and the National Development Vision 2025; analysts are wondering whether the initiative will meet the objectives and be sustainable, because many similar previous large-scale investments in groundnuts in Dodoma and wheat plantations in Hanang or programmes such as ASDP and CAADP, have mostly failed to meet the objective of changing the most Tanzanians' lives. Statistics from the 2007 household budget survey (National Bureau of Statistics 2009) show that poverty remains widespread, especially in rural areas. Between 2000/01 and 2007, the proportion of Tanzanians unable to meet basic needs only marginally decreased: changed from 35.6% in 2000/01 to 33.4% in 2007. The incidence of poverty in rural areas decreased from 38.7% in 2000/01 to 37.4 in 2007 while that in urban areas (excluding Dar es Salaam) decreased from 25.8% in 2000/01 to 24.1% in 2007.

The failure of the agricultural initiatives to achieve a significant impact on rural livelihoods could be attributed to many factors, but a close look at these initiatives shows that they are top-down projects, devoid of small-scale farmers' consultations (Cooksey 2012; Maghimbi et al. 2010).

Agriculture for energy security

Tanzania, like other countries around the world ventured into biofuels production based on four main assumptions that have driven the global bioenergy development. The first assumption is that bioenergy is a more economical and renewable alternative source of energy than fossil fuels. The second assumption is that bioenergy can reduce carbon emissions; the third is that bioenergy provides countries with the prospect of being energy independent by reducing or even cutting out dependence on imported fossil fuels. The fourth assumption is that bioenergy offers new avenues to farmers in developing countries to reduce poverty and improve their livelihoods (Sosovele 2010). After a study conducted by German Technical Cooperation (GTZ) in 2005 (GTZ 2005), doors for biofuel investment in Tanzania were opened. As of 2011, more than 40 companies, mostly with foreign capital, were involved in biofuel development activities in Tanzania (Mshandete 2011). While only a few and small local companies are engaged in biofuel development activities (Mshandete *ibid*), even though Arndt et al. (2010) show that to realise poverty reduction and sustainable development programmes through biofuel investment, engaging and promoting small-scale farmer productivity is indispensable.

¹³ Area amounting to 300,000km² is set for implementing the SAGCOT project

¹⁴ See <http://www.agra.org/> [Accessed on 19 October 2013].

¹⁵ Southern Agricultural Growth Corridor of Tanzania; Investment Blueprint published in January 2011.

While investors have acquired, and others are seeking to acquire, thousands of hectares of land for biofuels (see e.g. Veit et al. 2012), and while awaiting a national policy on biofuels, the government formed the National Bioenergy Task Force (NBTF) to prepare biofuels guidelines as an interim measure (ActionAid 2009). The guidelines, released in 2010, provide general statements with no binding force, enforcement mechanism, and legal teeth. The wave of investors in the biofuels sector scared the government and it suspended new biofuel development until appropriate policies, regulatory frameworks and laws are in place to guide the process (Sulle & Nelson 2009). In September 2012, the government issued the first draft of the National Liquid Biofuel Policy for public comments, but the policy is still in its draft form.

Several studies have explored issues related to biofuel investment in Tanzania. For example, Mshandete (2011) examines players in biofuels and their roles, value chain, social-economic and environmental impacts of the biofuel projects, tenure issues, food security, sustainability, research and development. Evidence shows that the role of state in facilitating land deals is higher than in enforcing the terms on the deals. For instance, state agencies more often aid investors to get land, mobilise villagers to give land to investors, and draft contract terms or Memoranda of Understandings (MoUs) than they make public all the contract terms and enforce the obligations made in such deals (Kweka 2012).

Poverty and illiteracy in local communities have been used to the advantage of the local elites, politicians, and investors in negotiating land deals (HAKIARDHI 2011b; ActionAid 2011). In some land deals (for example, Bagamoyo and Rufiji), in the process of negotiating land deals, meals (rice meat) and bribes (giving tips) were reportedly given to the village leaders (Massay 2012). In Songea, an investor offered an allowance of two thousand shillings to any villager who will attend the village assembly as a consideration to approve his request for land (HAKIARDHI 2012). This is not surprising given the high level of poverty in rural areas.

Studies show that politicians and district officials have been instrumental in land acquisitions for biofuels companies such as Sunbiofuels in Kisarawe, African Green Oil in Rufiji and BioShape in Kilwa, but the same state has given people a cold shoulder when investors fail to deliver the pledged benefits (ActionAid 2011; HAKIARDHI 2011a; Veit et al. 2012). This casts a shadow of doubt as to whether their active participation in the land acquisition process is really for the 'public interest'. Moreover, government agency interference has created fear among villagers and their leaders on one side, but it has also made villagers and leaders trust the government officials and politicians they know best when they are giving land for investment. There is evidence that negotiations for land deals, supervised by government agencies, have been done in a very short period (HAKIARDHI 2012). To date, much less land (641 179 ha), has already been allocated for biofuel investments. Only 100 000 ha has been fully secured by biofuel investors following the land acquisition procedures (Sulle & Nelson 2009; Mshandete 2011).

Because most companies engaged in biofuel activities in Tanzania are foreign companies and because of the lack of a national policy on biofuels, there are increasing concerns both within and outside the country that the industry may not be of much benefit to local people or the nation at large. For example, a Evert Vermeer Foundation (van Teeffelen 2013) reveals that European biofuel companies operating in Tanzania have caused problems for rural communities; it calls for a change in EU biofuel policy to ensure it is commensurate developing country (including Tanzania) development objectives, minimises the likelihood of food insecurity, and ensures people's land rights. This is especially important as many European companies invest in Tanzania because of EU support for Tanzania's biofuel industry (*ibid*).

Forest plantations for carbon market

Forest plantation investments are new in Tanzania, but agro-forestry investors are looking forward to using the opportunities of Clean Development Mechanism (CDM)¹⁶ as provided in the United Nations Framework for Climate Change Convention (UNFCCC) of 1992. Tanzania is a signatory to the UNFCCC and the Kyoto Protocol¹⁷ — two international legal instruments that provide a framework for industrialised countries to incentivise developing countries to conserve forests to increase carbon stock, which absorbs carbon dioxide and other greenhouse gases (GHG) from the atmosphere.

Tanzania, with over 33.5 million hectares of forestry reserves and a sizable rural land under forest cover, formulated a National Climate Change Strategy in 2012, which delineates strategic interventions to guarantee that the communities and the nation at large benefit from the global initiatives (for example, UNFCCC) to mitigate the effects of climate change (URT 2012). Climate change mitigation and adaptation programs have been encouraged worldwide. More funds are channelled to programs that have climate change adaptation or mitigation objectives and funding proposals sent to donor agencies or development partners are only accepted if they include climate change adaptation and mitigation objectives. The Carbon Market can now be accessed through REDD¹⁸ projects. In Tanzania, foreign companies have acquired land for agro-forestry projects in Mufindi, Kilombero, and Kilolo districts. Projects are now extending to Muheza, Songea, and Njombe districts (see Locher & Sulle 2013 for examples of projects).

Deals around this kind of investment are hindered with lack of *consensus ad idem* principle in contract law — literally a ‘meeting of minds’. That is, contracting parties must be on the same level of understanding of the terms of contract before entering/ signing the contract. In Idete village, where a Norwegian based Green Resource Limited (GRL) entered into an agreement with Idete Village of Mufindi district in Iringa region, the village chairperson, who signed the contract, confessed to the team of researchers that he did not understand the terms of the contract because the whole contract was written in English and not translated for him.

Investments in mining sector

The mining sector is considered likely to contribute to Gross Domestic Product (GDP) if sustainably exploited and effectively managed and it is currently the second fastest growing sector after tourism (Makwarimba & Ngowi 2012). Confirmed deposits in Tanzania include gold, diamonds, tanzanite, ruby, tin, copper, nickel, iron, soda, phosphate, gypsum, kaolite, coal, natural gas, and uranium (LHRC 2012). But, even after the Mining Act of 2010 was enacted, despite the enormous investments taking place, the mining sector has not met expectations in terms of income generation for Tanzania, since government is losing so much tax revenue from the mining sector (Curtis & Lissu 2008; LHRC 2012).

¹⁶ ‘As far as I know, there is no single CDM project approved yet in Tanzania. As far as I know, GRAS has so far sold carbon certificates on the voluntary market instead. However, I think the company’s application for being accepted as CDM project might be pending at the respective Tanzanian government authority’, Anonymous interview, 19 February 2013.

¹⁷ Kyoto Protocol to the United Nations Framework Convention on Climate Change of 1998.

¹⁸ REDD is an effort to create a financial value for the carbon stored in forests, offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. REDD+ goes beyond deforestation and forest degradation, and includes conservation, sustainable forest management and enhanced forest carbon stocks <http://www.un-redd.org>.

4 Land acquisition procedures

4.1 Land transfer

The President of Tanzania has powers to acquire any piece of land for public interest, including for investment for public interest. To make that possible, the President has to transfer village land¹⁹ (which is appropriate for investment) to general land. This has to go through several stages as per the Village Land Act of 1999. Villagers through village and district councils and any representations on the matter may endorse or reject to endorse the proposed transfer. However, the village assembly can only refuse a transfer of less than 250ha not that exceeding 250ha. Although there is a provision for villagers or a group of villagers who are allocated with the right to use the land (referred to as “the affected”) to register their unwillingness to support a transfer, they cannot in effect refuse the proposal, because the decision to approve or disapprove a proposed transfer is at the discretion of the Village Assembly or the Minister responsible for land depending on the area involved (although it is not clear if the President can override a Village Assembly’s decision to refuse on areas less than 250ha). Ultimately, the President can resort to lawful expropriation (S 4 (10)), subject to payment of compensation. In effect, a transfer of land can be a form of land acquisition giving rise to involuntary resettlement (Makwarimba & Ngowi 2012).

4.2 Access to Land through TIC

In Tanzania, land can be acquired through granted or customary right of occupancy through the TIC, which holds granted right of occupancy, but gives investors derivative rights of occupancy. According to the Land Act, 1999 (Section 2), derivative right is a right to occupy and use land created out of a right of occupancy and includes a lease, a sublease, a license, a usufructuary right and any interest analogous to those interests. In regard to this, section 20 of the Land Act, 1999²⁰ provides detailed account on land ownership issues vis-à-vis foreigners. However, of particular interest to the ongoing discussion is that the Act does not attach any value to all lands acquired by foreigners prior to the enactment of the Act except in situations where unexhausted improvements have been made. It states:

For the purposes of compensation made pursuant to this Act or any other written law, all lands acquired by non-citizens prior to the enactment of this Act, shall be deemed to have no value, except for unexhausted improvements for which compensation may be paid under this Act or any other law.

4.3 Alternative process commonly used to access village land for investment

Olenasha (2011)²¹ identifies an alternative procedure that investors use to access land, which emerged simply to meet a need, but is not guided by any law or official procedure. It is not clear whether the full land transfer procedures as laid down in the Village Land Act, 1999 are followed at the point when this process kicks in. Through this procedure, a potential investor identifies a place (e.g., village) where a suitable land for their intended investment is likely to be found. This is usually done with the help of local brokers, or it could be officials from TIC or a local member of parliament. On the other hand, an investor might approach and seek approval from village council first before other processes ensue (Sulle & Nelson 2009:41). An investor may also acquire land through some established institutions (authorities) that have administrative authority over land and they can invite and enter into contract with an investor, one of such authorities is RUBADA. EPZA also seeks land for

¹⁹ The Village Land Act of 1999 vests administrative powers of village land under the village council. Village land is one of the three categories of land in Tanzania; others are general and reserved land.

²⁰ This section is read together with amendment made under sections 2 and 4 of Act 12 of 2004.

²¹ As cited in: Makwarimba and Ngowi (2012).

investments through district and regional governments. So far, as per EPZA websites, over 23 000 hectares²² of land have been earmarked in Tanzania for investment.

5 Selected land deals in Tanzania

This section provides and analyses the contents and the involvement of government and local community in selected cases of land deals in Tanzania. The aim is to gain an understanding of the realities of land deals in Tanzania and their implications on the livelihood of people.

Case Study I: Lutukira Mixed Farm Limited

Lutukira Mixed Farm Limited has entered into a joint venture with a Seychelles company known as Montara Continental to form a management company known as Montara Land Company Limited, which is now running 50,000 acres farm located in Songea district in Tanzania.

The land acquisition process for this establishment is contentious. It started way back in 1991 when R.S.R Tanzania Limited requested a land of 400 acres and later in 1992 requested for 50,000 acres. The request for 50,000 acres got the approval of all stakeholders from the village, district, regional and national (ministry) levels between 1992 and 2000. In 1992, the investor abandoned the land until 2010 when he came under the name of Lutukira Mixed Farm to make an inquiry about the status of his farm. The investor was informed by the district officials to re-request the land from Lutukira Village. This time the Village Council approved only 25,000 acres but the Village Assembly, which was also attended by district officials and politicians approved 50,000 acres. Two thousand (2000) Tanzania Shillings (TZS) were given to every person who attended the Assembly. The Assembly was attended by 367 out of whom 364 approved the request.

The area, which Lutukira Mixed Farm Ltd was allocated in 1992, had later been given to about 100 farmers from the neighbour village of Nakagange and Mang'ati pastoralists. When Lutukira Mixed Farm Ltd came back in 2010, the company was asked to compensate and resettle the farmers and pastoralists to Mbundi and Nandete area. Both areas are in Lutukira village. However, there were complaints from the farmers that the area allocated to them was too far from their village thus they cannot engage in daily farming activities. Two versions of MoUs between Lutukira Village Council and the company have been drafted, they contradict in content since one recognises Lutukira Mixed Farm while the other recognises Montara Company Ltd and both do not allow the matter to be taken to the court should there be a dispute between the parties (HAKIARDHI 2012).

²² Earmarked areas are Lindi (Lindi Township) 250 ha, Coastal Region (Bagamoyo) 8000 ha, Manyara (Mererani) 530.87 ha, Tanga (Neema) 2000 ha, Arusha (Malula-KIA) 400 acres, Kilimanjaro (Sanya Station-KIA) 1000 acres, Mwanza (Usagara) 2000ha, Mara (Tairo/Bunda) 2316 ha, Kagera (Kitengule/Karagwe) 2500 ha, Kigoma (Ujiji) 300 ha, Mbeya (Sistile) 500 ha, Morogoro (Kiyegeya) 2000 ha, and Ruvuma (Luwawasi-Mkuzo) 2207 ha. <http://www.epza.co.tz> [Accessed 14 August 2012].

Case Study II: AgriSol Energy

The deal centers on developing a large agricultural enterprise on what AgriSol Energy describes in its business plans and prospectus as three “abandoned refugee camps”: Lugufu in Kigoma region (25,000 ha) and Katumba (80,317 ha) and Mishamo (219,800 ha), both in Rukwa region. However, far from being abandoned, the Katumba and Mishamo settlements are flourishing communities that are home to more than 160,000 people and the land that AgriSol seeks in Katumba is part of a protected forest reserve (OI 2012).

In 2009, the association of Pastoralist of Rukwa region requested the Prime Minister to give them Mishamo and Katumba refugee camps after the resettlement process. The Prime Minister’s office took their request for consideration, but they never received any formal response concerning the matter. They were surprised to see that the land in question is now in the process of being acquired by AgriSol (HAKIARDHI 2011c).

In 2009, the GoT granted citizenship to the refugees in Katumba and Mishamo camps. The head of Mishamo and Katumba refugee camps, intoned that the government is in the process of relocating refugees to 16 regions of Tanzania any time when some logistics with respects to payments are settled. It was revealed further that each refugee would be paid the sum of TZS300,000 as a transport cost to the new area of settlement. This amount is however, highly contested by refugees on the ground that it is very little. This is because some of them have already made permanent developments to their land by constructing permanent houses, so they are demanding sufficient compensation ranging from 13 to 19 million TZS. Moreover, an assessment study carried out among the receiving communities reveals that almost all regions selected for resettlement are not ready to receive refugees for fear that they can bring problems to their societies. Indeed, relocating a person who stayed in a place for over 30 years is not a simple task, their cultural, social, human, land, and food rights are likely to be violated. The government and other stakeholders need to devise a strategy that may include the ideas of the victims and thus, engage them in the implementation process (HAKIARDHI 2011c). One resident of Katumba said the following in regard to the matter: *“It’s like someone climbing a tree and finding a poisonous snake—and below him there’s a crocodile in the water. So if he stays on the tree, the snake will bite him. If he goes into the water, the crocodile will get him. That’s the situation we’re in”* quoted in (OI 2012).

Case Study III: Green Resource Limited

The Norwegian company GRL has already planted 2600 ha of its 14,000 ha of land, which it acquired from the Idete community in Iringa. It is hoped that 7000 ha of this land will be planted with eucalyptus and pine trees. The community is also encouraged to do its bit planting trees, which the company promises to buy. One of the motivations¹ for this investment is to earn income from the emerging carbon market made possible by climate change (Chachage 2010).

In November 2008, GRL entered into a contract with Idete village. The contract contains the following provisions, among others:

- Idete village as a participant in the project will benefit from capacity building in establishing farm forests and toward that end will receive technical support and seedlings for planting on individually owned plots.
- The village will receive 10% of the gross revenues generated from the sale of carbon credits from the project less withholding tax and any other fees and levies that may be imposed by the government. The project will also create employment opportunities for the village.
- The village government shall provide to the management of GRL a list of prioritised development projects to be undertaken using revenues from sale of carbon credits. GRL shall distribute funds directly to project suppliers and contractors within the approved budgets and audited accounts at the completion of each project.

From the aforementioned provisions, one can argue that, Idete village will benefit with the agronomy of the forests, which will be of greater advantage to the investor than to their livelihoods. Moreover, Idete village might have no means of verifying the total revenue generated from sale of carbon credit to which 10% is their entitlement. Furthermore, the investor holds the final say over the list of development priority projects submitted to him; and worse, the project suppliers and contractors might be the subsidiary company of the GRL, which may not necessarily employ locals during construction and may not use locally made construction materials. It is doubtful if this kind of investment will realise a win-win situation.

6 Analysis of land investment practices in Tanzania

6.1 Land Acquisition

As noted earlier, foreign investors are attracted to Tanzania and many other countries in Africa because they assume there is abundant land. In the case of Tanzania, this assumption however, is not supported by any nationwide survey. According to ActionAid (2009), the GoT considers 29.4 million ha to be suitable for irrigation development or 31.8% of Tanzania's total land mass, of which 2.3 million ha are of high irrigation development potential, 4.8 million ha are of medium potential and 22.3 million ha are of low irrigation development potential. Tanzania is estimated to have more than 30 million ha of land suitable for cultivating energy crops, with corresponding areas of 570,000 ha, 24 million ha and 14 million ha suitable for sugarcane, cereals and root crops, respectively (FAO 2007 cited in OI 2011).

The aforementioned statistics are not supported by land use maps/plans, which clearly show what amount of land has been identified and where it is located. Tanzania currently has about 12,000 villages and statistics show that only 1,000 villages have been surveyed and planned (URT, 2011). As

a result, some investors²³ have spent more time in land acquisition process because of absence of a land bank.

6.2 Community Participation

Local and international legal instruments require local community participation in any investment projects that involves their land. The noble idea behind this requirement is to have their free, prior and informed consent to such projects, which will help to avoid any future conflicts between investors and local communities. It also intends to pave way for negotiation and integration of local communities in such projects. Studies have shown that, most of the land deals have been transacted without full participation of local community. Where local communities are involved, it is because their political leaders have asked them to participate and some investors have furnished some considerations²⁴. Sometimes local communities have been deprived of the right to understand (lack of transparency) terms of land deals and the legal implications²⁵, and some local leaders have entered into agreement with foreign investors without understanding the language of the contract²⁶.

6.3 Compensation

Full, prompt, and fair compensation of the landholder is the right, which is not only provided by land laws²⁷, but also guaranteed by the constitution²⁸. Section 4 (8) of the Village Land Act states:

No village land is to be transferred until the type, amount, method and timing of payment of compensation has been agreed upon between:

(a) The Village Council and the Commissioner, and

(b) Affected persons/groups and the Commissioner where the affected persons/groups have been allocated customary rights of occupancy whether or not they are registered

While the Act guarantees compensation to the affected parties, there are many practical problems, which surround the compensation procedures in Tanzania. Compensation practices in Tanzania are not inclusive, lack participation of local communities, monitoring and record keeping (Mtoni 2010). Moreover, the compensation process involves middlemen (including elites) who are not part of the deal, but take part in the process because of private financial gains and not protecting the interests of the landholders or local communities (affected parties). Compensation processes in Tanzania have also been observed to be associated with high transaction costs, a situation, which limits maximisation of wellbeing of the affected parties.

Bioshape made a compensation of about \$647,000 but only 40% reached the targeted people, while Kilwa District Council took the remaining 60% (Veit et al. 2012; HAKIARDI 2011a). Sunbiofuels had recently (December 2013) paid 577,708,870 TZS as compensation for bare land, eight years after the valuation report for payment was made public and the land was acquired. Geita Gold Mine has not compensated over 20 people, delayed payment for over 30 villagers and over 50 households living near the mine suffered a lot from mining operation because their houses have cracks, and their water sources have been polluted, yet they are not resettled and compensated. Experience shows

²³ It took 3 years for Sunbiofuels to acquire land in Kisarawe district.

²⁴ Lutukira case discussed above is one example.

²⁵ Most villages are not made aware that when the land is taken by investor it has to be transferred to general land, which comes under the control of the commissioner of lands and not village council.

²⁶ The contract between Green Resources Company Limited and Idete Village was drafted in English and was signed by village chairperson who did not understand English.

²⁷ Land Act and Village Land Act of 1999, Investment Act of 1997, Road Act of 2007, Mining Act of 2010, Town Planning Act of 2007, etc.

²⁸ Article 24 of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

that compensation, which needs to be presided by participatory processes of land valuation, has never put the victims in the better position, but instead worsens their situation because land valuers are trained to use minimal standards (Bergius 2012). Sometimes the victims have been vacated forcefully and their properties destroyed in the name of paving the way for investment. For example, AgriSol tried to give half of the compensation to the victims a land deal and only promised to pay the remaining sum after the victims have vacated the area²⁹, which is against the requirements provided by law.

7 Impacts of Land Investment

7.1 Economic Impact

In 2011, EPZA registered 16 new investors who put up industries in the country, created about 8,000 new employment opportunities and increased export to \$130 million³⁰. Statistics show that in 2010, 8 new investors were registered under EPZA with about \$39 million capital investments, which created 3,000 employment opportunities for Tanzanians³¹. Though this sounds good, considering the costs which EPZA incurred in developing necessary infrastructure for these investments to take off and the 10 years tax grace period for investors, one would conclude that economic benefit takes a long time to be realised.

Studies show that Tanzania provides an assortment of tax incentives and exceptions, especially for mining companies and firms operating in the Export Processing Zones (EPZs). Many of these exemptions represent an unnecessary loss of revenue. Exemptions given in corporations have deprived Tanzania an average of TZS 458.6 billion (\$288 million) a year in three years 2008/09–2010/2011 (Curtis et al 2012).

7.2 Impact to livelihood and food security

Over the past few decades pressure on pastoral grazing lands and water resources have increased due to increased interests in investment, which demand more land for cultivation, and conservation areas. This culminated into the eviction of pastoralists residing in Usangu/Ihefu in 2006 and in Loliondo in 2009. These evictions are characterised as violent, having disregarded the human and land rights of the pastoralists. Such relocations of pastoralists from their original areas have caused serious livelihood issues as they failed to cope with the dry season and their movements have fuelled constant confrontation with other land users such as farmers.

Agro-fuel and agro-forestry is posing a challenge to food security to the communities around such investments because of acquisitions of areas that are good for growing food crops. Areas such as Kisarawe, Mpanda, Bagamoyo, Kilwa, Kilolo, Mufindi and Morogoro have fertile soil and good climatic condition for food crop production, but these areas have many reported deals in biofuels and agro-forestry such that it may jeopardise food security. There is also evidence that in such areas the labour force which was used for food crops production, is now used for biofuel and agro-forestry productions. This has resulted in hunger in such areas, for example, in Kilwa the Bioshape-hunger (*njaa ya Bioshape*) (HAKIARDHI 2011a). Project impacts correlate with compensation and worsening households natural, physical, human, financial, and social capitals (Mtoni 2010). Furthermore, land loss for investment purposes has resulted in deteriorating livelihoods for rural communities due to declining agricultural productivity.

²⁹ The case of resettlement of Katumba and Mishamo refugees to pave way for AgriSol investment

³⁰ The Guardian News Paper- 10 January 2012, pg. 3

³¹ The Citizen News Paper- 25 January 2010, pg. 10

7.3 Social impact

Land-based investments estrange local communities from their land, so that all traditional values attached to community land are disrupted. For example, in Kisarawe district, it became hard for the community to have access to medicinal plants and graveyards located in areas under investor control. In Mishamo and Katumba refugee camps, villagers (former refugees) have criticised the resettlement plan as it would detach them from their land and relatives with whom they have lived for decades which, they say, would destroy their traditional ways of living. Land deals typically have little involvement with local communities, and men are more involved in the process than women, making it hard for women to benefit from such deals (LEAT 2011).

7.4 Environmental impact

Environmental justice is a vital criterion that must be adhered to by all investment projects in the country. Corporate entities have a duty to manage and conserve the environment not only to preserve nature and the quality of the environment, but to benefit mankind. On this basis every entity is urged to look at the environment with a holistic eye considering the possible chain of consequence triggered by its single action (LHRC 2012).

Although both international environmental legal instruments and local environmental laws require the aforementioned condition, the practices are quite different. Allegations suggest that mining and manufacturing have caused land degradation, and factories near residential areas have caused air pollution. North Mara Gold mine had sustained impact on the surrounding environment of north Mara, as a toxic spill made the area dangerous for people and animals³² and there are concerns that the area around the tailing dam — in effect between the Tighite and Mara rivers — might be contaminated and harmful to people (LHRC 2012).

In Mkwajuni hamlet, located in Nzega district, wastewater from the mine has created serious environmental pollution with the water from the nearby stream producing a bad smell due to the contained chemicals from mines' dams. Also, in Nyakabale village, pollution due to the mining activities of Geita Gold Mine was a noted problem, as well as heavy dust caused by rock blasting. Barrick Buzwagi area is also largely affected by mine pollution, with severe complaints from the nearby residents (LHRC 2012).

In agribusiness investments, the situation is not advantageous as some companies have not conducted environmental impact assessments (EIA) in the way that the law requires, and others have not followed recommendations from EIA reports. Agro-Eco energy³³ and Sunbiofuels are criticised for not following the recommendations given by EIA reports, which are decried for lacking community participation (LEAT 2011; ActionAid 2011; OI 2012). As a result, local communities in Kisarawe district are facing serious water shortages and donors³⁴ are reluctant to finance Eco-energy projects. Clearing of miombo forest to pave way for jatropha farm in Kilwa by Bioshape caused serious environmental impact to the community.

At Kilombero, Illovo, a sugar-growing company, used aeroplanes to spray pesticides on its farm, while taking no effective environmental and health precautions, causing local crops to dry before maturity.

³² Nine cows died due to consumption of water from the ponds which had water mixed with chemicals from the mine (LHRC 2012)

³³ For more detailed information about this, see Matondi (2011) Biofuels, Land Grabbing and Food Security in Africa, Zed Books, London.

³⁴ SIDA recently commissioned a study to investigate on EIA process of Agro Eco Energy.

Also, in Mufindi district, Tanzania Pyrethrum is blamed for air pollution caused by dust generated from mining, with nearby communities suffering from chronic coughing (LHRC 2012).

The Environmental Management Act of 2004 provides for various prohibitions and corresponding penalties, but despite being comprehensive, the Act is not followed in letter or spirit. Despite many violations, law enforcement machinery is ineffective, although the entire public bears the burden as it has a stake on environment management (LHRC 2012).

8 Recommendations

- A wide-ranging land use plan is needed in all villages, especially those targeted for investment. Land use plans can help villages know the size of their village land and plan for current and future land use. With a village land use plan, villagers can identify land to be leased to potential investors.
- Land has to be given constitutional protection and the constitution should state how land based investment should be governed. This is the biggest challenge because the current land legal regime, governed by the Land Act and Village Land Act (both of 1999), has centralised power in government. These land laws declare all land in Tanzania as public, vested under the President as the trustee. The laws allow acquisition of any piece of land by the state for public interest, which can be investment for public interest. The definition of the term *public interest* has not been clearly defined by these laws. Related to this is that biofuels policy and associated legal framework, which is in harmony with other sector legislations need to be in place.
- Compensation should shift from monetary compensation, because money cannot compensate poor people when their land is taken. A partnership approach may be needed whereby a farmer can lease their land to the investor and get regular income from it.
- All land deals need to be entered in a transparent manner. Documents related to the proposed land deals should be made public, contract documents should be written in an accessible language (Swahili) that is widely spoken by most Tanzanians to permit easy understanding of the contents by all parties involved. In addition, local institutions need to build capacity to better interact and negotiate with investors in order to achieve a win-win situation in all land deals.

9 Conclusion

In Tanzania, large-scale land-based investments are happening at an extraordinary pace and are a reality for many local communities. Many issues need to be tackled to permit realisation of the benefits of land-based investments in the country. Challenges around land investments have made the local communities living around these projects believe that investment is not the goose that lay golden eggs. Much as the government is working hard to attract investors to for development, there is a need to learn from the past, be more cautious, and ensure that the project objectives are realised at all levels. Local communities and institutional empowerment and participation are equally essential to have profitable land deal discussions and sustainable investment for the benefits of the present and future generations.

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A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

Land-based Investments in Tanzania: Legal Framework and Realities on the Ground

Beginning in the mid-1970s through to the 1980s, Tanzania experienced a severe socio-economic crisis. In an attempt to turn things around the abating economy and accelerate economic growth, the government embarked on a broad range of radical policy, legislation, and institution reforms, which opened doors for foreign direct investments (FDIs) and further initiatives have been taken to create an enabling environment for investments to flourish in the country. This paper provides highlights and an analysis of the legal framework governing investment in Tanzania, discusses the context of investment within the existing legal framework, provides an overview of land acquisition procedures, and gives analysis of some land deals. The findings show that mixed procedures, some of which are not guided by laws, are currently used to acquire land for investment in Tanzania. Moreover, no clear definition of what public interest insinuates is given either in the constitution or in the land laws. Information asymmetry is a critical problem in land deals in Tanzania. Land acquisition and compensation practices are currently poor and have serious flaws in the way community consultations are carried out, including political interference, lack of transparency, lack of affected parties' (individuals and local communities) awareness of the process, and lack of productive engagement between investors and local communities. Poverty and illiteracy of the local community has been used to the advantage of the local elites, politicians, and investors in negotiating land deals.



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