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# Making Land Investment Work for Tanzania: Scoping Assessment for Multi-stakeholder Dialogue Initiative

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## Abbreviations/Acronyms

CAO	Compliance Advisor/Ombudsman
CCRO	Certificate of Customary Right of Occupancy
CSO	Civil Society Organisation
DPP	Department of Physical Planning
EIA	Environmental Impact Assessment
EITI	Extractives Industry Transparency Initiative
EU	European Union
GCA	Game Control Area
GDP	Gross Domestic Product
Ha	Hectare
IFC	International Finance Corporation
IIED	International Institute on Environment and Development
LA	Land Act, 1999
LEAT	Lawyers Environmental Action Team
LHRC	Legal and Human Rights Centre
LUPA	Land Use Planning Act, 2007
M&E	Monitoring and Evaluation
MKUKUTA	Mpango wa Kukuza Uchumi na Kupunguza Umasikini Tanzania
MLHUS	Ministry of Lands, Housing and Urban Settlements
MOU	Memorandum of Understanding
NARCO	National Ranching Company
NGO	Non-governmental Organisation
NLUPC	National Land Use Planning Commission
NSGRP	National Strategy for Growth and Reduction of Poverty)
PS	Performance Standard
REPOA	Research on Poverty Alleviation
SAGCOT	Southern Africa Growth Corridor of Tanzania
SPILL	Strategic Plan for Implementation of Land Laws
TAPHGO	Tanzania Pastoralist, Hunters and Gatherers Organisation
TIC	Tanzania Investment Centre
TNRF	Tanzanian Natural Resource Forum
UN	United Nations
URT	United Republic of Tanzania
USAID	United States Agency for International Development
VLA	Village Land Act, 1999
WB	World Bank
WWF	Worldwide Fund for Nature

## Executive Summary

The purpose of this assignment was to establish whether there is appetite to hold a public debate on how to realise better land-based investments in Tanzania. It also aimed at identifying what would be the discussion issues and most appropriate mechanism to allow different actors from different levels to articulate their perspectives on land-based investments in Tanzania. This has been triggered by the sensitivity surrounding the topic.

The findings of the study that informs this report indicates clearly that stakeholders are very interested in a multi-stakeholder dialogue on land issues. These stakeholders include Civil Society Organizations (CSOs); the Government; private sector/investors; Development Partners; religious leaders; politicians and academia/researchers/experts. All categories of stakeholders expressed an interest in issues associated with land-based investments. They support the need for the dialogue and indicated great willingness to participate in it.

The key findings from the policy and legal analysis and stakeholder consultations are as follows:

Land conflict is not new to Tanzania. However, economic liberalisation, the land law reforms and a renewed focus on formalisation of land ownership appear to be combining to intensify existing disputes and create additional disputes including those between investors and existing land holders/users. This is seemingly at odds with the articulated intent for the land law reforms and formalisation processes to reduce conflicts, increase tenure security and empower the poor.

With respect to the land laws there are contradictions between the Land Act (LA, 1999) and the Village Land Act (VLA, 1999) and also conflicts with other legislative instruments with respect to defining land uses and administrative responsibilities e.g. the Wildlife Conservation Act (WCA, 2009). However, there does appear to be increasing coherence around the recognition of customary management of communal resources (to a lesser extent the WCA, 2009), although it is yet to be demonstrated that these instruments guarantee any security for customary tenure.

The land laws are complex with cumbersome procedures and similar criticisms have been leveled against some of the new laws for natural resources e.g. Forest Act, 2002. The Strategic Plan for Implementation the Land Laws (SPILL) was developed in recognition of this and to assist with the implementation of the land laws. Implementation activities have been centred around rolling out the formalisation process. After various pilot projects it is unclear whether this is providing the necessary land rights protection especially to the rural population (& informal urban residents) the vulnerable and the marginalised. The benefits are also unclear. Recent independent research on a pilot project concerned with registering CCROs has suggested that the process “realigned land ownership, created new landlords and formalised landlessness” (ole Kosayndo, 2006). Much more research and documentation of processes to implement the land laws is required. Implementation activities have been heavily constrained by a lack of available funding either from the Government or development partners.

Being issued with a certificate of customary right of occupancy (CCRO) does not provide any additional security and/or benefits in the face of land acquisition for investment. The President can resort to compulsory acquisition on condition of compensation, for the public interest. This includes investment in the national interest. This typically becomes the scenario when suitable land for a foreign investment has been identified on Village Land. The identified land can ultimately be compulsorily acquired for the purpose of transfer to general land and subsequently made available to an investor.

In the event of compulsory acquisition, involuntary resettlement and compensation procedures have come under heavy criticism. There is a pressing need for detailed research, analysis and debate on the less than transparent village land transfer process and involuntary resettlement and compensation processes for land acquisition for investment. This is not a straight forward matter to resolve as it also impacts on what the Government can afford. Any approach to this issue has to recognise that it has to work for both land acquisition for foreign investment but for land acquisition associated with infrastructure, typically funded by Government e.g. roads.

A significant risk to land rights is weak governance in land administration at all levels but particularly at local level. There are a number of reasons for this including, but not limited to: availability of financial and material resources, capacity of human resources, complex procedures and multiple reporting lines reducing effective oversight and control; lack of transparency and accountability within institutions and decision making processes; corruption at various levels. Good quality land administration cannot be expected in the absence of a functioning system of local government. Any initiatives to strengthen governance of land administration need to be undertaken in conjunction with general reforms in local government.

Economic growth and development strategies are concerned with growth and facilitating private sector participation. Smallholders and livestock keepers are not fully integrated into growth strategies for the agricultural sector. Rather the emphasis appears to be on consolidating agricultural activity in the rural areas and making land available for commercial farming and ranching. There is little recognition of the potential threats these strategies may present to security of land and natural resource rights and as a result there are no strategies to mitigate these risks into the strategies.

In the mining sector the new policy and Mining Act, 2010 pay more attention to the role of small scale miners in the economy. However, it is yet to be seen whether this will reduce conflicts between this group and large scale mining investments. Landholders have no rights to mineral resources as stipulated by the land laws and the Mining Act, 2010 with the Mining Act taking precedence. This is also the case for petroleum resources. There is an absence of land use analysis and policy direction around priority land uses in different parts of the country. For example, recently in Queensland, Australia a decision was made to restrict coal mining activities in areas identified as “strategic cropping lands”<sup>1</sup>. Such analysis and policy direction is currently lacking in Tanzania.

Investors and the Government see the Village Land Act (VLA, 1999) as a hurdle. This suggests that the VLA can offer some protection for existing land use rights. However, the pro-investment drive and weak land administration tends to give rise to behaviours that at best rush through required procedures and at worst circumvent them.

With land not taking a central place in economic and development strategies it becomes more difficult to access the necessary financial resources for land administration and much needed land use planning activities. With the Government not being able to execute its responsibilities situations arise whereby investors fund land use planning activities in areas where they would like to acquire land. This is neither a “free” environment for villagers to make decisions about their resources and it is not particularly liked by investors as it adds to their investment transaction costs.

An absence of legal provisions for transparency means that it is almost impossible for the public to access information about investments (such as who is involved, who was informed, what amount of land was acquired and for how long) and for stakeholders to be able to respond to challenges and opportunities that such investments may present.

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<sup>1</sup><http://www.gasland.com.au/2011/05/the-australian-battle-between-mining-and-agriculture-threatens-22bn-in-coal-seam-gas-projects/>

There are a number of international instruments and initiatives (over and above national EIA regulations) that could be leveraged to encourage investors to act more responsibly in matters associated with land acquisition. Certainly a great deal more pressure could be exerted on foreign investments originating from OECD countries, both on the corporate entity and on their financial backers. There appears to be a need to raise awareness among stakeholders about the possible instruments that could be leveraged in this regard. It is more difficult to exert pressure using these instruments on investments emanating from countries in the Middle East and China and India. It is important that Tanzania strengthens existing national instruments for regulating corporate behaviour but also identify opportunities for encouraging more sustainable financing activities.

There is also a need to share research and thinking on land matters with business and investors as they may not be fully aware of the dynamics on the ground and the risks that these present. While there are “opportunistic, short-term” investors seeing an opportunity in weak governance<sup>2</sup> Tanzania needs to find ways to control this and attract better quality investment in. It is unlikely that such investors will be committed to Tanzania’s long term development. Tanzania needs to take advantage of changing risk management approaches by actors in the finance sector (lenders and investors). Longer term oriented responsible investors would consider the current situation in Tanzania a significant risk to investment.

Fimbo, (2003)<sup>3</sup> noted that the challenge that policy makers faced with the land law reforms were tensions between on the one hand freedom to deal with the land in the market and on the other security of tenure or protection of users and occupiers of land.

So 15 years down the line is Tanzania managing to balance these tensions, has anything changed on the ground as a result of either the LA, 1999 or the VLA, 1999, what has been their impact, are conflicts lessening, does the policy and legislation provide the right framework to manage these tensions or are weaknesses in the governance land administration undermining the laws, through improper implementation? What does this mean for security of tenure for land and other natural resources in the face of growing pressures for land for investment purposes? Is it possible to legitimately acquire land for investment purposes without first having protected the land rights of existing users? What does this mean for the type of investment activity that is acceptable?

The recommended dialogue mechanism is for a series of carefully coordinated smaller fora that feed into a larger forum where all stakeholder groups represented. It is recommended that partnerships are established with existing dialogue forums for the smaller fora. The media should also be utilised to inform the public of the dialogues and the outcomes.

In addition a separate process should be identified for specifically coordinating contributions on land issues and ensuring they find their way into the Constitutional review process.

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<sup>2</sup> A recent World Bank Policy Paper, October 2011 reports research findings that show an association between weak land governance and protection of land rights with higher rather than lower levels of investment.

<sup>3</sup> Cited by Olungurumwa, 2010

## 1 Introduction

The purpose of this assignment was to establish whether there is scope to hold a public debate on how to realise better land-based investments in Tanzania and manage the challenges associated with realising equitable and sustainable outcomes. If so, what would be the most appropriate mechanism(s) to allow different actors from different levels to articulate their perspectives on the opportunities and challenges of investing in Tanzania, and for these perspectives to be documented to provide the basis for setting an agenda of subsequent actions.

The reason for undertaking a scoping assignment is recognition of the sensitivity surrounding the topic. This assignment provides the opportunity to think through the intent and identify the most effective mechanism(s) for facilitating multi-stakeholder dialogue. This assignment is concerned with Mainland Tanzania only, unless otherwise indicated, as policy and legislation related to land and natural resources differ between Mainland and Zanzibar.

### 1.1 Background

Research on Poverty Alleviation (REPOA) in partnership with the Tanzanian Natural Resource Forum (TNRF) and the International Institute on Environment and Development (IIED) initiated this assignment in response to a growing body of research, commentary and media reports documenting concerns over increasing levels of conflict associated with land based investments, across Africa and more specifically Tanzania. Further, it is anticipated that if the dynamics behind these conflicts are not fully understood and resolved, there is the potential for such conflicts to escalate in the face of growing pressure for access to land based resources by investors, as Africa becomes increasingly integrated into the global economy.

Global drivers for land demand in Africa include rising commodity prices (particularly food, energy and certain metals) and the financial and economic crisis of 2008. These drivers have resulted in increasing numbers of foreign investors showing renewed interest in Africa's land based assets. These investors range from private individuals and companies to government backed entities and governments. Some are investing to establish productive enterprises whilst others are engaging in speculative acquisitions. Although the focus of media reports and research has been on foreign land based investments, Deininger et al (2010) note that in most countries in Africa local investors are the dominant players with respect to land related deals.

Observers suggest that the rapid growth in large-scale land acquisitions experienced since 2007<sup>4</sup>, for crop land expansion alone, is unlikely to slow. Conservative estimates by the World Bank, indicate that six million ha of additional land in developing countries will be brought into agricultural related production each year to 2030 (Deininger et al, 2010). Two-thirds (four million hectares) of this expansion is expected to be in Sub-Saharan Africa and Latin America, on the assumption that this is where potential farmland is available. Tanzania is a country considered to fall into this category of being "relatively land abundant", with respect to potential agricultural investments.

The pre-conception that there is available land overlooks the fact that much of this land is under customary domain; that is it is held collectively by individual communities for common use and where those communities consider themselves to be the traditional custodians of the natural resources which fall within those domains. These community land areas are extensive in area and

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<sup>4</sup>Numbers communicated to Alden Wily (2011) in January 2011 based on a verification exercise by the International Land Commission in conjunction with four other agencies, suggest that up to 70 million ha of land in Africa may have been leased or under negotiation since 2007. The World Bank reports a figure of investors expressing interest in large-scales land acquisitions amounting to 29 million ha of land in less than a year since the 2008 commodity boom (Deininger et al, 2010). In September 2011 Oxfam reports data from the Land Matrix Partnerships which indicate 227 million hectares of land have been acquired by primarily international investors since 2001, the majority of which has been in Africa. Recent initiatives to verify the amount of land acquired and/or under negotiation have revealed significant gaps in information and discrepancies between sources of information (e.g. official vs media reports).



are an important contributor to local livelihoods. Alden Wiley (2011) estimates that 70% of total land area in Africa can be considered to be commons under customary domain. Across Africa these areas tend to carry weak legal status and even in countries where this has been strengthened through recent land law reforms, as has been the case in Tanzania, it is still difficult for a community to refuse a land acquisition especially where that acquisition has been deemed to be in the public interest. In such a situation, as is the case for most investment related acquisitions in Tanzania, the President can resort to compulsory acquisition. At best the strengthened law provides the opportunity to negotiate better compensation terms, although a number of barriers to this have been documented. See Kabiri, (2011), Theting and Brekke, (2010), Cotula et al (2009), Sulle and Nelson, (2009).

Some Civil Society Organisations (CSOs) have introduced the term 'land grab' to describe investments involving land acquisitions. The term 'land grab' has been defined by the Tirana Declaration<sup>5</sup> as land acquisitions which do one or more of the following:

- i. Violate human rights, and particularly the equal rights of women;
- ii. Flout the principle of free, prior, and informed consent of the affected land users, particularly indigenous peoples;
- iii. Ignore the impacts on social, economic, and gender relations, and on the environment;
- iv. Avoid transparent contracts with clear and binding commitments on employment and benefit sharing;
- v. Eschew democratic planning, independent oversight, and meaningful participation.

The growing body of literature, suggests that to date large-scale land based investments, particularly in Africa and more specifically Tanzania are not realising the level of economic and social development intended (e.g. jump-starting growth in the agricultural sector). They are rather having a net negative impact primarily associated with dispossession and loss of resource access rights which in turn is giving rise to conflict.

As such REPOA, TNRF and IIED, sense that the emerging risks associated with land based investments are significant enough to justify the initiation of a multi-stakeholder dialogue. The aims include to share a common appreciation and understanding of the underlying dynamics and to prompt action to find a way for land-based investment to support equitable and sustainable development in Tanzania.

## **1.2 Assessment Methodology**

The scoping assessment has been informed by a review of both secondary and primary data sources. Data was collected through a combination of literature review and interviews with stakeholders. Individuals approached for interview were sent copies of a background note for the assignment and a questionnaire. This was followed by face to face interview and to a limited extent, telephone interviews.

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<sup>5</sup><http://www.landcoalition.org/about-us/aom2011/tirana-declaration>

## 2 Overview of Land Cover and Use in Tanzania<sup>6</sup>

As of 2009 Tanzania had a population of 43.7 million people<sup>7</sup> (3 million in Zanzibar), of whom 75% live in rural areas. The majority of the population lives in the fertile northern and southern highlands, along the shores of Lake Victoria, and in urban and coastal areas.

The total surface area of Tanzania is 94.3 hectares including water bodies comprising an area of 6.15 hectares. Land area is 88.2 million hectares<sup>8</sup>. There is a variety of data published on land cover and use in secondary sources. However, without supporting information it is difficult to interpret and comment on its reliability. The following table present data from two different sources to give an overview of major land cover/use types. There appears to be some missing data in the 1997 data judging from the totals for area and proportions. As the two data sets have different land use categories they should not be used for trend analysis.

**Table 1: Data sets on Land Cover**

Land Use/Cover Type	1997 National Reconnaissance Level Land Use and Natural Resources Mapping presented in Kironde 2009		Coverage in 2002 from ARU Land Cover Analysis 2007 published in NLUPF 2009 - 2029	
	Area (million hectares)	% of total area	Area (million hectares)	% of total area
Forest	2.7	2.9	4.76	5
Woodland	37.4	39.6	31.4	33.2
Bushland	17.3	18.3	23.5	25
Grassland			15.1	16
Mangrove forest			0.15	0.2
Forest plantation			0.1	0.1
Water features/Wetlands	7.35	7.8	5.78	6.1
Open land/Bare soils	0.14	0.2	0.14	0.2
Cultivated land	19.3	20.5	12.8	13.6
Urban areas/Built up areas	0.065	0.1	0.55	0.6
<b>Total</b>	<b>84.255</b>	<b>89.4</b>	<b>94.28</b>	<b>100</b>

Both data sets indicate that approximately 60% of the land cover is under forest, woodland and bushland. In the 2002 data 16% of land cover is grassland.

Data for cultivated land varies in publications. Here figures of 19.3 million hectares (20.5%) and 12.8 million hectares (13.6%). The Tanzanian Investment Centre (TIC) puts cultivated land at 10.2 million hectares (Sulle and Nelson, 2009). This figure is also quoted by USAID including mention that between 1.1 and 1.3 million hectares classified as permanent crop land.

<sup>6</sup>Data sourced from USAID's Country Profile: Tanzania – Property Rights and Resource Governance Information Portal (2011) <http://usaidlandtenure.net/usaidltpproducts/country-profiles/tanzania> unless otherwise specified. Please refer to this Country Profile for information on primary data sources.

<sup>7</sup>Department of Economic and Social Affairs Population Division (2009) (PDF). World Population Prospects, Table A.1.2008 revision. United Nations.

<sup>8</sup>Based on data presented on the national government website <http://www.tanzania.go.tz/landsf.html>.

With respect to land use the following two tables are presented.

**Table 2 Types of Land Use (Source: Kironde 2009)**

Type of Land	Area (millions hectares)	
Small holder cultivators	4.1	4%
Large-scale agriculture	1.1	1%
Grazing land	35	38%
Forests and Woodland	44	48%
Other land	4.4	5%
Arable land	3.6	4%

It is seen from the table above that the majority of land (48%) is under forests and woodland then the next greatest portion of land (38%) is under grazing land. Arable land is a mere 4% of the total while land under large scale agriculture is just 1%.

**Table 3 Main Existing Land Uses (2002) (Source: NLUFP 2009 – 2029)**

Land Use types	Area 2002 (millions hectares)	%	Basis for land use categories
Urban settlements, agriculture and mining	16.20	17.00	Dominated by high population density, farming, livestock keeping, utilisation of natural vegetation and mining
Scattered village settlements, agriculture and mining	20.10	21.00	Low population density, low intensity human activities such as farming, livestock keeping and utilisation of natural vegetation
Village settlements, grazing, hunting and non woody product harvesting	9.80	10.30	Very low population densities but used for grazing, hunting or harvesting of non woody products. These are mainly the GCAs. It is to be noted that it is an offense to graze into GCA under the Wildlife Conservation Act 2009.
Woody and non woody production	15.50	16.30	No permanent human settlements but used for harvesting of non woody including ecosystem maintenance and woody products
Water resource uses	6.30	6.70	Fishing, transportation, water supply and conservation in different types of water bodies
Conservation	27.40	28.70	Protected areas including both wildlife and forest areas

From the table above it is seen that the greatest portion of land (28.7%) is under conservation. The next greatest portion (21%) is under scattered village settlements, agriculture and mining followed by urban settlements, agriculture and mining (17%).

It is documented on the national government website that the grow area cultivated/planted annually is about 5.1 million hectares. There are about 4.9 million holdings with 90% of the holdings averaging 1 – 3 ha of rain-fed land, although a few larger commercial plantations exist. About 310,00 hectares were irrigated as of 2009, including 350 hectares in Zanzibar. The most intensive land cultivation is in the Kagera, Kilimanjaro, Arusha, Kigoma and Mbeya regions. Rice and sugarcane cultivation occurs in the alluvial river valleys e.g. Rufiji.

Figures that are typically unclear or absent in information on land use, and arguably important data, are those on areas of land accessed/utilised by small holders and pastoralists for resources such as grazing, water, forest products etc and that are managed under customary regimes for common use.

Pastoralists and smallholders, undertaking livestock activities on communal lands, are responsible for approximately 97-99% of the livestock sector which generates about one quarter of agricultural GDP. In 2008, agriculture accounted for 45% of GDP. From the information presented in Table 2 and Table 3 the current area under livestock keeping and grazing is anywhere from 10 – 35 million hectares (10-38% of total area).

Large dairy farms and commercial enterprises account for the remaining 1 -3% of the livestock subsector. The state owned National Ranching Company (NARCO), with operations covering 623,000ha is responsible for most commercial ranging. Since 2007, government has been restructuring ranch ownership, divesting and actively seeking buyers and joint venture partners. Much of the rangeland is in the northern and central regions of the country

According to data published on the United Republic of Tanzania (URT) website, a total of 24 million hectares is allocated to reserves. This is the largest share of land resources allocated by any country in Sub-Saharan Africa. Reserves include National Parks (4.2 million hectares), Game Reserves (7.7 million hectares), and Forest Reserves (10.1 million hectares).

## 2.1 Overview of Administrative Set Up

Mainland Tanzania is divided into about 28 Regions and 137 administrative Districts. There are 25 urban authorities and 106 district authorities. There are around 10,397<sup>9</sup> registered villages. Villages are administrative units, typically with a population of between 2,000 and 4,000, managed by Village Councils. Each village has a Village Government. Two to four villages make up a Ward and an elected Ward Councillor represent the Ward in the Full Council meetings at District Council level. The Department of Physical Planning (DPP) in the National Land Use Planning Commission (NLUPC) indicated that by November 2011 there are anywhere between 11,000 and 14,000 villages.

With respect to Land Administration there are three categories of public land as defined in the new land laws (Land Act, 1999 (LA, 1999) & Village Land Act, 1999 (VLA, 1999). All three categories are administered and managed by the Ministry of Lands Housing and Urban Settlements (MLHUS). Powers are delegated by the President as the ultimate owner of all land. The central office in the administration of land is the Commissioner for Lands. The three categories are:

- i. **General land** which is considered to be 2% of the land, mainly under urban use and supporting around 20% of the population. The Land Act governs general land. It is effectively directly administered by the Commissioner of Lands. Under section 2 of the LA, 1999 general land is defined as all land that is not reserved land or village land and includes unoccupied or unused village land. It has been noted that this definition differs from that given in the VLA, 1999 which simply states that general land is all land that is not reserved land or village land. As the LA, 1999 is considered to be the primary land act it is not clear what this means in practice.
- ii. **Village land** is land declared to be village land in accordance with section 7 of the VLA, 1999. It is considered to be 70% of the land and supporting 80% of the population. It is governed

<sup>9</sup>Kironde (2009). Data sourced from the Ministerial report on achievements of the Government for the past three years (Uhuru, January 13th 2009, p13-17) and from PMO-RALG. Also stated in the USAID Country Profile <http://usaidlandtenure.net/usaidltpproducts/country-profiles/tanzania>.

by the Village Land Act and is managed by the Village Council. Shivji (1999) notes that the Village Council is effectively an agent of the Commissioner although there are constraints through requirements that the Commissioner consult village bodies.

- i. **Reserved land** is 28% of the land made up of forests, national parks and game reserves. It also includes land reserved for other special purposes such as highways, public utilities and spatial planning and hazardous land. These lands are governed by a number of laws<sup>10</sup> and their administration comes under statutory or other bodies set up with powers over these lands. However the Commissioner has ultimate powers of allocation on reserved lands as well.

The President can transfer land between all three categories in accordance with procedures set out in the LA, 1999 and VLA, 1999, which are discussed in Section 3.3

In all the above land is defined as per section 2 of the LA, 1999 and section 2 of the VLA, 1999 as including:

“...the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on land, buildings and other structures permanently affixed to land”

Any rights to occupancy and use conferred under these Acts do not extend to the mineral and petroleum resources which can be found in that land. These resources belong to the State and are regulated by other statutory instruments and their use is administered by other authorities.

## 2.2 Land Availability and Acquisitions for Investment

The Tanzanian government has been actively seeking investors in the agriculture and other sectors as part of its economic growth and development strategies. These strategies are seemingly based on the assumption that there is a relative abundance of land “available” for agricultural investment. The following data are often quoted to reflect this assumption: 44 million hectares of arable land of which 10.2 million hectares is currently under cultivation. It is estimated that 29.4 million ha of arable land is suitable for irrigation (data sourced from TIC by Sulle and Nelson, 2009). On land suitable for irrigation USAID (2011) reports a figure of 2 million hectares. In the URT’s website it is documented that there are 10 million hectares of other arable land that is not cultivated and an additional 4 million hectares of land suitable for cultivation in the reserves.

During the course of this assignment it was not possible to readily access any data that would indicate how much land has been acquired, that is formal rights of occupancy granted to investors either foreign or local.

A Land Bank Scheme was created under the Tanzania Investment Act, 1997 as an instrument for holding land suitable for investment and managed by the Tanzanian Investment Centre. As of 2005 2.5 million hectares of land were identified as available for investment. However, government records indicate that only 50,000 hectares were transferred to foreign investors during the period 2004-2009. The Land Bank is considered to be unsuccessful for a number of reasons including that the parcels of land held are too few, too small and too scattered to be of much interest to investors (USAID, 2011). In 2008, TIC reported that it registered 270 applications for land by investors annually and had a backlog of 4,200 applications (Lugoe, 2008). The majority of these applicants

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<sup>10</sup>Nine laws are listed under s 6 of the Land Act but many of these have subsequently been repealed with the coming in of new sector legislation.

require land for agriculture, livestock development, hotel construction, tourism, manufacturing, processing plants, commercial building and apartments.

Research by Sulle and Nelson (2009) indicates that over 4 million ha of land have been requested for biofuels investments alone<sup>11</sup>. A total of 640,000ha have been allocated and 100,000ha have been granted formal rights of occupancy. Deininger et al (2010) note that officially reported figures on land deals tend to be much lower than that reported in the media<sup>12</sup>.

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<sup>11</sup>For example what about land that has been acquired for investments in food cropping (e.g. in the Southern Agricultural Growth Corridor (SAGOT)), forestry, mining, game management areas, commercial and industrial development.

<sup>12</sup>There have been numerous reports in the media reporting on land conflicts in general and land acquisitions by investors. Examples include: Accusations by law makers of ex presidents and other political heavy weights of land grabbing with 25,000ha specifically cited; A controversial MOU between the District Council and Agrisol Energy LLC for 300,117ha in Rukwa Region's Mpanda District that will displace over 160,000 Burundian refugees who have been resident in the area for over 30 years; Indian investors, Karuturi Global indicating that they are ready to spend \$500million acquiring and developing 370,000ha of land for palm oil, cereal and sugar cane.

### **3 Analysis of Policy and Legal Framework**

The analysis in this section aims to establish a) whether there is any bias inherent in the policy and legal framework and if so what is the source of this bias (policy, legal or administrative procedure) and towards which parties; b) the coherence between the various policies and laws governing investment and land (tenure, planning, management, use, acquisition) where these policies align or invite conflict; c) coherence between policies and over arching national economic and development strategies d) what debates around current policies are being debated; and e) who the key actors are.

The section begins with a look at the overarching national economic and development strategies before proceeding to a discussion of the policies, laws and administrative procedures governing land in general. It then specifically looks at process of land acquisition for investment purposes.

#### **3.1 Economic Growth and Development Strategies**

The vehicle for realising Tanzania's Development Vision 2025 is the National Strategy for Growth and Reduction of Poverty (NSGRP) commonly referred to as MKUKUTA. The ultimate aspiration that by 2025 Tanzania has become a middle income country characterised by, among other things, a strong and competitive economy and peace and security.

The current NSGRP, MKUKUTA II covers the period 2010/11 to 2014/15. As with its predecessor, continues to focus on accelerating economic growth, reducing poverty and improving the standard of living and social welfare of the people of Tanzania as well as good governance and accountability. MKUKUTA II is more orientated towards growth and enhancement of productivity than the first strategy. Its interventions focus on wealth creation to reduce poverty. To support this, the strategy calls for more active private sector participation.

The strategy does take into consideration changes in the global economy and acknowledges risks associated with growing demand for large scale land acquisition for biofuel and food cropping. However, whilst the strategy focuses on leveraging this as an opportunity it fails to appreciate the need to provide for necessary safeguards to manage the risks, particularly with respect to land rights.

Both the agricultural and mining sectors have been identified as growth drivers along with manufacturing and tourism. For the purposes of this assessment the focus is around the strategic intent of MKUKUTA with respect to the agricultural and mining sectors and the implications for land rights. These are considered more significant than the strategies articulated for the manufacturing and tourism sectors. However, this does not imply that there are no land issues associated with investment in these sectors, particularly the tourism sector which can involve land acquisition for private safari operations in conflict with existing land users e.g. the impact on pastoralists of land acquisitions in Loliondo by OBC and Thompson Safari (Olengurumwa, 2010). A number of potential industrial projects across the county have been identified by the National Development Corporation. Many of these are likely to require the acquisition of land in areas currently under Village Land.

##### **3.1.1 Agriculture Sector**

With respect to the agricultural sector, which supports 80% of Tanzania's working population, the strategy recognises that the sector is dominated by small scale farmers. It indicates that the intention is to facilitate enhancing productivity, with particular concern for the small scale farmer. Aside from this acknowledgement much of the discussion revolves around the strategies articulated in Agricultural Sector Development Program and Kilimo Kwanza with the focus being on the modernisation and commercialisation of private sector based small, medium and large scale agriculture and a reduction of dependence on rain-fed agriculture.

The strategy states that in the medium term, emphasis will continue to be on small scale agriculture, with a gradual shift to medium to large scale farming. However, there is a lack of substantive information to define what this is (e.g. by 2015 the total area under cultivation, categories of farmers, average farm sizes by category, strategies to support each category). A following statement in the strategy is potentially alarming *“the shift away from small scale farming, thus releasing agricultural labor to non-farm sectors is one of the outcomes of increases in agricultural productivity .....Strategies to ensure the economy absorb labor released from farming, especially the rural non-farm activities, become an integral part of rural development strategies”*.

This statement implies that small-holder farmers will be taken over by larger-scale mechanized commercial enterprises and that their labour will be released into a labour market<sup>13</sup>. Whilst the various strategies state a primary purpose of growth in the agricultural sector being poverty reduction they are not supported by actions to defend, support and actively include the majority of the population which engages in small-scale farming and whose livelihoods are dependent on access to land and associated natural resources. Where there is limited scope of non agricultural development to absorb labour in the short run then investment in raising smallholder productivity is necessary. This can take the form of private investment into contract farming by downstream agro-processing industries. It is important that property rights are protected and that markets work well to prevent large scale acquisitions from pushing people off the land.

It is worth noting that the NLUP 2009 – 2029<sup>14</sup> proposes to increase commercial farming and ranching from 2% to 18% primarily for Kilimo Kwanza. This land is to be made available from an existing land use category which the NLUP defines as “scattered village settlements, agriculture, grazing and mining<sup>15</sup>”. It covers an area of 20 million hectares (21% of total area)<sup>16</sup> in 2002. This appears to support the strategy above and presumably will require changes to existing land use patterns, land consolidation and the possibility of involuntary resettlement<sup>17</sup> physical and/or economic displacement. The possibility of involuntary resettlement is real given the current land laws which allow the President to compulsorily acquire on condition of compensation.

With respect to pastoralist activities the NLUP 2009 -2029 indicates that the areas currently categorised as being used for grazing, hunting, game control areas (GCAs), scattered settlements and agriculture are to become community ranching areas covering an area of 12 million hectares, with various conditions attached on how these areas are to be used. The impression is that government wants pastoralists to reduce their herds and settle in one place and is a view expressed in the Strategic Plan for Implementation of Land Laws (SPILL). There have been instances where pastoralists have been forcefully moved from such areas as Ihefu and Usangu valleys to pave way for farmers.

Pillar 5 of Kilimo Kwanza is concerned with making land available for Kilimo Kwanza. The first activity listed is to amend the Village Land Act No. 5 of 1999 to facilitate “equitable access” to village land for Kilimo Kwanza. Other activities are concerned with building capacity with local institutions

<sup>13</sup> It is acknowledged by large-scale commercial farming entities that it is not possible to absorb all labour made available from displacing small holder farming Can industrialised farming make Africa feed the World <http://news.bbc.co.uk/2/hi/programmes/newsnight/9623031.stm>

<sup>14</sup> Yet to be approved by Cabinet

<sup>15</sup> The definition of this category changes from scattered village settlements, agriculture and mining in Table 1 to scattered village settlements, agriculture and grazing in later tables. It is assumed that a mix of all these activities will be occurring in these areas.

<sup>16</sup> 2002 data

<sup>17</sup> Involuntary resettlement is a term used when affected individuals or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of i) lawful expropriation or temporary or permanent restrictions on land use and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations fail. Voluntary land transactions on the other hand are market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail. Source: IFC Performance Standard Number 5



responsible for land administration, fast tracking land delivery and dispute resolution systems, identifying available land for investment and structural changes to arrangements for granting and allocating land. These activities imply that Government considers the Village Land Act and village land administration processes to be a barrier to achieving the objective of Kilimo Kwanza.

All this is beginning to trigger debate about a possible contradiction between the poverty reduction intentions of national agricultural policies and strategies, such as Kilimo Kwanza and the Southern Agricultural Growth Corridor (SAGCOT). There are worries that these initiatives can increase insecurity around access to and use of land and natural resources for the rural population.

### **3.1.2 Mining Sector**

The mineral sector is considered to have great potential to contribute to GDP if sustainably exploited and efficiently managed. It is currently the second fastest growing sector after tourism. Economically proven deposits include gold, diamonds, tanzanite, ruby, tin, copper, nickel, iron, soda, phosphate, gypsum, kaolite, coal, natural gas and uranium. The government sees the exploitation of these mineral deposits as being a significant contributor to growth and socioeconomic transformation and as a catalyst for growth in other sectors such as agriculture, manufacturing, infrastructure, and services.

The Mineral Policy (2009) provides the framework for more sustainable exploitation of the country's mineral wealth. It aims, among others, at:

- i) improving the economic environment in order to attract and sustain local and international private investments in the mineral sector;
- ii) promoting economic integration between the sector and other sectors of the economy;
- iii) supporting and promoting development of small scale mining so as to increase its contribution to the economy;
- iv) promoting and facilitating value addition activities within the country to increase income and employment opportunities; iv) promoting research development and training required in the mineral sector and encouraging its utilization; and
- v) developing local base technical capacity.

Growth targets have been set for 3.2 percent by 2015 from 1.2 percent recorded in 2009. Strategies to support the policy include:

- Promoting domestic value adding activities in order to increase earnings and create employment and wider linkages to the rest of the economy particularly manufacturing and services sectors;
- Empowering artisanal miners to acquire geological information, title deeds, equipment and appropriate mining and processing skills and technologies as well as start-up capital;
- Promoting joint ventures between large foreign mining companies on the one hand and land owners, small scale miners, communities and local experts on the other hand, in order to improve access to external markets and technologies by the latter;
- Enforcing adherence to the laws, regulations and environmental considerations;
- Improve infrastructure;
- Ensure sustainable extraction;
- Maintain health and safety standards;
- Ensure equitable distribution of proceeds to local stakeholders;
- Addressing potentially conflicting policies between mining and natural resources;

From 1987 – 1997 artisanal miners were the major producers of minerals. The small scale and artisanal mining sector currently employs 600,000 – 1,000,000 people primarily in the gemstone,

diamond, crushed stone and gold production. They typically operate in areas where large mineral deposits are located, thereby increasing the likelihood of conflict with new larger scale investors. Much of this sector operates outside the ambit of government authority and regulation. There are a number of challenges associated with this sector and its impact on health and safety of communities and the environment.

Given this context, the Government has recognised the importance of including artisanal and small scale miners in the economic growth and development strategy. In 2006 a specific strategy was formulated to develop the small-scale mining sector. The Mining Act, 2010 has responded to this through the allocation of areas for exclusive use by artisanal and small-scale miners but it is unknown what progress has been made on other elements of the strategy. The Mining Commission has made an effort to support the rights of small-scale and artisanal miners. Among other things, it encourages larger operations to work with them in partnerships and other business arrangements, such as the Mwaduli Community Diamond Partnership formed between De Beers and nine villages (Lange, 2008). However, in many cases no negotiation has taken place and small scale miners have been forced off concessions and paid inadequate compensation.

Conflict between small scale/artisanal miners and larger investors is just one source of conflict within the sector. Conflicts also arise over rights to land and other natural resources (e.g. access to water, pollution of water) between miners, be they small scale or large scale, and local communities. The presence of mining activities can also intensify existing disputes with existing users such as the escalation of conflict among competing users of natural resources. These competing users include farmers, pastoralists and miners. According to Madulu (2002), such disputes have been observed in Kwimba District.

The 1998 Mining Act and its 2010 successor require the recognition of granted or customary rights of occupancy. In practice however, the rights of landowners are often disregarded for a number of reasons including simply an absence of data on village land, land occupants and existing rights to mineral resources to inform the granting of concessions. Or even if this information is available it is ignored (Lange, 2008).

Tanzania is a member of the Extractive Industries Transparency Initiative (EITI) which requires transparency and accountability around extractive industry revenue. Tanzania's candidacy of EITI as renewed in 2011 until 2013 on the grounds that the country had made 'meaningful progress' but that further action is required to ensure compliance. It is also a signatory to the Kimberly Process Certification Schemes which tracks and records diamonds to reduce trade in conflict diamonds. Such interventions provide opportunities to enhance governance in natural resources, although the Kimberly process is losing credibility and a founding member pulling out in recent weeks<sup>18</sup>. Furthermore, EITI intervenes only at the point of mineral payment which is a very advanced node in the mineral commodity chain. It would be more meaningful and effective if EITI activities could cover the whole minerals commodity chain.

### **3.1.3 Promoting and Protecting Human Rights**

MKUKUTA II discusses the need to institute mechanisms for targeting the poor and vulnerable groups. It sets a target of 45% of vulnerable groups reporting having full access to their rights. Given the potential for an increasing need to acquire land to facilitate some of the proposed economic growth strategies there is a noticeable absence of consideration on how the poor and vulnerable groups will have their access to land and natural resources protected. There is no

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suggestion that security of tenure is under threat. It appears that there is an underlying assumption driving national economic growth and development planning that land can be made available for investors as part of private sector participation in the growth strategies. However, this cannot be determined until the land is properly planned.

Such assumptions give rise to economic growth policies and strategies that focus on large scale farming investments, by external investors, to play a transformative role whilst remaining quiet on strategies to include, defend and support the small-holder farmers and livestock keepers. Furthermore there is little recognition of the potential for adverse impacts on small-holder farmers and livestock keepers from such investments and therefore an absence of strategies to mitigate these. Consultations on the Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources (FAO, 2010) identified the failure to place small-scale farmers at the centre of national development paradigms and agricultural investment policies as an issue contributing to the erosion of land rights by investment, primarily through the impact of land acquisition but also in other areas e.g. monopolies on agricultural inputs.

### 3.2 Land Policy, Laws and Administration

Although land (and its associated resources) is identified as essential to the economic development of the country it is not discussed as a key theme in MKUKUTA II. Reference is made at various points throughout the document<sup>19</sup> but it is not considered holistically as a cross sector driver of growth along with infrastructure, transport infrastructure, energy and water. This is surprising given that the effectiveness of its governance, which is increasingly being questioned by stakeholders, underpins the success of the growth strategy.

The 1984 amendment of the Constitution of Tanzania, National Land Policy, 1995, the Land Act 1999 and the Village Land Act 1999 provide the basic policy and legal framework for the management and administration of land tenure, settlement of disputes and related matters.

The 1984 amendment to the constitution brought in the recognition of citizens' right to own private property and states that "*subject to the relevant laws of the land, every person has the right to own or hold any property lawfully acquired*" and that "*a person shall not be arbitrarily deprived of his/her property for the purpose of acquisition, or any other purposed without the authority of law that shall set out conditions for compensation*"

The policy and legal reforms of the 1990s were initiated to respond to:

- a) land conflicts founded in dispossessions arising from post-colonial and pre-colonial land policies and laws<sup>20</sup> and
- b) to a change in national policies to facilitate economic liberalisation.

Concerned with the escalation in land conflicts during the 1980s and a need for increased land tenure security for customary land holding, the Minister of Lands at the time, in consultation with the President, set up a Presidential Commission of Inquiry into Land Matters, commonly referred to as the Shivji Commission. After two years of work and extensive consultation the Commission published its report in 1994.

The Commission's findings were downplayed with the Technical Committee tasked with developing the land policy indicating that the work of the Commission was just one input into the process. The

<sup>19</sup>For example mention is made of enhancing the efficient use of essential factors of production including land and its resources. It lists areas as requiring investment such as surveying and zoning.

<sup>20</sup>Whilst the historical context is important there are a number of other papers which cover this aspect in detail and to which the reader is directed. They include Sundet (1997 & 2006), Lange (2008), Lugoe (2008)

primary reason was Government's disagreement with the Commission's recommendation to divest the control of land from the Executive. In an unpublished Government position paper (1993) on the Commission's findings, quoted in Sundet (2006) the Government registers concern about being "turned into a beggar for land when required for development" ...and states that "*Government will not implement its policies in that way. The Investment Promotion Policy will be impossible to implement when Government does not have a say in land matters. Land has to remain in the hands of Government*".

The 1995 Land Policy maintained central control of the land, reaffirming that all land in Tanzania is considered public land vested in the President as trustee on behalf of all citizens. This element of the policy and legal framework is still being debated with some CSOs calling for this issue to be debated under the Constitutional review process.

Aside from concerns over the reaffirming of radical title, others have included:

- i. the policy's support for foreign and commercial interests by providing for broad land acquisition rights;
- ii. failing to adequately recognise and address the need for affirmative measures to change patrimonial and male-dominated practices that prevent women from realising equal land rights;

### 3.2.1 Laws governing land tenure

This section provides an overview of the key pieces of legislations that govern land tenure with a specific focus on types of land tenure provided for, provisions for the allocation and transfer of occupancy rights with regard to land acquisition for investment purposes and dispute resolution mechanisms. The discussion also picks up on opinion regarding the effectiveness of land administration and progress being made in implementing the land laws. The following legal instruments have been considered<sup>21</sup>:

- The Land Act, 1999, Land (Amendment) Act, 2004 and associated regulations of 2001
- The Village Land Act, 1999 and the Village Land Regulations, 2001
- The Courts (Land Disputes Settlements) Act, 2002
- The Land Use Planning Act, 2007
- The Land Acquisition Act, 1967
- The Mining Act, 2010
- The Wildlife Conservation Act
- The Forest Act, 2002 and Written Laws (Miscellaneous Amendment) No 19, 2004
- The Tanzania Investment Act, 1997

The 1999 Land and Village Land laws were enacted for the purpose of implementing the 1995 Land Policy. Some observers note that, particularly with respect to the Land Act, that the laws provide little that is new and that in effect they "entrench in law what was the practice. That is to say that the administration, management and allocation of land are placed squarely in the Executive arm of the Central Government under a centralised bureaucracy." (Shivji, 1999). Sundet (2006) specifically highlights the following aspects of the LA, 1999:

- It provides for a land market, but retains discretion to refuse or cancel sales at will, without assistance from the courts;
- It does not require land to be auctioned, so it is free to allocate land at prices below market value;

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<sup>21</sup>In addition to a review of the relevant statutory instruments this section has also been informed by the following papers Olenasha (2011), USAID (2010), Pedersen (2010), Kironde (2009), Lange (2008), Sundet (2005, 2006, 2008), Shivji (1999)

- Land administration remains highly centralised with the Commissioner granting rights of occupancy.

The Village Land Act, 1999 is seen to contain significant elements of change providing for a devolved system of registration, titling and dispute settlement at village level and recognition of customary tenure (Kironde, 2009; Sundet, 2006 and Wily, 2011). Furthermore recent changes to laws governing other natural resources reinforce recognition of customary resource use. For example the Forest Act 2002 enables villages to declare their own village forest reserves on land within the village area and by so doing assuring communities' rights to valuable forest, marsh or other lands. The VLA, 1999 also makes provisions for pastoralists to secure rights to land for extensive grazing systems, but they are not widely known or exploited and efforts to secure land and resource tenure for pastoralists are generally limited.

Sundet (2005) notes that the VLA, 1999 does break new ground in women's rights with section 20 (2) rendering as invalid any customary practices that discriminates against women. There are also requirements for female representation in key decision making bodies e.g. at least 25% female representation on the Village Council, 4 female members on the adjudication committee and at least 3 on the Village Land Council. Whilst it is acknowledged that these provisions will not lead to an immediate change in the rights of women it does nevertheless set the stage for change in the longer term.

The provisions in the VLA, 1999 can be viewed as a potentially positive move towards protection of land rights of smallholders, livestock keepers and vulnerable groups but by no means a guarantee.

### **3.2.2 Types of Land Tenure and Administrative Rights**

All land in Tanzania is considered public land, which the President holds as trustee for the people. The following tenure and administrative rights types are recognised: Village Land, Customary Right of Occupancy, Granted Right of Occupancy, Leasehold and Residential License.

This section presents information on these different types of tenure and administrative rights, the processes behind their granting, the challenges being faced in implementing these processes and how this is impacting on the legitimacy/acceptance of the decisions arrived at and perceptions on the benefits of registering rights. Village Land and Customary Right of Occupancy are discussed in detail. The purpose is to set the scene for the following section which discusses the processes by which land occupancy rights are being transferred to investors.

#### ***Village Land***

Village land is declared as being the land falling under the jurisdiction and management of a registered village. Land held collectively by village residents under customary law is recognised by the VLA, 1999. Villages have rights to the land that their residents have traditionally used and have been managed under customary principles.

In order to fulfill the provisions of the VLA, villages have to demarcate their land, register their rights and obtain certificates evidencing their rights. As part of the process the village is required to divide its land into three broad land use categories (VLA 1999, s 12):

- i) communal land which is available for common use and includes land that has habitually been set aside for community use prior to the enactment of the VLA. Section 13 of the VLA establishes a procedure for creating communal land. It is land that is not available for individual use and occupation and by extension by investors. Olenasha(2011) notes that this is therefore the most secure category of village land.

- ii) occupied land which is being occupied or used by an individual or family or group of persons under customary law. Although a group of persons is not defined Olenasha (2011) argues that by implication it can refer to a group that have traditionally been using land together (e.g. pastoralists). A holder of a certificate of right of occupancy for land in this area can lease or rent their land subject to restrictions of the Village Council.
- iii) land which is available for future use as individualised or communal land. Olenasha (2011) argues that this land is the most vulnerable to alienation. However, in cases where villages have undertaken land use planning exercises in accordance with the participatory land use planning procedures developed by the DPP various land use categories are demarcated, including an area for future use. Only then is any available land for investment identified.

The VLA, 1999 Act does not recognise grazing land as a separate category, but pastoralists can assert customary rights of occupancy to grazing land and apply for a certificate of customary right of occupancy (CCRO). Furthermore, there are provisions under s 11 of the VLA, 1999 to enter into joint land use agreements where a resource is shared. This could work well for pastoralists' villages.

The procedure for certification includes compulsory agreement upon the boundaries with neighbouring villages (s 8 (6)) and compliance Land Survey Act. In practice, establishing what constitutes village land and its boundaries is not so straight forward, due to the historical context in which villages have been created in Tanzania and the breadth of provisions within the VLA, 1999 for defining village land (s 7 VLA, 1999). This is reflected in the numbers for registered villages, villages that have been surveyed and villages that have actually been issued with a Certificate of Village Land (refer to Table 5).

The official documentation as evidence of a village's rights is a Certificate of Village Land. It is issued in the name of the President, by the Commissioner for Lands and registered in the National Register of Village Land (VLA 1999, s 7). It is held in the Village Land Register with a copy held by the Registrar. In accordance with the VLA a certificate will affirm the occupation and the use of the village land by villagers and also by pastoralists. (Olenasha 2011).

### ***Customary Right of Occupancy***

Under section 2 of the Village Land Act a customary right of occupancy is defined as a right of occupancy which is created by a certificate of customary right of occupancy (CCRO) and it includes a deemed right of occupancy. A deemed right of occupancy is defined to mean "the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law". In practice this means that a person/group of persons (e.g. pastoralists, cooperative groups) can apply for a CCRO for village land that they hold under customary law (based on them having a deemed right) or have received as an allocation from the village council.

That person/group of persons can be residents or non-residents of the village. In the case of non-residents there are conditions attached to their customary right of occupancy the intention of which is to contain land speculators. Organisations, associations or companies interested in acquiring CCROs are required to show that the majority of shareholders are Tanzanian citizens. A foreigner cannot be allocated land in the village under a customary right of occupancy.

CCROs can be issued on general land<sup>22</sup> and reserved land depending on the character and purpose of the reservation. This brings the VLA, 1999 and the Wildlife Conservation Act, 1999 (WCA, 1999) and

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<sup>22</sup> Olenasha (2011)

the authorities administering them into direct conflict. This is particularly apparent for Game Controlled Areas and the Ngorogoro Conservation Area. It is also not clear which authority would be responsible for issuing the CCROs a Village Council or the Commissioner who is the authority that can allocate land on reserved land.

The process for CCROs is demand-driven which some observers have raised concerns about. For example what is the impact of information asymmetries in access to information on the land laws and titling processes? Does this result in those better connected being able to access rights to greater areas of land than others and what impact does this have on the local community? For any significant uptake there is an assumption that there are benefits to be realised in applying for CCROs and that these have been widely communicated, debated and understood. Presently, other than being able to sell and lease the CCRO (with Village Council approval) it appears that, for resident villagers, there are very few incentives associated with applying for a CCRO. Other than the ability to sell or lease they confer no differences in occupancy and usage rights and they offer no greater protection from acquisition by the State than a villager not holding a CCRO. CCROs perhaps hold the greatest value for a non-villager wishing to acquire land. It is worth to note that where CCROs can be leased, under the terms of the lease – there can be a negotiation whereby that lease is not governed by customary law but by statutory law. CCROs can also be mortgaged – in theory as per the amendments to the Land Act. But it is also worth noting that despite these amendments banks are refusing to accept CCROs as collateral.

A CCRO can be held individually or jointly, are perpetual and heritable. They can be transferred within the village or to outsiders with permission of the village council. Village land allocations can include rights to grazing land which can either be through a recognised right of customary use under the Village Land Act or by a specific land allocation by the village council. The village council may charge annual rent for village land. The official document of evidence that a person/group of persons has a customary right of occupancy is the CCRO. Records of CCROs are kept in a village title register held by the Village Council an arm of the District Land Registry which is under the supervision and direction of the Registrar. There are fees that have to be paid for CCROs applications to be processed.

The VLA, 1999 and through the Village Land Regulations stipulates an adjudication process for the allocation of land in a village, the purpose of which is to ensure that a customary right of occupancy is not granted unless fully accepted and agreed. The VLA, 1999 does not require any prior land use planning, other than the three board use demarcations discussed for the allocation of land within the village. Under section 76 of the Village Land regulations on consent arrangements for ceilings on land holdings any allocation over 21ha requires the consent of the District Council and anything greater than 50ha requires consent of the Commissioner.

However, the Land Use Planning Act, 2007 which governs land use planning in the rural areas requires a village to produce land use plans before it can allocate land. Such land use plans have to be rationalised in district plans, approved by the Minister and Village Assembly, and a notice published. Under LUPA, 2007 a village council is considered to be a land use planning authority with responsibility for undertaking participatory village land use planning in accordance with the requirements of the Act and any other guidelines that the NLUPC may develop.

These plans, in accordance with section 33, are/were to be developed within 2 years of an area being declared a planning area to the district planning authority for rationalisation. According to officials in the DDP of the NLUPC the regulations to effect the (land use planning requirements) provisions under this Act are still under development.

Section 40 (1) of LUPA, 2007, states that “except upon application made in the prescribed form and prior approval by the relevant planning authority, no land shall be adjudicated, demarcated, subdivided or consolidated in [other than in] accordance with the requirements of a plan approved in relation to that area or zone under this Act”

Section 41 provides for a planning authority to re-arrange a parcel of land or re-adjust the boundaries of land for the purpose of security in use in the manner provided for in the relevant land use plan. Section 42 also makes provisions for a planning authority to readjust tenure rights

The National Land Use Planning Commission is the executing agency under the MLHUS, for the purposes of the LUPA, 2007. The Department of Physical Planning provides land use planning services which villages can contract and it also undertakes capacity building activities with authorities responsible for planning. Villages may seek services from other organisations. The decision to do so is generally driven by funding sources available to villages for planning activities. For example a number of NGOs and development partners have been involved in funding village land use planning activities. They may either provide services to assist the village or support District Councils to assist the villages or request assistance from the DPP. Investors have also funded village land use planning activities. This scenario typically arises when an investor has identified land that they are interested in acquiring.

The DPP in the NLUPC notes that around 1,000 – 1,200 villages have developed land use plans. The DPP has records of 850 land use plans. The discrepancy in the numbers reflects the fact that a number of organisations (e.g. NGOs, District Councils) other than the NLUPC are assisting villages to develop their land use plans and that there is a lack of coordination in tracking what is being done where and ensuring copies of documents are lodged with the DPP.

The DPP indicated that some village land use plans have been gazetted in the past but without the regulations in place. It is not clear what this means in practice. Are they deemed to have no legal basis?

Kironde (2009) notes that LUPA, 2007 and its requirements for devolved, transparent and participatory planning processes and the publication of approved land use plans, is a major achievement for Tanzania. A number of conflicts are considered to be rooted in a lack of transparency in land use planning and management where knowledge of land use schemes by a few officials has facilitated unprofessional behaviour in land allocations. However, it also has the potential to increase complexity to village land administration and potential conflicts between the requirements of the VLA, 1999 and other statutory instruments with a bearing on land and natural resource management. It is noted that section 24 of the LUPA, 2007 states that the provisions of the VLA, 1999 relating to land use and environment planning shall, with necessary modifications be read and construed as if they were provisions of the LUPA, 2007.

With respect to the process for the allocation of CCROs Sundet (2005) notes that the provisions under the VLA, 1999 are for an essentially complicated and paper oriented process that is not very different to the procedure at national level for issuing a Grant of Right of Occupancy, but which has to be managed by the Village Council. A number of commentators have raised concerns about whether it is realistic to expect local governance institutions to manage land rights in accordance with the principals and requirements of the VLA, 1999. On material resources alone, Village Councils do not have offices let alone stationary or filing cabinets (Sundet, 2006). Hardly a conducive environment within which to establish and maintain a village land register, let alone manage and maintain the necessary documentation as evidence that due process has been followed. It has been noted that without the involvement of the MLHUS or other government agencies it has been difficult



to carry out even basic implementation activities and the first CCROs were only issued after a pilot project in Mbozi District in 2004.

In response to this concern the Strategic Plan for the Implementation of the Land Law (SPILL) was developed in 2005 with financial support from the European Commission. It has been criticised for being primarily concerned with facilitating the national economic growth and poverty reduction strategies, particularly those concerned with the commercial transformation of the agricultural sector as opposed to focusing on protecting existing rights to land first.

The budget for activities under SPILL was estimated at 300 billion Tsh over a ten year period, with development partners identified as the major sources of funding. Implementation to date has been somewhat ad hoc and project driven, primarily due to limitations on funding availability<sup>23</sup>. Table 4 summarises the various initiatives that have been undertaken to implement the land acts. All programmes have aimed to develop and implement procedures in accordance with the land and land use planning legislation.

**Table 4 Summary of Initiatives to Implement the Land Laws<sup>24</sup>**

Initiative	Activities	Outcomes	Lessons Learned
Mbozi District, Mbeya Region Pilot Project	WB and later EU funded registration activities for CCROs	First parcels of land were adjudicated in 2002/2003. By 2010 almost 25% of all CCROs were in Mbozi District	The use of aerial photos to assist in the surveying of village boundaries. This method was also used for determining boundaries for individual plots for CCROs.
Follow up to Mbozi pilot - project closed in 2008	Pilots in 15 Districts (Mbozi, Kilombero, Korogwe, Njombe, Mbinga, Newala, Rungwe, Ileje, Karatu, Arumeru, Ngorongoro, Magu, Serengeti, Monduli, Simanjiro) selected for their high potential for agricultural and livestock development EU funded with a budget of 1 million Euro.	Total of 5,000 CROs issued two thirds in Mbozi District	Village land registries for storing documents Equipment such as GPS and computers needed at District level Need for information for villagers for them to understand purpose of the land laws and how to use them to increase security of tenure No comprehensive evaluation of the project has been undertaken.
Implementation Project by the then Ministry of Land and Human Settlements Development	Started in 2006, jointly funded by World Bank, DFID, SIDA, DANIDA and Dutch Government US\$ 157 million under the Business Environment Strengthening for Tanzania (BEST) programme. Purpose was to reduce the burden on businesses by removing as many procedural and administrative barriers as possible. Project to be undertaken in 15 rural districts and unplanned settlement in Dar Es Salam and Mwanza	Pilot under implementation in 2 Districts, 9 villages each. As at 2008 70,000 land parcels identified for surveying and registering and issuing of CCROs. Project also providing capacity building including infrastructure for surveying, mapping, registration; strengthening institutions responsible for dispute resolution	Systematic adjudication approach is being used (adjudication of all parcels in a given area) as opposed to spot adjudication for individual applicants. Assumed to be cheaper and faster and provide better safeguards for the rights of poor and vulnerable groups.

<sup>23</sup>Mukandala (2008), in a study of the rural land certification programme found that the Ministry of MLHUS had calculated that the cost of village land title certification over a five year period was 19.0bn Tsh or 3.8bn Tsh/annum. The approved allocation however was just over 1bnTsh or an average of 203m Tsh/annum. Figures provided by the NLUPC to undertake land use planning in the SAGCOT corridor put the costs of developing regional, district and village land use plans at US\$276,000, US\$2 million and US\$5 million respectively.

<sup>24</sup> Source: Pederson, 2011

Initiative	Activities	Outcomes	Lessons Learned
MKURABITA – Property and Business Formalisation Programme	Main purpose is articulated as empowering the poor majority of the population in Tanzania by improving access to formal financial markets and other services through the formalisation of property rights <sup>25</sup>	<p>Funded by the Norwegian Government (US\$7 million). 2 pilot projects in the rural areas. One in Handeni (end of 2006) and one in Bagamoyo (2007 – 2008).</p> <p>Handeni was selected as the District had a District Land Use Framework Plan, a District Land Registry and equipment. 617 CCROs were prepared after 3 months.</p> <p>The 6 villages in Bagamoyo District were selected as they had been surveyed and village boundaries determined. Whilst villages were supported with preparation work they were left to finish the applications and payments for CCROs. At the end of 2008 the Village Land Certificates hadn't been approved by the Ministry and no CCROs had been issued. District and Village Land Registries hadn't been set up.</p>	<p>Spot adjudication was used in Handeni and deemed slow and inefficient.</p> <p>The MKURABITA programme is no longer supporting full implementation and is just carrying out capacity building activities.</p> <p>Norwegian Government is no longer funding the programme. Evaluations of the pilot projects have been critical of the programme. 2 key assumptions behind the programme have been challenged 1) that registered land can be used as collateral to obtain loans; and 2) that land titling will create a functioning land market and increase the market value of land. A recommendation was also made for research to test the assumption that land titling and registration are effective means to alleviate poverty.</p>
CONCERN World Wide (Irish NGO)	Supporting land rights registration through a 1.8 million Euro Rights Based Programme for the Fulfillment of the Right to Adequate Food and Right to Land for Poor and Vulnerable Citizens.	The programme was implemented in Iringa, Kilolo and Mtwara districts and was extended until 2009. Training was provided to local residents on the land laws and registration process. Not known if any land was registered.	No evaluations
Kilimo Kwanza	Reportedly money from Kilimo Kwanza is being channeled into implementation activities.	In February 2010 the Citizen reported that 7 villages would be surveyed and 1,000 titles issued. Activities are also being undertaken in Handeni District.	No evaluations
Land Management Programme (LAMP)	Coordinated by RALG-PMO& implemented by District Council. Financed by SIDA. Facilitated the development of village land use plans and Village Land Certification process in 4 Districts in north Tanzania.		No evaluations
Various NGO supported interventions	No comprehensive data available on activities. CORDS – working in 5 Districts since 2000 Haki Ardhi – primarily focused on research and training in land rights and village governance	CORDS - aim to secure pastoralists' rights to land. Initially assisted in preparation of village land use plans and applications for Village Land Certificates. More recently has started assisting villages with	No evaluations

<sup>25</sup>Sundet (2008 and 2009) has argued that the design of the MKURUBITA programme is based on a faulty diagnosis of what the poor see as their most important problems relating to property rights and failure to consider the 'dirty' reality of the capacity of institutions to deliver transparent and accountable land administration and to manage vested interests and the political nature of conflicts. The implication is that it may not deliver on its intention to empower the poor.

Initiative	Activities	Outcomes	Lessons Learned
	UCRT and FARM Africa – supporting land use plans and issuance of village land certificate in pastoralist areas.	the CCRO processes.	

In a critical analysis of MKURABITA and the challenges facing the formalisation process in Tanzania, Sundet (2009) notes that “deciding and documenting the rights and ownership over land in a transparent and accountable manner require a certain level of administrative capacity” requiring a certain minimum of institutional, human and material resources. In this respect administrative capacity at village level is not good and is possibly better at district level where there is some level of human and material resource availability. At both levels the complexity of procedures and multiplicity of reporting lines weakens effective oversight and control and lessens transparency and accountability (Sundet, 2009; Cooksey, 2011). It can also incentivise behaviours to fast track processes.

Research undertaken by two CSOs, the Legal and Human Rights Centre (LHRC) and Tanzania Pastoralists, Hunters and Gatherers Organisation (TAPHGO) provide some interesting insights and an alternative view point on the success and impact of one of the first pilot projects for the MKURABITA programme, in Handeni North-East Tanzania<sup>26</sup>. In summary two notable observations were:

- i. The exercise was rushed, explanations of the procedures and guiding principles were not properly provided resulting in different interpretations of terms. In effect subsequent decisions by communities were not “informed” and impacted negatively on some groups, particularly the more vulnerable e.g. the Maasai and women.
- ii. Secondly, the process triggered a land rush by the better informed taking advantage of the opportunity to get access to larger areas of land. By failing to prevent these weaknesses in local governance and decision making systems the process is in effect reinforcing inequalities rather than managing them and protecting the more vulnerable and marginalised groups within a community.

Table 5 below presents some figures that provide some insight on the reality of progress with respect to the implementation of the land laws.

**Table 5 Progress with Land Use Plans and Issuing of CCROs**

Registered Villages	Villages with land registries	Number of Village Land Councils (for dispute settlement)	Villages with Land Use Plans	Surveyed Villages	Villages with Village Land Certificates	Various figures for CCROs registered	Potential number of parcels of land requiring registration

<sup>26</sup> For a more detailed discussion of the Handeni Pilot refer to Sundet 2009.

10,397 <sup>a</sup> . Total number of villages in Tanzania 11-14,000	30 <sup>a</sup>	In 2005 only 40% of villages had Village Land Council and only 20% were functional	1,000 to 1,200 <sup>a</sup> 850 held on record by NLUPC <sup>27</sup> . None approved and published as per LUPA, 2007 requirements. NLUPC also has a spreadsheet with land use information for 616 villages, which includes a category titled "land available for investors"	8,700 <sup>a</sup>	753 <sup>a</sup> 853 <sup>c</sup>	14,017 <sup>a</sup> 14,046 <sup>c</sup> mainly in Mbuzi, Babati, Iringa and Kiserarwe Districts 110,000 <sup>d</sup> 165,000 <sup>e</sup>	8 million
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<sup>a</sup>Source: Kironde 2009 from Ministerial report on achievements of the Government for the past three years (Uhuru January 13<sup>th</sup> 2009)

<sup>b</sup> Pederson 2011 data sourced from Gastorn 2007

<sup>c</sup> Source: figures presented by Havnevik, 2009, taken from Report on Implementation of Village Land Act July 2007 – 2008, (June 2008) under the BEST project 2003 – 2008.

<sup>d</sup> Source: Pedersen, 2010, from Ministerial Speech on submission of 2010/11 revenue and expenditure of MLHUS to Parliament, 2010

<sup>e</sup>Kironde (2009). Land parcels registered nationwide with the majority in urban areas

<sup>d</sup> Estimate made by Kironde (2009) based on population of 40 million and average household size of 4.9 people. Assumes each household is issued with a right of occupancy. Under the Ministry's implementation project each village in Babati and Bariadi Districts had an average of 4,000 land parcels. If this is typical then there are potentially more than 8 million parcels of land requiring registration in the rural areas alone.

The Village Land and Customary Right of Occupancy tenure provisions under the VLA, 1999 are in effect a continuation of a land rights formalisation process that began in the late 19<sup>th</sup> century, slowed down during the era of socialism and picked up again with an increase in titling activity in response to the 1984 Agriculture Policy which recognised and emphasised the role of medium and large scale private farms in the development of the agriculture sector. 1990 Investment Policy which decreed that investors should have priority in land allocation and the Zanzibar Declaration of 1991 which lifted previous restrictions on political leaders to own commercial property, further accelerated processes of allocating and granting rights of occupancy to individuals (Sundet 2008). These allocations often disregarded the rights of existing users of the land under customary tenure and resulted in an escalation in land conflicts during the 1980's which precipitated the establishment of the Commission of Inquiry into Land Matters.

As noted earlier Shivji (1999) argues that the provisions of the new land Acts have simply legalised existing formalisation processes and that there has been no meaningful reform of the system. Until smallholder and livestock keepers are meaningfully recognised and integrated into economic and development policy making land administration and formalisation of land rights is going to be driven by an agenda to "free up" land for investment rather than a need to first protect the rights of existing land users. This in turn impacts on the evolution of procedures for the implementation of the laws.

### ***Granted Right of Occupancy***

Under the Land Act, 1999 (LA, 1999) applications can be made for granted rights of occupancy for general and reserved land.

<sup>27</sup> According to NLUPC (personal communications, November 2011) most of the village plans on record were completed before 2006. Over 800 were gazetted prior to the 2007 Land Use Planning Act. Few village land use plans have been produced since 2006 and the ones that have generally been funded by investors that have identified land in an area that they would like to invest on.

Granted rights of occupancy are available for periods up to 99 years and can be made in periodic grants of fixed terms. The procedures for applying for a Granted Right of Occupancy are detailed in the LA, 1999 and accompanying regulations. Under section 19 and 20 of the LA, 1999 (and amended by the Land (Amendment) Act 2004) provisions are made for conditions by which foreign investors can obtain granted rights of occupancy, on either general land or reserved land but not village land. The Commissioner of Lands has the final say on allocation of land in reserved areas.

Squatters and others on general land without granted rights may have customary rights to occupy general land, which may be formalised with a residential license or remain unformalised and insecure.

The Commissioner of Lands is the authority for making a decision on these allocations on the advice of a Land Allocations Committee, the composition and function of which are stipulated through the Land (Allocation Committees) Regulations 2001. No local government authority has any powers of allocating land unless the same is delegated to it by the Commissioner.

### ***Leasehold***

Leaseholds are derivative rights granted by holders of granted or customary rights of occupancy. Holders of granted rights of occupancy may lease that right of occupancy or part of it to any person for definite or indefinite period, provided that the maximum term must be at least ten days less than the term of the granted right of occupancy.

Holders of customary rights of occupancy may lease and rent their land, subject to any restrictions imposed by the village council. Leases shall be in writing and registered although short term leases which are for one year or less may be written or oral and need not be registered.

### ***Residential license***

This is a derivative right granted by the state (or delegated authority) on general or reserved land. They may be granted for urban and peri-urban non-hazardous land, including land reserved for public utilities and for development. Residents of urban and peri-urban areas who have occupied their land for at least three years at the time the Land Act was enacted had the right to receive a residential license from the relevant municipality, provided they applied within six years of the enactment of the Act (i.e. by 2005).

### **3.2.3 Dispute Resolution Mechanisms**

The land laws provide for a system of councils, tribunals and courts to be established for the purpose of settling land disputes. In 2002 the Courts (Land Disputes Settlements) Act was passed and came into force in 2003. The organisation of the system is complex and responsibility for establishing the prescribed councils, tribunals and courts split between different ministries. RALG-PMO oversees responsibility for the establishment of village land councils and ward tribunals and the Ministry of Lands is responsible for the establishment of the District Land and Housing Tribunals. The High Court Land Division and the Court of Appeal are situated under the Ministry of Justice and Constitution Affairs.

In general people prefer to have their conflicts resolved as close as possible to where the conflicts occur. In this regard the provisions for Village Land Councils is a positive move forward. However they stop short of the recommendations made by the Land Commission which was to bring the judicial system within the reach of the common villager. The Village Land Council can only function

as a mediating body between consenting parties and does not have legal powers to determine a case. Ward Tribunals are empowered to mediate and determine in all disputes concerning land in the areas. It can only accept cases involving property valued less than 3 million Tsh and advocates are not allowed before the tribunal.

The District Land and Housing Tribunal is the first land court body in which there is a professional lawyer appointed by the Minister of Lands and assessors. It is restricted to cases involving property valued less than 40 - 50 Tsh. Lawyers are permitted but not required. The High Court receives cases where property is valued over 40 - 50 Tsh and receives appeals from both the Ward and District land and housing tribunals. Regardless of the tribunal customary law will be applied to resolved disputes over land held under a right of customary occupancy.

The court system is gradually becoming more effective but is constrained by a lack of resources. Since their establishment until mid 2010, around 20,000 cases had been resolved at the District land and housing tribunal. Complaints tend to relate to the long waiting lists particularly at the higher level institutions and the quality of village land councils and ward tribunals.

Over and above this system the Commissioner of Lands can operation as an independent adjudicator. The Commissioner can commission an inquiry into land matters, conduct proceedings and reach determinations. These proceedings do not need to adhere to rules of evidence and the procedures are distrusted by many rural communities.

### **3.2.4 Land Tenure and Mining**

As noted earlier, rights to occupy land do not include rights to mineral and petroleum resources in said land as per the definition of land under the two main land laws. Section 22 (2) the LA, 1999 specifically states that a granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to appropriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any palaeontological or archaeological remains found on the land;"

The provisions in the new Mining Act, 2010 for support to small scale miners, if followed through on, may reduce conflicts between small scale/artisanal miners larger mining investments in the long run. However, they are unlikely to mitigate tensions with landholders when they are dispossessed of their land by a mining investment particularly if there are grievances over compensation matters. Ironically, landholders tend to benefit more from "illegal" agreements with small and medium scale miners who are prepared to pay a fee based on a percentage of the minerals extracted to operate on their land. Landholders prefer this form of partnership to compensation as the rates used for determining compensation are rarely agreeable.

### 3.3 Accessing Land for Investment

National investors can acquire granted rights of occupancy in general and reserved lands in accordance with the LA, 1999 and customary rights of occupancy in accordance with provisions of the VLA, 1999.

Foreign investors can acquire granted rights of occupancy in accordance with provisions in the LA, 1999 and the Tanzania Investment Act, 1997 provide for foreign investors to acquire land for investment purposes.

S 3 of the Land Amendment Act of 2004 which amends subsection (2) of s 19 of the LA, 1999 and s 19(1) and s 20 (1) define how a non Tanzanian citizen can acquire a granted right of occupancy, presumably on either general or reserved (in accordance with other statutory instruments) under the land. Under these provisions a person or a group of persons whether formed into a corporate body under the Companies Ordinance or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens, may only obtain

- i. a right of occupancy for purposes of investment approved under the Tanzania Investment Act, 1997. This is under the administration of the Commissioner and could be issued for general or (presumably) reserved land. Although the later would have to be in accordance with requirements of the relevant statutory instrument. This is seemingly straight forward, although presumably there is not a great deal of available land to be granted, being only 2% of the total land area (and excluding the controversial reference to “unoccupied or unused village land” in the definition of general land in the LA, 1999. There have been grievances over investors taking over land and property previously held by state run enterprises e.g. NARCHO. There was an expectation from local communities that this land would be reverted back to them as the original occupiers.
- ii. a derivative right for purposes of investment approved under the Tanzania Investment Act, 1997. This could be a derivative right for land held by the TIC in their Land Bank, either for land that TIC has title for or alternatively from any other holder of land willing to allocate their land for investment purposes. This is the simplest way for investors to obtain land. However, the reality is that there is very little land readily available land in the Land Bank. Either because most of the land identified is Village Land and the necessary transfer processes have not been undertaken or the TIC has been unable to acquire the granted rights of occupancy, usually due to a lack of funds. As noted earlier much of the land parcels are also considered to be too small and too scattered.
- iii. an interest in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania Investment Act, 1997 in a joint venture to facilitate compliance with development conditions. This arrangement is managed by the Commissioner of Lands.

20 (1) goes on to state “for avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act, 1997”.

A foreign investor as an individual or majority shareholder cannot directly acquire customary rights of occupancy for investment or any other purpose in Village Land. However, a non village organisation where Tanzanian citizens are the majority share holders can apply for a CCRO which implies a foreign investor could have a minority share. The only way a foreign investor can access village land is for it to be transferred to general land first. This provision under the VLA, 1999 is being used as part of an acquisition process which whilst not fully provided for by the laws is commonly followed (Olenasha, 2011) as an alternative way of obtaining land than from TIC’s Land Bank. It involves investors starting negotiations from the village level. This process will be discussed after a discussion of the village land transfer provisions under the VLA, 1999.

Under the provisions of s 4 the VLA, 1999 the President can transfer land from village land to general land, and by default compulsorily acquire land held under customary rights of occupancy, and make it available to an investor.

### 3.3.1 Process for transferring village land

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 proceed in accordance with the provisions of this section. (2) For the purposes of subsection (1), public interest shall include investments, of national interest."

Some of the provisions for transfer of village land worth noting are<sup>28</sup>:

- i. The publication of a notice in the Gazette and sent to the village council of the proposed transfer and details about the area e.g. location, reasons for transfer, extent and boundaries and the date when the President may exercise his power to transfer the land in question. This date is indicated to be not less than 90 days from the date of the publication.
- ii. Any villagers or group of villagers allocated with a right to use the land shall be informed of the proposed transfer. Any of these affected persons/groups may make representations to the Commissioner and to the village council which need to be taken into account in any decisions or recommendations that are made on the proposed transfer.
- iii. Where the village transfer land is less than 250 hectares in extent, the village council shall prepare and submit recommendations for the proposed transfer to the village assembly for it to approve or refuse and the village assembly shall, meeting under section 103 (3) of the Local Government (District Authorities) Act, 1982, consider the recommendations of the village council and any representations made by the district council of the area where the land is situate, and decide whether to approve or refuse to approve the proposed transfer;
- iv. Where the area proposed for transfer is greater than 250 hectares, the Minister shall, after considering any recommendations made by the village assembly through the Village Council, district council and any representations on the matter made by the village and district councils of the area where the land is situate, by resolution, signify his approval or refusal to approve the proposed transfer. As the village assembly can refuse a transfer that is less than 250ha but not one that is over 250ha and assuming that a central government entity is more likely to be pro-investor this provision potential acts as an incentive for an investor to seek access to land that is greater than 250ha in area. Particularly as there are no legal limits on the size of land that can be given to an investor.
- v. There are provisions for consultations and under the regulations a variety of forms for calling meetings, summoning the village council or assembly. So for each transfer of land there should be a paper trail for the process undertaken.
- vi. Section 4 (8) provides for compensation matters relating to a transfer of village land. No village land is to be transferred without agreement between
  - a. The village council and the Commissioner for any village land whether there are affected persons/groups or not with allocated rights to that land and/or on behalf of villagers in respect of the loss of communal land, assets and benefits derived; 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.
- vii. Compensation matters to be agreed upon include the type, amount, method and timing of the payment of compensation and Part III of the Village Land Regulations, 2001 indicate what these should be.

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<sup>28</sup> It is also worth noting that cross referencing to sub-sections in this section of the VLA, 1999 appear to be incorrect.



- viii. The President can direct compensation payable to be paid by the person or organization to which the transferred village land will ultimately be granted.
  - i. If the matters of compensation cannot be agreed on it is taken to the High Court for determination. The High Court can order an interim measure, pending final determination
  - ii. General or reserved land can be exchanged for the village land.
  - iii. Under s 4(10) the President can make a decision to allow persons/groups with rights of occupancy of to continue to occupy and use the land subject to conditions.
  - iv. The transfer of the area of village land is notified in the Gazette and the transfer completed after 30 days of notice. After that it ceases to be under the management of the Village Council.

Whilst affected persons can register their unwillingness to support a transfer, they cannot in effect refuse the proposal. The decision to approve or not approve a proposed transfer is at the discretion of the Village Assembly or the Minister 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.

Kironde (2009) notes that whilst compensation provisions under the land laws are an improvement there is always dissatisfaction associated with compensation packages, the lack of transparency in determining them and failure to pay on time. It is also very difficult of affected parties to lodge complaints and have them adequately addressed through the court system. Involuntary resettlement if not managed properly can have a very significant negative impact on the livelihoods of affected individuals, families and communities.

Reference has been made to an Involuntary Resettlement Policy Framework. However the only one that could be located was the Resettlement Policy Framework which was developed for the Private Sector Competitiveness Project – Land Reform Sub-component. It is based on the World Bank's Safeguard Policies for involuntary resettlement OP 4.12 which has more stringent requirements than those currently provided for in national legislation. However, it has been developed for a specific project and is not a national guideline. A national Resettlement Policy Framework would be a very valuable document.

Investors with financing from financial institutions that have signed up to the Equator Principles (which will be discussed later) are required to comply with the International Finance Corporation's (IFC) Performance Standard on Land Acquisition and Involuntary Resettlement. It is one of the more stringent standards and in its most recent revision to come into effect in January 2012 it has included more explicit requirements regarding the impact of land acquisition on access to land and resources under customary tenure. One of the difficulties faced by investors implementing these standards is a significant gap between these and national requirements. The IFC's Performance Standard requires that the more stringent requirements should be followed, and where resettlement and compensation process is managed by the government the onus is on the investor to collaborate with government and implement supplementary measures. In reality there is usually significant resistance from government to do this with a frequently used argument being that it sets to high a precedent which government cannot afford to implement on its own projects e.g. road construction

### 3.3.2 Process commonly used to access Village Land for investment

Olenasha, 2011 has captured an alternative process that is used by investors to access land other than through the TIC bank. It is likely that processes will vary from investment to investment<sup>29</sup> simply because it is a process that has evolved to meet a need and is not guided by any law or official procedure. It is not clear whether the full village land transfer procedure as laid down by the VLA, 1999 is followed at the point when this process kicks in.

- i. A prospective investor identifies an area where suitable land is likely to be located, usually with the help of local brokers, or it could be officials from TIC or a local MP;
- ii. The investor, facilitated by the broker, approaches the District Council (usually through the land officer) and makes their intentions known about what they are looking for;
- iii. The District Council identifies suitable locations and approaches the Villages in whose jurisdiction the land lies;
- iv. The District Council aims to sell the benefits of the investment in a bid to secure land. The investor may or may not interact with villagers. Typically the District Council officials will speak to and seek assistance from the Village Council before going to the general assembly;
- v. If the Village does not have a land use plan, a request may be made for the investor to fund the development of one;
- vi. When the Village Assembly approves the request for land, minutes of the meeting will be as evidence of the village having been given consent for its land to be used for investment purposes;
- vii. These minutes are then submitted to either the TIC or the Commissioner of Lands for the village land transfer procedures to begin.
- viii. The village land transfer will take place subject to compensation.

It is not possible to make an informed assessment of the impact of this process on land rights as there is not enough information on the details of the processes followed (levels of consultations, checks and balances, documentation required, compensation procedures), the outcomes of decisions and the impact of decisions on local communities and directly affected parties. One of the few comprehensive studies available is that by Sulle and Nelson, 2009.

As Sulle and Nelson, 2009 note in their study on biofuel investments many of the concerns expressed about the acquisition of village land by investors arise “as much from a lack of information about land acquisition processes at the local level in relation to the biofuel development as about any clearly documented malpractices”

There is certainly the potential for land rights, particularly for the marginalised and vulnerable, to be eroded, most likely arising from a lack of transparency and accountability in the decision making process. Even if consultation is undertaken it is hardly in an environment that would be considered free (investors may be funding land use planning activities), prior (information received in good time to allow a community to consider meaningfully) and informed (adequate levels of information about the intended investment in adequate time; likelihood of false promises by District Council officials).

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<sup>29</sup>Sulle and Nelson (2009) also describe a process which is slightly different. In that process they indicate that the investor approaches and seeks approval from the Village Council first. They indicate that if the area sought is over 250ha then the investor submits a proposal to the District Council Land Committee for approval. The proposals are then submitted to the Village Assembly for consideration. If they approve then the process for the transfer of village land to general land is initiated. They also present a more detailed overview of the process followed by Sun Biofuels for their acquisition of land in Kisarawe. This is a British company which has suspended operations due to financial difficulties with the parent company. (Daily News, 3 October 2011). There are suggestions that Chinese investors have been interested in taking the operations over.

Sulle and Nelson, 2009 identified the following issues arising from land acquisitions for biofuel investments, especially when investors go directly to the villages to identify land:

- i. A lack of understanding of the process by villagers, suggesting a lack of transparency and upfront information about the process
- ii. Land targeted by be unoccupied but it is not unused, raising issues of restrictions on/or loss off access to resources critical to livelihoods
- iii. Promises about benefits (e.g. provision of social services, employment) of the investments but no contracts formalising them
- iv. Procedures for determining compensation not followed and general confusion about the process especially with respect to the criteria for establishing eligibility for compensation and processes for determining compensation packages due to eligible persons/groups
- v. Inadequate valuation criteria for determining compensation packages and ensuring that affected parties are not left worse off
- vi. High level of risk carried by communities realities result in land being transferred to general land before compensation is paid. Under the VLA, 1999 no transfer should occur until compensation has been paid. This situation is arising because investors, who typically end up paying the compensation (and can be directed to do so by the President under the VLA, 1999), can only secure the financing for the investments when they have received either a granted or derivative right of occupancy which is used as collateral. In the event that an investor fails to secure financing, which could be for reasons other than failure to provide collateral, villages are left with a situation whereby they have lost land and there is no investment. According to Sulle and Nelson, 2009 this has happened to villagers in Rufiji where a Turkish company acquired 5,000ha but the proposed agricultural project never materialised.

Environmental Impact Assessment (EIA) requirements should provide a mechanism to manage some of these issues and typically require consultation with local communities. However it is unclear at what point the EIA process is initiated and whether it is early enough to have a bearing on the land acquisition process. Certainly if land is being acquired the social and environmental impact of this should be determined and where there is any physical and or economic displacement (which includes from communally managed resources) a resettlement and compensation planning process should be undertaken. Typically resettlement and compensation planning processes need to be undertaken earlier than other components of an EIA. Critics have noted that there are significant weaknesses in the EIA processes one of which is inadequacy of consultation with local communities and particularly affected parties.

### **3.3.3 Use of Land Markets**

Rights of occupancy can be bought, sold, leased and mortgaged although their sale is restricted by various government controls for example a holder of a customary right of occupancy can only sell subject to the approval of (and subject to any restrictions imposed by) the village council. As such there is a very limited formal market the majority of which is in the urban areas. Most transactions occur in the informal market and mainly involve leases.

Many of the transactions in rural areas do not follow formal procedures as set out by the VLA, 1999 and tend to be informal transactions involving negotiations with traditional village authorities and government bodies with the transaction evidenced by an informal deed signed by representatives of traditional village and/or other official authorities (USAID, 2011)

### 3.4 Governance of Land Administration

A key observation emerging from the various literature around land issues, in particular those focusing on the implementation of new land reforms and their effectiveness in addressing land conflict, is that of weak governance in land administration<sup>30</sup>. That is the processes by which decisions are made and implemented with respect to land, access to and use of and conflicts resolved are holding back effective implementation of the new land policies and legislative frameworks. Although, as noted in earlier sections, there are aspects of the policy and legislative frameworks that invite conflict, it is an absence of transparency, accountability and efficiency in the activities of the institutions responsible for land administration that seem to be undermining fairness and equality in the management of land rights.

It is argued that devolving decision-making power and authority to local communities and other stakeholders can give rise to better decision making around land resources. The land policy and laws require a devolved decision making model (although district and central government institutions have the ultimate say on certain decisions) and provides for checks and balances.

However, it should be borne in mind that local governance bodies tend to mirror social hierarchies in communities and often lack representation from groups that are politically, economically and socially marginalised. The *Lendani: Rockland Ltd vs Pastoralists* case is an example where village and district governance bodies, which are supposed to represent their local communities, appeared not to act in the interests of sections of their communities that were being directly affected by mining activities (Lange 2008).

Complex procedures and multiple reporting lines in land administration weakens oversight and control and lessens transparency and accountability. This in turn provides opportunities for corrupt practices at various levels. Cooksey and Kelshall (2011) note that “bribes involved in the process of securing land concessions are more complex, and do not always work”. In a recent exercise to prepare Anti-Corruption Action Plans, 76 out of 109 districts listed corruption in land allocation as one of the most pressing problems (Tideman and Msani 2010). The findings of Special Presidential Committees established shortly after the newly elected government of President Jakaya Mrisho Kikwete, in 2006 to solve land problems noted that 75% of the disputes emanated from the action of public officials (Kironde, 2009).

This is not an argument against devolved decision making processes. As noted by Bruce (1994)<sup>31</sup> “control of land and viable local government seems to be inextricably tied together in rural Africa. A local government which does not control land is almost irrelevant, given that the concerns of rural people are so focused on land”. Rather a cautionary reminder of the reality of weaknesses in local governance institutions. Good quality land administration cannot be expected in the absence of a functioning system of local government. Any initiatives to strengthen governance of land administration need to be undertaken in conjunction with general reforms in local government.

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<sup>30</sup>Kironde (2009) uses a definition of land governance as “the process by which decisions are made regarding the access to, and use of, land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled”. These processes are inevitably technical, procedural and political by nature. As such if fairness and equality is to be achieved in decision making it requires integrity at political, administrative and professional levels. In many African countries, Tanzania being no exception, control over land rights (and many other resources) is a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption. [http://www.fig.net/pub/fig\\_wb\\_2009/papers/gov/gov\\_1\\_kironde.pdf](http://www.fig.net/pub/fig_wb_2009/papers/gov/gov_1_kironde.pdf)

<sup>31</sup> Quoted in Sundet 2008

## 4 Review of International Instruments

There are a growing number of international instruments, many of them voluntary that have emerged with the intention to guide national land governance but also to encourage more responsible investment, particularly within the international investment community. Where local and national governance fails these instruments can provide mechanisms by which pressure can be brought to bear on a business and its investors, if not legal action e.g. the IFC's CAO, OECD's National Contact Points complaints mechanism, the US Alien Tort Act. Overviews of the key initiatives relevant to this assessment can be found in Annex 1.

There are two relevant international instruments negotiated at inter-governmental level by the UN. The first is the UN 'Protect, Respect, Remedy' Framework on Human Rights for Business and Human Rights which was developed to address gaps in the application of human rights principles to business operations, and has been adopted by the UN Human Right Council. It arose from work by John Ruggie the UN Secretary- General appointed a Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises. Under this framework i) states have a duty to protect people from human rights abuses by third parties, including business; ii) corporations have a responsibility to respect human rights; and iii) people must have more effective access to remedies. Many of the principles under this framework are being carried into other instruments.

The second are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security. These are still work in progress and at an inter-governmental meeting held in October 2011 progress was made in the adoption of significant sections of the first draft. Their purpose is to serve as a reference to guide the governance of tenure of land, fisheries and forest with the overarching goal of achieving food security for all to support the progressive realisation of the right to adequate food in the context of national food security. They are voluntary and are considered to be potentially useful to a variety of actors including national and local governments, judicial authorities, small scale producers, civil society, private sector and academia. They could provide a useful reference framework for the multi-sector dialogue particularly when discussing the performance of land governance in Tanzania.

There are two instruments that have been developed by regional groupings. One is the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises which regulate the activities of multinational/transnational companies overseas and also place requirements on home governments with respect to managing enterprises domiciled in their country.

The other is the African Union Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods. This framework developed by the African Union, African Development Bank and the Economic Commission for Africa was published in 2009. Its primary purpose is to offer a basis for commitment by African member states to the formulation and operationalisation of sound land policies to assure social stability, facilitate economic growth and poverty alleviation and protection of natural resources.

In addition to these, there are a number of initiatives that have been developed within the private sector, at the company or sector level. Standards and guidelines developed at sector level are typically done through multi-stakeholder dialogue, and are usually initiated by corporates that have already made significant strides in integrating more responsible business practices into their business models. These initiatives can be broadly categorised into three groups:

- i. Those developed to guide project finance and lending (e.g. financial institutions involved in project and corporate finances) such as the Equator Principles and the Common Approaches for Export Credit Agencies.

- ii. Those developed by the investment community (e.g. institutional investors, asset managers, fund managers) and include initiatives such as the United Nations Principles of Responsible Investment and the Private Equity Council's Guidelines for Responsible Investment.
- iii. Commodity sector initiatives which are specifically focused on setting standards for the business enterprise operating in that sector. E.g. Roundtable on Sustainable Palm Oil, Better Sugar Initiative, Roundtable on Biofuels, Extractives Industry Transparency Initiative, International Council and Mining and Metals

It is worth noting that one set of standards that is increasingly being adopted across the financial sector and by default having to be complied with by corporates through loan and investment agreements is the International Finance Corporation's (IFC) Performance Standards on Social and Environmental Sustainability<sup>32</sup>. They were first published in 2006 and the most recent revision will be adopted as of January 2012. They are also the default set of standards for a number of other development finance institutions e.g. FMO, DEG (who either invest directly in a business or increasingly on lend to financial intermediaries in or investing into developing economies, Tanzania being no exception) and adopters of the EPs. They consist of 8 performance standards (PS) and pull together performance objectives on environmental and social issues in an integrated manner. The 8 PS are:

PS1: Assessment and Management of Environmental and Social Risks and Impacts

PS2: Labour and Working Conditions

PS3: Resource Efficiency and Pollution Prevention

PS4: Community Health, Safety and Security

PS5: Land Acquisition and Involuntary Resettlement

PS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

PS7: Indigenous Peoples

PS8: Cultural Heritage

The PSs are also supported by comprehensive Guidance Notes and IFC's general and sector specific Environmental Health and Safety guidelines. They also require the business to take into consideration any sustainability guidelines developed for their sector such as some of those presented in Annex 1: Relevant International Instruments.

As they stand the IFC PS set a far higher performance benchmark than current national legislation in Tanzania with respect to environmental and social impact assessment and management, management of the impact of an investment on access to natural resources and ecosystem services (e.g. watersheds) important to local communities and involuntary resettlement arising from land acquisition. The new revision also embeds the principle of free, prior and informed consent with respect to consultation and decision making processes.

The IFC also has an accessible complaint redress mechanism through its independent Compliance Advisor/Ombudsman (CAO), which has helped communities in Indonesia, to resolve contentious issues with an oil palm investor. However, LEAT's experience with the CAO with respect to the Bulyanhulu Gold Mine has not been so positive. In general few civil society organisations have turned to the CAO or the complaints panels of other investors.

Often the driver for these initiatives is to adopt and implement common standards in order to create a level playing field. However, such standards can serve as useful tools in assisting a business or an investor to identify and mitigate risks associated with environmental, social and governance matters.

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<sup>32</sup> [www.ifc.org/sustainability](http://www.ifc.org/sustainability)

These risks are typically greater in a country where national legal and administrative frameworks are weak and uncertainly surrounds there regulation.

They can also play a critical role in fostering an environment that leads to the introduction of enforceable legal rules, both internationally and at the national level in affected countries. Some of them have grievance mechanisms that can be useful tools for affected communities. Standards developed by initiatives in the commodity sectors e.g. palm oil, sugar cane are increasingly being used as a benchmark by financial institutions in ascertaining the performance of companies in their portfolios.

A recent Oxfam Briefing Note (September 2011)<sup>33</sup> includes a discussion on how well some of these international mechanisms are working with reference to five case studies they present. Despite misgivings from some quarters, these mechanisms are beginning to play a role in facilitating change and more responsible corporate behaviour. If there were no initiatives such as the Equator Principles and the UN Principles for Responsible Investments, it is unlikely that financiers and investors would be considering environmental, social and governance matters in the investment decision making process, as they are now beginning to. How well an individual financial institution performs in considering these aspects in their due diligence processes and how effective they are at facilitating a better investment is dependent on a number of factors all of which are open for debate.

There is also a growing trend towards the enactment of legal instruments in developed economies to regulate more responsible business practices and to increase transparency, including obligations for investment activity overseas. For example the Dodd Frank Act (2010) and more recently the EU regulations on OTC which create new obligations around transparency for investments; the 1977 Foreign Corrupt Practices Act, UK Bribery Act, 2011.

With the exception of frameworks developed through inter-governmental negotiations many of the initiatives in the corporate responsibility and responsible financing and investment arenas have been developed by actors in developed economies. As such the systems for encouraging compliance tend to extend as far a companies and investors originating from these economies. As such new sources of foreign investment from regions or countries such as the Middle East, India, Brazil and China tend to fall outside the ambit of many of these initiatives. Also few of these countries have their own instruments for regulating the behaviour of their corporate's overseas activities.

Some countries have responded to this gap by beginning processes to develop their own national frameworks to government sustainable investment e.g. recent initiative by the Nigerian Banking Association and the Nigerian Reserve Bank to establish a Strategic Sustainability Working Group and draft the Nigerian Sustainable Banking Principles, which will apply to all investments into and within Nigeria. Closer to home the World Wildlife Fund for Nature (WWF) is coordinating a multi-stakeholder initiative to develop a set of guidelines to integrate environment into investment decisions in the mining sector for Tanzania. It is anticipated that they will be launched at the 2011 Mining Indaba.

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<sup>33</sup>Land and Power: The Growing Scandal Surrounding the New Wave of Investments in Land [www.oxfam.org/grow](http://www.oxfam.org/grow)

## 5 What do the Various Stakeholders Say on Land in Tanzania?

Views on land issues in Tanzania were sought from various broad categories of stakeholders to inform the study. These categories include Civil Society Organizations (CSOs), the Government, private sector, Development Partners, religious leaders, politicians and the academia/researchers/specialists.

All categories of stakeholders expressed an interest in issues associated with land-based investments. They supported the need for multi-stakeholder dialogues and indicated a willingness to participate in a multi-stakeholder dialogue. There are areas of commonality as well as areas of differences on issues of concern for stakeholders. The following section presents a summary of the issues and concerns raised by the stakeholders. These are among the issues and concerns that need to be discussed and solved if land-based investments are to work for Tanzania. The stakeholders include CSOs, the government, the private sector, religious leaders and the academia/experts. The detailed list of issues raised by each stakeholder are presented in Annex 2.

### 5.1 Issues From the Civil Society Organisations (CSOs)

The key messages from CSOs and religious leaders include the need for stakeholders especially the government to make sure that there is a win-win situation between all parties involved in land-based investments. The need to avoid conflicts between communities, investors and the government is very clear. There is also a need to protect the weak and marginalized communities in land-based investments. There is also a need for the government to make it relatively easier for investors to access land in such a way that will benefit all involved parties. Discussions on how all of the above can be achieved in a sustainable way are very important.

#### Specific issues that were mentioned by CSOs and identified as needing discussion

- Controversial land deals involving allocation of huge tracks of land to few companies and individuals (land grabbing) should be discussed and solved ;
- corruption by public officials in land deals need to be stopped as this is a case of bad land governance;
- roles of the central and local governments in land-based investments should be made clearer. At some points, local government seems to be interfered and directed by the central government where the latter is supposed to just advise;
- modes of community as well as local firms benefits from land-based investments need to be thoroughly discussed for the benefit of the communities.;
- proper and adequate compensations in relation to evictions to pave way for land-based investments need to be discussed. This includes the need for provision of alternative and better land. There is also a need to provide continuous/perpetual sources of incomes instead of one-off monetary compensation. This includes but is not limited to provision of new sources of livelihoods which may call for capacity building on part of those evicted;
- there are cases where investors, instead of the government, do the payment for land use plans and surveys. This is bad governance and subjective practice as such investors have vested interest and therefore conflict of interest. This needs to be stopped;
- there is plenty of land speculation in Tanzania. This leads to the rich and well connected to buy land, keep it idle for sale when prices go higher. This practice denies land availability and accessibility by others;
- land laws, regulations and processes are centralized, difficult, long, bureaucratic, corrupt and inefficient. There is therefore a need for reforms;



- there is a need to discuss coherence and institutional coordination in land issues. This is because there are many and at times conflicting institutions that deal with land issues. There is therefore a need for one stop centre for land matters
- there is a need to classify land according to various possible uses, prime, fertile and marginal land so that land is put into its best use only;
- there is a need for the government to develop land use plans and make land surveys partly to reduce costs on investors who may have to do this for themselves and most importantly to reduce land-based conflicts;
- there is general local communities' weaknesses, ignorance, inadequate participation and negotiation capacity on land issues. This calls for capacity building (including training, coaching and mentoring) at community level;
- there is a need for respectful treatment of local communities by land-based investors. This will partly reduce land-based conflicts;
- core sources of land-related conflicts should be addressed accordingly. This is because there are many cases of land-based conflicts involving communities and individuals on one hand and investors on the other;
- there is a need for policies, laws and regulations to take into account community and national interests for win-win situation in land-based investments. Among other things, this calls for review of outdated policies, laws and regulations;
- land-based investments should adhere to environmental protection principles and local communities' access to livelihood sources. This is because there have been cases of environmental destruction by such investors as well as fencing of land that deny communities access to various sources of livelihoods such as land and water;
- there is a need to consider domestic food-security issues in decisions on land-based investments. This is because of the emerging trend of investments in land that may be dangerous to local food security. These practices include biofuel farming and production of food in Tanzanian soil for export;
- there is a need for local processing of land-based products such as agricultural and mineral products. This will make land-based investments work better for Tanzania due to the benefits derived from value addition. By extension, the government needs to create the necessary environment for domestic value addition;
- there is a need to consider gender issues in land. This is because women tend to lose out in various land-based investment issues including eviction, compensation, loss of livelihoods and denied availability of and access to resources
- there is a need of incorporation of land issues in the new constitution. This will give a legal protection of the various land issues;
- there is a need to consider and discuss land as a human rights issue;

## 5.2 Views of the Government

Views from the government indicate that there are inadequacies in land administration issues. There are disparities between what is on paper and the practice on the ground. There are a number of challenges that make land administration in Tanzania cumbersome. These inadequacies make it extra challenging to attract and retain investors. The inadequacies are part of criticism that the government receives from various stakeholders including CSOs, investors, academia and the opposition parties. The inadequacies need to be addressed in a participatory way if the country is to benefit more from land-based investments. The key message from the government is an acknowledgement that all is not well in the land resource in Tanzania and that the identified challenges need to be solved. The Government considers a multi-stakeholder dialogue as a very important forum for parties to meet and engage each other constructively. These views are very

similar with those of other stakeholders. This shows that there is a meeting of minds between the government on one side and the other stakeholders on the other. This is very important because when the government - which holds the key to unlock most of the land problems and challenges - accepts that there are problems, it is a good start to solving the problems.

**Key issues that reappear from the government responses include:**

- The government acknowledges that land space is of significant importance for any development to take place;
- land requires massive investments to ensure an equitable and fair ownership and subsequently a productive utilization;
- major infrastructural investment on land are required;
- access and rights to use land for development purposes are critical;
- there are views that there is no large amount of land available for future investments as well as views that there is a lot of unutilized land;
- there is a huge problem with unplanned and non-titled land;
- there are frequent land disputes;
- land administration system is inadequate;
- there is lack of one stop shop for land matters;
- there is a need to coordinate and harmonize approaches in land use plans;
- various authorities dealing with land and investors need to be coordinated and consult each other.
- there is resources scarcity in land administration;
- there have been substantial improvements on land-based investments for the country's development (for example the 2010 Mining Policy);
- there should be a balance between monetary gains from land-based investments and impacts on the environment.

### **5.3 Views from the Private Sector/investors**

According to the private sector stakeholders who by and large represent views of investors, the state of land administration in Tanzania is cumbersome, bureaucratic and inefficient. It adds to the already not so good investment environment in Tanzania. It adds to the initial and operational costs of investors in land-based investments. Among others, investors have to identify the land they need for investment. At times they have to undertake and pay for the basic processes like land use planning and surveys without any assurance that they will get the needed land. If land-based investments are to be forthcoming and beneficial to Tanzania, there is a need for the government to make sure that it does its assignment of preparing the land so that investors can access ready-to occupy and ready-to use land instead of investors doing all the ground work that should be done by the government. The private sector/investors in general and investment advisors/experts in particular are very much interested to participate in constructive and intelligent multi stakeholders' dialogue on land issues.

**Key issues from investors/private sector include:**

- challenges in accessing adequate and ready-to use land. There is no land bank and the view that Tanzania has huge land for large-scale land-based investments is wrong;
- lack of land bank is a constraint for investors' access to land
- direct negotiations on land acquisition with and facilitation by government and (both central and local) its institutions such as the TIC reduces challenges of acquiring and investing on land;

- conflicts with local communities are not good for investments. These impose extra cost and may lead to reputation loss. It is therefore very important for all stakeholders to play their part to avoid and reduce land-based and other conflicts
- customary land ownership is a big problem for investors. This is because investors cannot easily access such land;
- there is a general lack of transparency in land acquisition process as what is on paper is not always what works. Individual investors may need to find out their own ways to acquiring land;
- there is a problem of rent-seeking government officials in matters related to land. This is a constraint to investments as it adds into costs and time taken before an investment can take off;
- accusations of land grabbing by investors are unfounded and unfair because investors do follow the existing laws of the country;
- there is private sector willingness and ability to practice Corporate Social Responsibility (CSR) in their land-based investments so that communities around such investments benefit as well.

#### **5.4 Views from Development partners (DPs)**

Development partners agree that land issues are essential in the development process and need to be identified and discussed.

##### **Key land issues raised by DPs**

- land-based foreign investments are becoming very popular across the world in general and Tanzania in particular. This is due to the changing global food and energy demand, among others;
- land grabbing is an issue in Tanzania and needs to be addressed sooner than later before it gets out of control;
- supporting development of land banks in general and land banks at all levels (regions and districts) is important for land-based investments;
- emerging new ways of using land - such as biofuel and food production for export – and the extent to which these are or are not beneficial for Tanzania need to be discussed;
- the constitutional change debates is an opportunity that should be used to capture and incorporate land issues;
- high centralization of land administration is an issue of concern that needs to be solved;
- political will in improving and implementing land policy, laws and procedures need discussion
- capacity building in forms of training, coaching, mentoring and exchange visits on land issues (such as land use plan, land surveys and negotiations) at all levels and especially at the local level are needed. This is because such capacities are highly inadequate;
- the development and dissemination of land use plans is a key areas that DPs should focus on;
- land programmes and projects by DPs and the government are key livelihood issues. These should therefore feature more in DPs and government dialogues;
- village registration is important for development in general and in the context of Village Land Act is particular. This should therefore be prioritized;
- local level (village, district) and national information program on land issues is important;
- women rights related to land need discussion as gender equity is a challenge in land matters;
- environmental impacts of land-based investments need broad discussions including best practices of environmental impact assessment as well as restoration of the environment during and after land-based investments;

## 5.5 Views from Parliamentarians/politicians

Politicians consider the following as key issues of discussion in land-based dialogue:

- There is a need for openness on various land-based investment contracts
- There is a need to address environmental, social and health issues related to land-based investments;
- the benefits Tanzanians realize from land-based investments should be discussed with the view of determining whether these are optimal benefits
- The government should make thorough study of investors' plans before allocating them land and make regular monitoring and evaluation (M&E) of such investments with the view of determining the extent to which approved plans are adhered to. This is because there have been cases of investors changing their government approved plans without notifying and getting go ahead from the government

## 5.6 Views from Academia/researchers/experts

Views expressed by academia and researches include:

- land issues should be part of the constitutional change debate;
- there is a need to discuss land based-investments with broader food security in mind;
- best land ownership system should be identified and adopted in Tanzania;
- land issues in the East African Community (EAC) common market protocol need debating;
- taking land from citizens and giving it to foreign investors need discussion due to its many and far-reaching implications for this and the coming generation;
- land-based investment is seen as new form of exploitation and colonialism;
- investors must have clearly stipulated duties – not only rights - to the country in general and communities they operate-in in particular,;
- There is a need to emphasize for land-based investors to do business according to Tanzania's laws and not the other way round;
- There is a need for government to be very careful when dealing with foreign land-based investors;
- There is a need to review outdated land-related policies and laws
- in-depth research on land issues is needed as well as wide dissemination of findings;
- there is a need to learn from other countries on the good and bad practices related to land-based investments.
- acceptable mode of land lease need to be identified;
- there is a need of incorporation of key land issues in relevant curricula at various levels;
- there is a need to empower small scale land users including peasants, miners, pastoralists as well as hunters and gatherers;

## 5.7. Views of religious leaders

### Religious Leaders' Views on Land Issues

- Below are the views of leaders of various religious groups and denominations on land issues in Tanzania.
- Compensation in the mining sector is not proper. There is a need to identify and discuss broadly what fair and adequate compensations should be.
- Compensations should be based on actual and potential value (perpetual income stream) of land to be 'given' to investors instead of just the surface value of the land in question
- Large scale land-investors and the government are not realistic on actual benefits from investments. For example, how realistic will investments create employment for unskilled and uneducated population; how local firms with low capacities can benefit from local procurement arrangements without capacity building
- Discussions on how small scale miners should be considered in making decisions on large scale land-based investments are important
- Discussions on how local firms can be involved in delivering goods and services to multinationals as sub-contactors are needed. Issues here include their competitiveness based on their capacities to deliver required quantities, qualities and timely
- Discussions on local processing of land-based products (agriculture, mining) in order to benefit the country to the maximum are needed
- There is a need to discuss how development of local communities through CSR can be more meaningful not just peanuts. Issues here include how participatory and demand-driven the process is; should CSR be limited to the communities surrounding investments only? Is CSR alone enough or should it be more through taxation?
- There is a need to debate on how to avoid unnecessary conflicts between various groups of land users
- There is a need to discuss on whether and how CSR can be legally binding instead of being based on investors' discretion and mercy
- There is a need to discuss issue of investors that do not treat locals with respect and dignity
- There is a need to discuss how to make various land-based investments including contracts more transparent

### **Synthesis of stakeholders view**

Generally, the views of the academia are very similar with those of CSOs and religious leaders. They also resemble the views of politicians. Generally these are pro-poor views that seek improvement on various specific land issues for the benefit of the people and the nation at large. The views of the private sector/investors revolve around improvement of land-based investment climate. The government on its side acknowledges that there are problems and challenges to be solved around the land issue in Tanzania.

The most striking issue from the various stakeholders is that they all acknowledge the importance of land and investments on it for economic growth and social-economic development. However, the stakeholders see the actual and potential challenges posed by the current land situation in Tanzania. They clearly note that land administration and governance needs much improvement if this cross-cutting resource is to be a blessing instead of a curse in today's and future generations of Tanzanians. The need for the multi-stakeholders to meet and carefully dialogue on how to resolve the various issues around the land question in Tanzania for the country's benefits cannot be overemphasized. Indeed, such dialogue is long overdue.

## 6 Summary of Findings

In summary the key findings are:

Land conflict is not new to Tanzania. However, economic liberalisation, the land law reforms and a renewed focus on formalisation of land ownership appear to be combining to intensify existing disputes and create additional disputes including those between investors and existing land holders/users. This is seemingly at odds with the articulated intent for the land law reforms and formalisation processes to reduce conflicts, increase tenure security and empower the poor.

With respect to the land laws there are contradictions between the LA, 1999 and the VLA, 1999 and also conflicts with other legislative instruments with respect to defining land uses and administrative responsibilities e.g. the WCA, 2009. However, there does appear to be increasing coherence around the recognition of customary management of communal resources (to a lesser extent the WCA, 2009), although it is yet to be demonstrated that these instruments guarantee any security for customary tenure.

The land laws are complex with cumbersome procedures and similar criticisms have been leveled against some of the new laws for natural resources e.g. Forest Act, 2002. The Strategic Plan for Implementation the Land Laws (SPILL) was developed in recognition of this and to assist with the implementation of the land laws. Implementation activities have been centred around rolling out the formalisation process. After various pilot projects it is unclear whether this is providing the necessary land rights protection especially to the rural population (& informal urban residents) the vulnerable and the marginalised. The benefits are also unclear. Recent independent research on a pilot project concerned with registering CCROs has suggested that the process “realigned land ownership, created new landlords and formalised landlessness” (ole Kosayndo, 2006). Much more research and documentation of processes to implement the land laws is required. Implementation activities have been heavily constrained by a lack of available funding either from the Government or development partners.

Being issued with a CCRO does not provide any additional security and/or benefits in the face of land acquisition for investment. The President can resort to compulsory acquisition, on condition of compensation, for the public interest. This includes investment in the national interest. This typically becomes the scenario when suitable land for a foreign investment has been identified on Village Land. The identified land can ultimately be compulsorily acquired for the purpose of transfer to general land and subsequently made available to an investor.

In the event of compulsory acquisition, involuntary resettlement and compensation procedures have come under heavy criticism. There is a pressing need for detailed research, analysis and debate on the less than transparent village land transfer process and involuntary resettlement and compensation processes for land acquisition for investment. This is not a straight forward matter to resolve as it also impacts on what the Government can afford. Any approach to this issue has to recognise that it has to work for both land acquisition for foreign investment but for land acquisition associated with infrastructure, typically funded by Government e.g. roads.

A significant risk to land rights is weak governance in land administration at all levels but particularly at local level. There are a number of reasons for this including, but not limited to: availability of financial and material resources, capacity of human resources, complex procedures and multiple reporting lines reducing effective oversight and control; lack of transparency and accountability within institutions and decision making processes; corruption at various levels. Good quality land administration cannot be expected in the absence of a functioning system of local government. Any

initiatives to strengthen governance of land administration need to be undertaken in conjunction with general reforms in local government.

Economic growth and development strategies are concerned with growth and facilitating private sector participation. Smallholders and livestock keepers are not fully integrated into growth strategies for the agricultural sector. Rather the emphasis appears to be on consolidating agricultural activity in the rural areas and making land available for commercial farming and ranching. There is little recognition of the potential threats these strategies may present to security of land and natural resource rights and as a result there are no strategies to mitigate these risks into the strategies.

In the mining sector the new policy and Mining Act, 2010 pay more attention to the role of small scale miners in the economy. However, it is yet to be seen whether this will reduce conflicts between this group and large scale mining investments. Landholders have no rights to mineral resources as stipulated by the land laws and the Mining Act, 2010 with the Mining Act taking precedence. This is also the case for petroleum resources. There is an absence of land use analysis and policy direction around priority land uses in different parts of the country. For example, recently in Queensland, Australia a decision was made to restrict coal mining activities in areas identified as “strategic cropping lands”<sup>34</sup>. Such analysis and policy direction is currently lacking in Tanzania.

Investors and the Government see the Village Land Act (VLA, 1999) as a hurdle. This suggests that the VLA can offer some protection for existing land use rights. However, the pro-investment drive and weak land administration tends to give rise to behaviours that at best rush through required procedures and at worst circumvent them.

With land not taking a central place in economic and development strategies it becomes more difficult to access the necessary financial resources for land administration and much needed land use planning activities. With the Government not being able to execute its responsibilities situations arise whereby investors fund land use planning activities in areas where they would like to acquire land. This is neither a “free” environment for villagers to make decisions about their resources and it is not particularly liked by investors as it adds to their investment transaction costs.

An absence of legal provisions for transparency means that it is almost impossible for the public to access information about investments (such as who is involved, who was informed, what amount of land was acquired and for how long) and for stakeholders to be able to respond to challenges and opportunities that such investments may present.

There are a number of international instruments and initiatives (over and above national EIA regulations) that could be leveraged to encourage investors to act more responsibly in matters associated with land acquisition. Certainly a great deal more pressure could be exerted on foreign investments originating from OECD countries, both on the corporate entity and on their financial backers. There appears to be a need to raise awareness among stakeholders about the possible instruments that could be leveraged in this regard. It is more difficult to exert pressure using these instruments on investments emanating from countries in the Middle East and China and India. It is important that Tanzania strengthens existing national instruments for regulating corporate behaviour but also identify opportunities for encouraging more sustainable financing activities.

There is also a need to share research and thinking on land matters with business and investors as they may not be fully aware of the dynamics on the ground and the risks that these present. While

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<sup>34</sup><http://www.gasland.com.au/2011/05/the-australian-battle-between-mining-and-agriculture-threatens-22bn-in-coal-seam-gas-projects/>

there are “opportunistic, short-term” investors seeing an opportunity in weak governance<sup>35</sup> Tanzania needs to find ways to control this and attract better quality investment in. It is unlikely that such investors will be committed to Tanzania’s long term development. Tanzania needs to take advantage of changing risk management approaches by actors in the finance sector (lenders and investors). Longer term oriented responsible investors would consider the current situation in Tanzania a significant risk to investment.

Fimbo (2003)<sup>36</sup> noted that the challenge that policy makers faced with the land law reforms were tensions between on the one hand freedom to deal with the land in the market and on the other security of tenure or protection of users and occupiers of land.

So 15 years down the line is Tanzania managing to balance these tensions, has anything changed on the ground as a result of either the LA, 1999 or the VLA, 1999, what has been their impact, are conflicts lessening, does the policy and legislation provide the right framework to manage these tensions or are weaknesses in the governance land administration undermining the laws, through improper implementation? What does this mean for security of tenure for land and other natural resources in the face of growing pressures for land for investment purposes? Is it possible to legitimately acquire land for investment purposes without first having protected the land rights of existing users? What does this mean for the type of investment activity that is acceptable?

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<sup>35</sup> World Bank Policy Paper, October 2011 reports research findings that show an association between weak land governance and protection of land rights with higher rather than lower levels of investment.

<sup>36</sup> Cited by Olengurumwa, 2010



## 7 Framework for Dialogue

REPOA, TNRF and IIED, sense that the emerging risks associated with the acquisition of land for investment purposes are significant enough to justify the initiation of a multi-stakeholder dialogue. The purpose of the dialogue would be to share a common appreciation and understanding of the underlying dynamics and to prompt action to find a way for investment to support equitable and sustainable development in Tanzania.

Tanzania is still a developing economy where the majority of its population is dependent on access to land and other natural resources to sustain their livelihoods. Tanzania has to both protect the livelihoods of its citizens and generate wealth and the governance of land and its natural resources play a critical role in achieving this.

Many of the conflicts associated with current investment activities be them foreign, national, large or small arise from stakeholders questioning the legitimacy of a land acquisition/transfer of occupancy/usage rights of land and other resources to another. Sources of discontent range from:

- i. Competition for natural resources such as land, water and minerals;
- ii. Conflicts over land uses, such as grazing versus cultivation;
- iii. Demarcation of village boundaries and allocation of common resources; and
- iv. Adoption of land use plans that deny local communities access to land and natural resources needed for livelihoods.

In order to understand the failings in the transfer of land occupancy rights to investors the debate has to be widened to consider governance of land in Tanzania more generally and the effect of economic and development policy thrusts on decision making around land.

This also opens up the floor for debate around the recognition of existing communal land uses in economic growth and development and national land use planning, the potential threats that economic growth strategies may present to them and identification of mitigation measures.

### 7.1 Areas for Debate

The questions presented at the end of Section Summary of Findings<sup>6</sup> can provide a useful framework around which to construct a dialogue.

15 years on how well is Tanzania governing its land resources and what has been the impact of the land laws of 1999.

- i. Has anything changed on the ground as a result of either the LA, 1999 or the VLA, 1999? What has been their impact? Are tenure rights strengthening or being undermined? Are conflicts lessening?
- ii. Given that land and how it is governed is fundamental to the economic, socio-cultural and political development of nations why is it that economic growth strategies are relatively silent on the protection of land rights? Is this having an impact on how Tanzania's land resources are being managed?
- iii. Does the policy and legislation provide the right framework for securing land tenure rights or are weaknesses in the governance land administration undermining the laws, through improper implementation?
- iv. What does this mean for security of tenure for land and other natural resources in the face of growing pressures for land for investment purposes? Is it possible to legitimately acquire land for investment purposes without first having protected the land rights of existing users? What does this mean for the type of investment activity that is acceptable?

It is also recommended that on the key areas of land governance and involuntary resettlement and compensation the following are referred to.

- i. A land governance performance framework presented by Kironde(2009) in his paper "Improving Land Sector Governance in Africa: The Case of Tanzania.
- ii. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security. Whilst it is appreciated that these are still under negotiation consensus has been reached on a number of areas although some critical areas for this initiative such as investment and expropriation and compensation are yet to be agreed on.
- iii. UN 'Protect, Respect, Remedy' Framework on Human Rights for Business and Human Rights
- iv. The International Finance Corporation's Performance Standard on Involuntary Resettlement

These can be used to structure debate around current performance in Tanzania with respect to the areas of land governance and more specifically involuntary resettlement and compensation associated with land acquisition.

## 7.2 Dialogue Mechanism

A number of suggestions came forward from stakeholders for multi-stakeholder dialogue. There was general opinion that a large conference was not the most appropriate forum for now. Rather there was support for a series of smaller dialogue initiatives.

Stakeholder Category	Recommended multi-stakeholder dialogue mechanism
Civil Society Organisations	<ul style="list-style-type: none"> <li>• It should be a platform for all stakeholders (the government, communities, CSOs, private sector, various land users – farmers, miners, pastoralist, hunters etc - academia, politicians, development partners, media etc) to meet and dialogue intelligently on land issues</li> <li>• Cascading mechanism: Each stakeholder group should discuss issues on their own, then bring all the parties that have discussed separately together to share view.</li> <li>• Zonal meetings/dialogues (in regions, districts or wards) are important for a wider outreach.</li> <li>• Make use of dialogues around review of the Constitution particularly with respect to the radical title.</li> </ul>
Government	<ul style="list-style-type: none"> <li>• Use media (radio, TV, newspapers, brochures, extension zones).</li> <li>• Village meetings (various committees).</li> <li>• Organize sector-wise workshops: land and mining; land and agriculture; land and tourism.</li> </ul>
Private sector	<ul style="list-style-type: none"> <li>• In the dialogue, various stakeholders should participate. These include but are not limited to people at policy level (Ministries, Members of the Parliament, Regional Commissioners, District Commissioners, District Executive Directors etc)</li> <li>• The dialogue should be a broader national debate going from the national to local levels.</li> <li>• There should be multiple discussion of issues by various stakeholders.</li> </ul>
Development Partners	<ul style="list-style-type: none"> <li>• Multi-stakeholder dialogue possibilities include:</li> <li>• use of participatory video filming in which the people themselves define what the problem is, why it is a problem, how it can be solved etc. Let the people do film discussions on land issues then debate on the outcome of the filming (HakiArdhi does this)</li> <li>• Basic awareness creating campaign</li> </ul>

In identifying a suitable dialogue mechanism the following existing dialogue forums should be considered for possible collaboration:

- i. Haki Ardhi's Land Symposium undertaken every two years. Next one will be in 2012,
- ii. Action Aid undertakes annual community (Ward, District then National) land symposium

- iii. Tanzania Gender Networking Programme, Gender Festivals. In 2011 they collaborated with TALA on land issues
- iv. Policy Forum breakfast debates
- v. CEO Roundtable,
- vi. Tanzania Private Sector Foundation (TPSF) - Government Dialogue;
- vii. Mwalimu Nyerere Chair at University of Dar Es Salaam; and
- viii. Television programmes including This Week in Perspectives at Tanzania Broadcasting Corporation (TBC); UchumiWetu (our economy), Malumbano ya Hoja (facts-based debate) and Kipima Joto on Independent Television (ITV).
- ix. Other media outlets in particular radio and coverage in the print media.

### **Recommendation**

The recommended dialogue mechanism is for a series of carefully coordinated smaller fora that feed into a larger forum where all stakeholder groups (especially from the village level) are represented. It is recommended that partnerships are established with existing dialogue forums for the smaller fora. In particular the Policy Forum, Haki Ardhi, Legal and Human Rights Centre, Action Aid's annual symposiums and Gender Festival organized by Tanzania Gender Networking Programme.

The small dialogue sessions should be constructed with the intent to feedback key concerns/issues for discussion at a larger forum with all stakeholder groups represented. The output from this should be a set of actionables and allocated responsibilities for change. Haki Ardhi could be approached to explore the possibility of collaborating with them and link this with their next Land Symposium. However, it may be more appropriate to have a separate event (hosted by REPOA, for example) that is considered to provide a "neutral" environment.

In addition a separate process should be identified for specifically coordinating contributions on land issues and ensuring that they find their way into the Constitutional review process.

The media should be used to inform the public about the dialogues and to feedback some of the issues arising. Panel debates on Radio and TV could provide some interesting opportunities. Contributions should be written for exposure through the print media. Mechanisms should also be found to enable the public to contribute through the media.

### **7.3. Key Research Available to Inform Dialogue/Key Note Speakers**

There are a number of potential speakers/researchers/institutions that could be followed up to contribute materials/inputs for dialogue events. Nearly all stakeholders interviewed expressed their interest in being involved in the dialogues but also to contribute.

Some recommendations include:

HakiArdhi  
 Action Aid  
 Alden Wily – Policy, Land Laws, Customary Land Tenure  
 Commissioner of Mines  
 GeirSundet on the formalisation process  
 J M Lusugga Kironde, Ardhi University on governance in land administration  
 Jon Hobbs – WWF. Currently coordinating multi-stakeholder dialogue in the extractive industry sector  
 Legal and Human Rights Centre e.g. Onesmo Olunguruma on pastoral land tenure  
 Martina Locher – recent research on land acquisition for a forest project  
 Ngeta Kabiri – Wildlife Conservation and Acquisitions  
 Professor IssaShivji – Policy and Land Laws  
 William Olenasha – Land Laws

Siri Lange – Mining and Land Tenure  
 Ministry of Lands, Housing and Urban Settlements  
 Lands Commission  
 National Land Use Planning Commission  
 Tanzania Investment Centre

### **7.3 Information Gaps for Informing Constructive Dialogue**

#### ***Availability/accessibility/reliability of Data on Land Acquisition for Land Based Investments in Tanzania***

Data on land allocations across the country is not readily available or accessible to the general public. This is supported by an assignment undertaken by REPOA in 2006 to prepare a draft Framework for Downward Accountability where general information on plans, budgets, expenditures, decision making and audits were made available, but key non-financial information for different sectors such as land allocations was not readily available<sup>37</sup>. Aside from a freely accessible document trail being an indicator of transparency and accountability in land allocation and transfer processes the lack of reliable data undermines informed/constructive dialogue.

#### ***Availability/accessibility/reliability of data/research on “land use” “land use planning” and “land availability” and in Tanzania***

Data on broad categories of existing land use is available from material sourced on the internet rather than official government publications. Often the original source and date of data is not indicated. Comprehensive records of land use at a local level are few in number. Information obtained from the Department of Physical Planning (DPP) in the NLUPC indicate that approximately 1000 – 1200 villages have been planned of which 850 village land use plans are on record. The discrepancy in the numbers is because a number of different institutions have been assisting villages to undertake planning exercises and the Physical Planning Department does not have a complete record of who is doing what where. The Department of Physical Planning also has a spreadsheet containing data on 616 villages indicating their land use areas including a category which is land available for investors. It was not clear whether these 616 villages are a subset of the 850 villages that the DPP has land use plans for. It is also not clear whether the data on land available for investors held in this document relates to data held by TIC in the Land Bank, although DPP did indicate that TIC has access to this data. In order to access this information an official request needs to be sent to the parent Ministry, the Ministry of Lands and Urban Settlement Development MLUSD)

#### ***Independent Research on Land Acquisition Processes for Investment***

Whilst some research has been done on some of the pilot projects to implement processes for the registration of land rights in rural and urban areas (although more could be done here to as noted by Sundet, 2008), very little independent research has been undertaken on recent land acquisition for investment, the processes undertaken, the outcomes and the impact on villagers and the investor. In situations where there has been displacement an evaluation of livelihoods post resettlement and compensation would be useful, although it is unlikely that adequate household level socio-economic baseline data<sup>38</sup> on the situation prior to displacement would be available to inform such an

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<sup>37</sup> As reported by Sundet (2008) the consultants, although carrying a letter of introduction from the Permanent Secretary of the parent Ministry failed to collect and/or see documents on land allocations in any of the District authorities visited.

<sup>38</sup> Which incidentally it should be as a properly managed Resettlement and Compensation Planning exercise requires the collection of socio-economic baseline data a) for information the identification of resettlement and compensation options and b) to feed into a post resettlement evaluation an important activity for ensuring that affected parties are not left worse off.

evaluation. Sulle and Nelson (2009) have provided some insights into land acquisitions for biofuel investments but even they indicated that the availability of details is lacking. Locher 2011 and Kabiri (2011) have also undertaken some informative research which was presented at the Global Land Grabbing Conference in April 2011.

A research opportunity would be to identify a number of current land acquisition processes for investment that could be followed and documented and for which relevant research data could be collect for before and after the acquisition. On the process of implementing the land laws in general, Sundet (2008), identifies the needs for further research and documentation of processes to track what is happening and evaluate the impact and whether or not it is a positive impact with respect to the protection of land rights.

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## Annex 1: Relevant International Instruments

### International and Regional Frameworks for Land Governance

There are two potential international frameworks that could form a basis for dialogue around land governance which are presented below.

#### ***Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security***

These are still work in progress and at an inter-governmental meeting held in October 2011 progress was made in the adoption of significant sections of the first draft. Their purpose is to serve as a reference to guide the governance of tenure of land, fisheries and forest with the overarching goal of achieving food security for all to support the progressive realisation of the right to adequate food in the context of national food security. They are voluntary and are considered to be potentially useful to a variety of actors including national and local governments, judicial authorities, small scale producers, civil society, private sector and academia.

The general principles include:

States to:

- i. Recognise and respect all legitimate tenure right holders and their rights;
- ii. Safeguard legitimate tenure rights against threats and infringements;
- iii. Promote and facilitate the enjoyment of legitimate tenure rights;
- iv. Provide access to justice to deal with infringements of legitimate tenure rights;
- v. Prevent tenure disputes, violent conflicts and corruption.
- vi. Provide access to effective judicial remedies for negative human and legitimate tenure rights impacts by business enterprises.
- vii. Take additional steps to protect against human and legitimate tenure rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

Non-state actors including business enterprises:

- i. Have a responsibility to respect human and legitimate tenure rights;
- ii. To act with due diligence to avoid infringing on these rights;
- iii. To include appropriate risk management systems to prevent and address any adverse impact on these rights;
- iv. To provide for and co-operate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms;
- v. To identify and assess any actual or potential human and legitimate tenure rights impacts they may be involved in;

In addition where transnational corporations are involved, their home states have a role to play in assisting both the corporations and host States to ensure that businesses are not involved in human and legitimate tenure rights abuses.

They also outline principles of implementation which include:

- i. Human dignity
- ii. Non-discrimination
- iii. Equity and justice
- iv. Gender equality
- v. Holistic and sustainable approach
- vi. Consultation and participation



- vii. Rule of law
- viii. Transparency
- ix. Accountability
- x. Continuous improvement

### ***African Union Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods***

This framework was published in 2009 and was developed by the African Union, African Development Bank and the Economic Commission for Africa in consultation with, regional economic communities civil society organizations, centres of excellence in Africa and elsewhere, practitioners and researchers in land policy development and implementation, government agencies and Africa's development partners.

The driver for the initiative was a recognition that the proper management of land is an important factor in development and for ensuring or preserving peace and security. It was noted at the time that a number of African member states had embarked on land policy reforms and that the drivers for these reforms, their level of comprehensiveness, the capacities for their implementation and their impact varies widely. Furthermore, most of the reforms appeared to have proceeded in the absence of any articulated guidance or national consensus on the goals for such reforms.

This framework is not binding, to be adopted by member states nor is its purpose to instruct member states on how to formulate land policy in their particular country states. Rather its purpose is stated as follows:

- i. to offer a basis for commitment by African member states to the formulation and operationalisation of sound land policies as a basis for sustainable human development that includes assuring social stability, maintaining economic growth and alleviating poverty and protecting natural resources from degradation and pollution.
- ii. to promote consensus for shared principles as the basis for securing access to land for all users, enhancing agricultural productivity and sustaining livelihoods to underscore the need for popular participation in land policy formulation and implementation so as to facilitate improved governance of land resources
- iii. to suggest standards for best practices for land policy reforms and benchmarks for the performance of land institutions that member states can adopt in keeping with their respective contexts
- iv. to articulate a policy framework for addressing emerging issues and anticipating future trends relating to land resources,
- v. to provide a basis for more coherent partnership between states, citizens and development partners in land policy formulation and implementation on the continent
- vi. to establish general principles for engaging development partners for the purposes of mobilising resources for building capacities for transformative land policy reform processes; and
- vii. to develop guidelines for regional convergence on the sustainable management and utilization of land and associated resources shared by two or more member states in various parts of Africa

## **Business and Human Rights**

### ***UN ‘Protect, Respect, Remedy’ Framework on Human Rights for Business and Human Rights***

At this point it is worth mentioning this framework which has been developed to address gaps in the application of human rights principles to business operations, and which has been adopted by the UN Human Rights Council. It arose from work by John Ruggie the UN Secretary-General appointed a Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises.

Under this framework states have a duty to protect people from human rights abuses by third parties, including business; corporations have a responsibility to respect human rights; and people must have more effective access to remedies. The framework and its principles identify the following roles for businesses to meet their internationally recognised human rights obligations:

- i. Identify, prevent, and mitigate the adverse human rights impacts of their operations;
- ii. Exercise due diligence pertaining to adverse human rights impacts that the business enterprise may cause through its own activities, or which may be directly linked to its operations, products, or services by its business relationships (in other words, a company should take responsibility for its entire supply chain);
- iii. Communicate externally how the company is addressing its human rights impacts; and
- iv. Give victims access to effective remedy.

The UN Framework also underlines the importance of state oversight, including oversight of companies operating abroad; it calls on governments to provide effective remedies to redress human rights abuses by business enterprises. Investors often take advantage of weak or non-existent governance at the national level to acquire land. To address this, home countries (where investors are based) should institute tougher legal rules and safeguards for companies, regardless of where they operate, in order to promote transparency, regulate business practices, and enable communities to find remedy.

## **Responsible Investment and Corporate Social Responsibility**

### ***Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises***

The [OECD](#) consists of 34 member countries and is involved in research and standard creation in 4 main areas: confidence in markets and institutions, healthy public finances, growth through environmentally-friendly strategies and technologies and labour force skill-sets. With these goals in mind the OECD has produced a number of papers and recommendations of key issues areas including the [OECD Guidelines for Multinational Enterprises](#) which apply to all based in OECD countries that are engaged in transnational activity

The latest revision of the Guidelines, have the support of business, government, trade unions, and many NGOs. They draw heavily on John Ruggie’s work on human rights and also focus on supply chain issues, environment and industrial relations amongst others. They also apply to financial institutions which are recognised as a responsible party in a business activity that they are financing.

Although Tanzania is not an OECD country all companies operating in Tanzania and domiciled in OECD countries have to comply with the appropriate guidance. They oblige participating governments to set up National Contact Points to handle complaints raised by stakeholders regarding alleged breaches by a particular company, and to provide communities affected by the types of projects presented here with the opportunity to bring a complaint. To date, over 200 cases have been raised through this mechanism.

### ***Multisector Initiatives***

In addition to these, there are a number of initiatives that have been developed within the private sector, at the company or sector level. Standards and guidelines developed at sector level are typically done so through multi-stakeholder dialogue (MSIs), and are usually initiated by corporates that have already made significant strides in integrating more responsible business practices into their business models. The purpose of these initiatives is to adopt and implement common standards in order to create a level playing field. Such standards can serve as useful tools in assisting a business to identify and mitigate risks associated with environmental, social and governance matters, that are often greater in a country where national legal and administrative frameworks are weak.

They can also play a critical role in fostering an environment that leads to the introduction of enforceable legal rules, both internationally and at the national level in affected countries. Some of them have grievance mechanisms that can be useful tools for affected communities. Standards developed by initiatives in the commodity sectors e.g. palm oil, sugar cane are increasingly being used as a benchmark by financial institutions in ascertaining the performance of companies in their portfolios.

The following sections highlight some of the multi-stakeholder initiatives that have potential relevance to guiding more responsible investment in Tanzania.

#### **United Nations Environment Programme Financial Initiative<sup>39</sup>**

The UNEP FI currently has over 190 [signatory institutions](#) from over 40 countries.

The UNEP FI Statements represent the backbone of the Initiative. By signing up to the voluntary Statements, financial institutions openly recognize the role of the financial services sector in making our economy and lifestyles sustainable

All financial institutions wishing to join the UNEP FI and so demonstrate their commitment to sustainability principles and environmental protection, must adhere to one of the two Statements depending on their core business (finance or insurance):

Some of UNEP FI's most interesting work is delivered through the very active workstreams that focus on key areas of relevance to the financial sector one of which focuses on human rights and finance.

#### **Equator Principles<sup>40</sup>**

The Equator Principles (EP) are a voluntary set of social and environmental guidelines for project finance lending and advisory services. They are used by about 85 % of the project finance market worldwide. The principles help screen social and environmental risks of investment projects that exceed \$10 million. They provide a framework for banks to manage social and environmental issues related to projects they finance anywhere in the world and to all industry sectors, including mining,

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<sup>39</sup> [www.unepfi.org](http://www.unepfi.org)

<sup>40</sup> [www.equator-principles.com](http://www.equator-principles.com)

oil and gas, forestry, and agribusiness. The standards referred to by the Principles are IFC's Environmental and Social Performance Standards.

The Equator Principles Financial Institutions (EPFIs) continue to grow in number, from ten leading banks from seven countries when the principles were launched in 2003, to now over 68 banks. An increasing number of banks in emerging markets are now signatories, in addition to major international commercial banks.

### **International Finance Corporations (IFC) Performance Standards on Social and Environmental Sustainability<sup>41</sup>**

They were first published in 2006 and the most recent revision will be adopted as of January 2012. They are the default set of standards for a number of other development finance institutions e.g. FMO, DEG and adopters of the EPs. They consist of 8 performance standards (PS) and pull together performance objectives on environmental and social issues in an integrated manner. The 8 PS are:

- PS1: Assessment and Management of Environmental and Social Risks and Impacts
- PS2: Labour and Working Conditions
- PS3: Resource Efficiency and Pollution Prevention
- PS4: Community Health, Safety and Security
- PS5: Land Acquisition and Involuntary Resettlement
- PS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PS7: Indigenous Peoples
- PS8: Cultural Heritage

The PSs are also supported by comprehensive Guidance Notes and IFC's general and sector specific Environmental Health and Safety guidelines. They also require the business to take into consideration any sustainability guidelines developed through multi-stakeholder sector initiatives.

As they stand they set a far higher performance benchmark than current national legislation in Tanzania with respect to environmental and social impact assessment and management, management of the impact of an investment on access to natural resources and ecosystem services (e.g. watersheds) important to local communities and involuntary resettlement arising from land acquisition. The new revision also embeds the principle of free, prior and informed consent with respect to consultation and decision making processes.

The IFC also has an accessible complaint redress mechanism through its independent Compliance Advisor/Ombudsman (CAO), which helped communities in Indonesia, to resolve contentious issues with oil palm investor. However, LEAT's experience with the CAO with respect to the Bulyanhulu Gold Mine has not been so positive. In general few civil society organisations have turned to the CAO or the complaints panels of other investors.

### **Export Credit Agencies (ECAs)**

Amongst the OECD country ECAs, the majority have systems in place that are broadly compliant with the 2007 revised council recommendation on the Common Approaches. However, the standards and regulations referred to by ECAs in their environmental analyses vary quite considerably, although there has been an increase in uptake of the IFC PS. Despite the Common Approaches framework a 2009 review showed that some OECD member ECAs have little or no experience in dealing with projects with potential adverse environmental impacts. Amongst the non-OECD countries, the ECAs of Brazil and China do claim to take environmental principles into account and require adherence to laws and regulations of the host country as a minimum. However, there are examples of projects

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<sup>41</sup>[www.ifc.org/sustainability](http://www.ifc.org/sustainability)

funded by both entities that would not be termed compliant with environmental regulations of their host countries, let alone good practice.

### **UN Principles for Responsible Investment<sup>42</sup>**

The Principles for Responsible Investment (PRI) were launched in 2006 by then UN Secretary-General Kofi Annan. The PRI aims to assist investors to implement of best practice in responsible investment. As of October 2011 there were over 915 signatories from the institutional investment community, as well as asset managers, fund managers, private equity etc, including many of the world's largest pension funds, with assets amounting to US\$30 trillion under management.

The Principles for Responsible investment include the following key objectives by signatories:

- i. Incorporate environmental, social and governance (ESG) issues into investment analysis and decision making processes
- ii. Active owners and incorporate ESG issues into our ownership policies and practices
- iii. Seek appropriate disclosure on ESG issues by the entities in which we invest
- iv. Promote acceptance and implementation of the Principles within the investment industry
- v. Work together to enhance our effectiveness in implementing the Principles
- vi. Report on our activities and progress toward implementing the Principles

Under PRI a group of institutional investors representing US\$1.3 trillion in assets have today launched the Principles for Responsible Investment in Farmland (the "Farm land Principles") with the goal of improving the sustainability, transparency and accountability of investments in farmland. They mirror commodity-specific standards such as those promoted by the roundtable of responsible palm oil (refer to sections below).

The Farm land Principles provide institutional investors with best practice guidelines for:

- i. Promoting environmental sustainability (Principle 1)
- ii. Respecting labour and human rights (Principle 2)
- iii. Respecting existing land and resource rights (Principle 3)
- iv. Upholding high business and ethical standards (Principle 4)
- v. Reporting on activities and progress towards implementing and promoting the Principles (Principle 5)

### **Private Equity Principles**

Often seen as the dark side of investment activity the Private Equity sector can play a key role in facilitating more responsible investment as they typically take controlling equity stakes in businesses and as such and in a great position to influence change than a bank providing some corporate financing.

The Private Equity Council has developed its own guidelines which build on the UN PRI but also recognised the unique role the can play. Private Equity Council members will:

- i. Consider environmental, public health, safety, and social issues associated with target companies when evaluating whether to invest in a particular company or entity, as well as during the period of ownership.
- ii. Seek to be accessible to, and engage with, relevant stakeholders either directly or through representatives of portfolio companies, as appropriate.
- iii. Seek to grow and improve the companies in which they invest for long-term sustainability and to benefit multiple stakeholders, including on environmental, social and governance issues. To that end, Private Equity Council members will work through appropriate governance structures (e.g. board of directors) with portfolio companies with respect to

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<sup>42</sup><http://www.unpri.org/>

- environmental, public health, safety, and social issues, with the goal of improving performance and minimizing adverse impacts in these areas.
- iv. Seek to use governance structures that provide appropriate levels of oversight in the areas of audit, risk management and potential conflicts of interest and to implement compensation and other policies that align the interests of owners and management.
  - v. Remain committed to compliance with applicable national, state, and local labor laws in the countries in which they invest; support the payment of competitive wages and benefits to employees; provide a safe and healthy workplace in conformance with national and local law; and, consistent with applicable law, will respect the rights of employees to decide whether or not to join a union and engage in collective bargaining.
  - vi. Maintain strict policies that prohibit bribery and other improper payments to public officials consistent with the U.S. Foreign Corrupt Practices Act, similar laws in other countries, and the OECD Anti-Bribery Convention.
  - vii. Respect the human rights of those affected by their investment activities and seek to confirm that their investments do not flow to companies that utilize child or forced labor or maintain discriminatory policies.
  - viii. Provide timely information to their limited partners on the matters addressed herein, and work to foster transparency about their activities.
  - ix. Encourage their portfolio companies to advance these same principles in a way which is consistent with their fiduciary duties.

### **Responsible Agricultural Investment**

in response to growing concerns around the increasing levels of investment in agriculture and conflicts over access to resources and food security various stakeholders have called for principles, guidelines and even codes of conduct to govern agricultural investments particularly those involving large tracts of land in developing countries. The World Bank has worked with FAO, IFAD and UNCTAD, and more recently with an expanding set of governmental, non-governmental, and private partners, to help ensure that responsible investments are carried out through the formulation of a set of principles to help governments, investors, communities, and other interested stakeholders to facilitate “responsible agro-investment that respects rights, livelihoods, and resources.” <http://www.responsibleagroinvestment.org/rai/node/232As>The principles address:

- i. respecting land and resource rights;
- ii. ensuring food security;
- iii. ensuring transparency, good governance, and a proper enabling environment;
- iv. consultation and participation;
- v. responsible agro-enterprise investing;
- vi. social sustainability; and
- vii. environmental sustainability.

They have come under heavy criticism already with debate around whether they encourage companies to respect local rights, ensure transparency, and act in a socially and environmentally friendly manner. Some are adamant that the principles are intended to help eradicate damaging mega-farm deals. Others are convinced that the principles are a front to help legitimize land grabbing and facilitate ‘long-term corporate (foreign and domestic) take- over of rural people's farmlands’<sup>43</sup>, which could be an argument lodged against any of the commodity based multi-stakeholder initiatives.

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<sup>43</sup> GRAIN (2011) ‘It’s time to outlaw land grabbing, not make it responsible!’, Barcelona: GRAIN, [http://www.grain.org/o\\_files/RAI-EN.pdf](http://www.grain.org/o_files/RAI-EN.pdf)

#### **Bon Sucro: Better Sugar Cane Initiative<sup>44</sup>**

A global multi-stakeholder non-profit initiative dedicated to reducing the environmental and social impacts of sugar cane production. It aims to achieve this with a Standard that measures these impacts accurately, and with the development of a system to certify that sustainable practices are being adhered to

#### **Roundtable on Responsible Soy Association<sup>45</sup>**

The Round Table on Responsible Soy Association (RTRS) is a multi-stakeholder initiative which aims to facilitate a global dialogue on soy production that is economically viable, socially equitable and environmentally sound. It provides stakeholders and interested parties – producers, social organizations and business and industry - with the opportunity to jointly develop global solutions leading to responsible soy production. As a result of consensus between producers, industry, trade & finance and civil society actors involved in the soy value chain, the RTRS standard for responsible soy production - version 1.0 was developed. The RTRS standard for responsible soy production includes requirements to halt conversion of areas with high conservation value, to promote best management practices, to ensure fair working conditions, and to respect land tenure claims. A certification scheme for production and one for Chain of Custody have been implemented. Early June 2011 the first farm was certified RTRS and the Certificate Trading Platform already facilitated several transactions between certified producers and market stakeholders.

#### **Roundtable on Sustainable Bio-fuels<sup>46</sup>**

The Roundtable on Sustainable Biofuels (RSB) is an international initiative coordinated by the Energy Centre at EPFL in Lausanne that brings together farmers, companies, non-governmental organizations, experts, governments, and inter-governmental agencies concerned with ensuring the sustainability of biofuels production and processing. Participation in the RSB is open to any organization working in a field relevant to biofuels sustainability. The RSB has developed a third-party certification system for biofuels sustainability standards, encompassing environmental, social and economic principles and criteria through an open, transparent, and multi-stakeholder process.

#### **Roundtable on Sustainable Palm Oil<sup>47</sup>**

In response to the urgent and pressing global call for sustainably produced palm oil, the Roundtable on Sustainable Palm Oil (RSPO) was formed in 2004 with the objective promoting the growth and use of sustainable oil palm products through credible global standards and engagement of stakeholders. RSPO is a not-for-profit association that unites stakeholders from seven sectors of the palm oil industry - oil palm producers, palm oil processors or traders, consumer goods manufacturers, retailers, banks and investors, environmental or nature conservation NGOs and social or developmental NGOs - to develop and implement global standards for sustainable palm oil. principles and criteria for sustainable palm oil production.

#### **Extractives Industry Transparency Initiative (EITI)<sup>48</sup>**

The EITI is a coalition of governments, companies, civil society groups, investors and international organisations. The EITI supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. Tanzania applied to join the [Extractive Industries Transparency Initiative](http://eiti.org/) (EITI) in 2009 and had its candidacy renewed in 2011 until 2013 given that the EITI Board considered the country to have made 'meaningful progress' during its candidacy period but that further action is required to ensure compliance.

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<sup>44</sup> [www.bonsucro.com](http://www.bonsucro.com)

<sup>45</sup> [www.responsiblesoy.org](http://www.responsiblesoy.org)

<sup>46</sup> <http://rsb.epfl.ch/>

<sup>47</sup> [www.rsपो.org](http://www.rsपो.org)

<sup>48</sup> <http://eiti.org/>

Whilst the EITI is credited with creating space for national civil society organisations and helping to shed light on financial flows, its impact is limited and its obligations also exclude contract details or transparency around consultations before contract are finalised.

#### **International Council on Mining and Metals (ICMM)<sup>49</sup>**

Established in 2001 to improve sustainable development performance in the mining and metals industry, the [ICMM](#) consists of 21 mining and metals companies and 32 national and regional mining and global commodity associations. It was created after the adoption of the Toronto Declaration and following the Johannesburg World Summit on Sustainable Development as a result of the Mining, Minerals and Sustainable Development consultative process. The central objective of the ICMM is to 'improve sustainable development performance in the mining and metals industry'. Member companies are required to make public their commitment to improving sustainability in their operations and are committed to report their progress in this respect on a yearly basis. They also sign up to ICMM sustainability principles.

#### **The Dodd-Frank Act, 2010**

The Dodd-Frank Act imposes two obligations of transparency on companies with securities registered in the US: financial transparency in the extractive industries and transparency of supply in case of mineral imports from the African Great Lakes region. This law translates the due diligence principle for the identification of the origin of imported ores and the principle "Publish What you Pay" of the Extractive Industries Transparency Initiative (EITI) into national law. Although it is already applied to other economic sectors like banking and the food industry, the introduction of due diligence into U.S. legislation caused great controversy. Indeed, it aims at making transparent a business that prefers darkness to light and discretion to advertising.

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<sup>49</sup> [www.icmm.com](http://www.icmm.com)



## Annex 2: Stakeholder Feedback

### Civil Society Organizations (CSOs)

A number of local and foreign CSOs based in Tanzania have identified key land issues in Tanzania that need to be thorough discussed in multi-stakeholder dialogue on land-based investments. Their general views are documented below.

#### Land issues of concern for CSOs

- There have been many land deals between investors (mainly foreign) and local communities recently. However, there is no much involvement of CSOs in these processing of these deals
- Government aims at large scale land-based investments. However, the land questions are not being well articulated in these investments
- Investors cannot access land easily because laws, regulations and processes are difficulty, long, bureaucratic, corrupt and inefficient. There is a need to improve this situation if land-based investments are to flow to Tanzania and benefit Tanzanians
- The land acquisition process especially by elites is taking advantage of community members' weaknesses, ignorance and poverty
- There seems to be corruption in land acquisition deals
- CSOs are not saying no to investments. They want policies, laws, regulations etc to take into account community and national interests for win- win situation
- Promotion of land-based investments in a policy vacuum environment (e.g bio-fuel) is wrong. However, now there are some improvements on policies (e.g bio-fuel policy)
- There is a need for an organization (for example REPOA) to take lead on stakeholders' dialogue on land issues
- Government thinks that CSOs do not want investments and investors. This is a wrong perception that has to be changed. The envisaged multi-stakeholder dialogue can be among the avenues for this change
- There are a lot of land-related conflicts including conflicts between communities and the government when government supports 'bad' investors; conflicts between communities and investors; conflicts between various land users (agriculturalists versus livestock keepers, beekeepers versus large plantations that spray pesticides, hunters (especially commercial) versus local communities surrounding hunting blocks, conflicts between small scale miners and large scale mining companies)
- Inadequate community participation, knowledge, negotiation capacity in land-deals with investors
- The extent to which and the way the community should benefit or do not benefit from investors (and implications of the same): Is it:
  - through taxation?,
  - through Corporate Social Responsibility (CSR)?
  - through employment?
  - through learning and other trickle-down effects?
- The extent to which communities get adequate and fair compensations for their land when taken by investors
- Issues on environmental destruction by land-based investments
- Blocking of public goods/services (eg roads, water, farms etc) by investors (for example i Mvomero district)
- Land speculation where land is bought by prospective and actual investors but is not developed and remains idle and unproductive but inaccessible to others who could have made use of it. This creates artificial land scarcity

- Only few villages have village land use plans. This is a constraint in making most out of village land
- Villages have been given mandate to transfer land from village to general land (threshold is 250ha). However, these lands are not surveyed and their sizes are not known. This is a loophole that can lead to villages losing to investors
- Investors are paying for land use plans (because the government has no money for that). This is not good governance and objective as such investors have conflict of interest
- Village land use plans are sporadically done on a project approach by various actors (for example National Land Use Planning Commission, Action Aid, Belgium Technical Cooperation, Prime Ministers' Office). These need to be coordinated
- Land transfers (from village to general land) are not always Gazetted, if so not easily accessible. This is a constraint for investors who would like to access the said land
- Land administration in general is too centralized and bureaucratic
- There is need to clarify roles of the government (local and central), Tanzania Investment Centre (TIC), investors and communities in land issues:
  - Is it that the government speaks (eg giving promises) on behalf of the investor?
  - Are investors aware of what the government is promising to community on their behalf?
  - Is the government and its officials 'agents' for investors?
- The establishment of Tanzania Land Portal (by Action Aid) to report on land issues in Tanzania and make follow ups is a good initiative that will make it more possible for the country to benefit from its land resources
- Fast-tracking land use plans for every district will help to reduce land-based problems/conflicts thereby making benefits from the same more possible
- The government does not seem to want CSOs to lead on land-based issues
- There is a need of sensitization of communities on what they can benefit from investors: However it should be clear whose role is this. Is it the investor or the government role?
- Land issues should be incorporated in the new constitution
- Legal licenses to operate land-based investments are not adequate. 'Social licenses' (community acceptability, support and approval) too are necessary
- Impacts of land-based investments on livelihood systems of entire society need to be discussed and taken into account
- There is a need for protecting marginal societies against land grabbing
- Gender issues, especially the rights of women and children in land issues need discussion
- There is a need to discuss what should be done on the seemingly plenty of land whose ownership is not known
- Land issues in investments should be discussed as human rights issues
- There is a need to classify land: for example agricultural prime land, agricultural marginal land etc as these have many and far-reaching implications (for example on food security, on land for biofuels etc)
- Food-security issues should be considered in decisions on land-based investments
- Land policy, strategies and laws should be clear, simple, available/accessible and in popular/simplified versions
- There is a need to review Act No. 4 (land administration by President) and Act No. 5 (Village land Act – customary land occupancy) whose adjudication processes are very complicated especially when there are dangers to evacuate people
- The government has to do all background work (including surveying and land use planning) before investors come in, in order to minimize conflicts between locals and investors
- There is a need to discuss issues around capacity building (such as contractual and negotiation skills) of communities in general for example farmers involved in the emerging block farming (organizing farmers around a particular area for a particular product) and

contract/out-growers farming. This is because such capacities are lacking and are among discussion issues for win-win situation between local communities and land-based investors

- There is a need to discuss coherence and institutional coordination in land issues. This is because land is multisectoral therefore land issues need common policy that is honoured and understood by all in order to avoid unnecessary conflicts
- More valuable land (for example more prime agricultural land, land with minerals, land with water etc) should be compensated more
- The emerging big agricultural interest on the big 6 regions: Rukwa, Morogoro, Mbeya, Iringa, Rukwa and Katavi should be taken with great care so that it becomes beneficial to the country in general and local communities in particular
- The Southern Agricultural Growth Corridor of Tanzania (SAGCOT) and Kilimo Kwanza need to be popularized and focus on broader national interests
- There is a need for the government to dictate on how land given to investors should be used. There have been cases of change of land use, for example from agriculture to tourism as some investors are of the view that "...if you have given me land, do not dictate what I should produce".
- Broad-based and participatory social, environmental and health impacts assessments of land-based investments need to be done properly and outcomes be broadly disseminated
- The capacity and willingness of the government to take action against investors that violate good practices in land-based investments should be discussed
- There is a need to discuss the way laws of the country are followed or not followed and why in land-based investments
- CSOs Views on Multi-stakeholders Dialogue
- There is a great need for multi-stakeholder dialogue on land issues
- It should be a platform for all stakeholders (the government, communities, CSOs, private sector, various land users – farmers, miners, pastoralist, hunters etc - academia, politicians, development partners, media etc) to meet and dialogue intelligently on land issues
- Haki Ardhi organizes land symposium after every two years (February), Action Aid does annual community (Ward, district then national) land symposium – government is normally invited, makes presentations, answers issues from stakeholders. There is collaboration in land issues between CSOs in identifying land issues (for example Haki Ardhi, Tanzania Land Alliance - TALA and Tanzania Gender Networking Program – TGNP – collaborated on land issues in the 2011 Gender Festival)

### **Form of dialogue:**

The multi-stakeholders dialogue can take many forms including the following:

- Cascading: Each stakeholder should discuss issues on their own, then bring all the parties that have discussed separately together to share view
- Zonal meetings/dialogues (in regions, districts or wards) are important for a wider outreach

**Government views** Below are the views from various government institutions on land issues in Tanzania. These are among the key issues that need to be discussed and resolved in land-based investments are to be of benefit for all involved parties. The views are from such government institutions as the Ministry of Land and Human Settlement; Ministry of Minerals and Energy; National Land Use Planning Commission; Tanzania Investment Centre; National Development Corporation (NDC) and the Planning Commission in its Tanzania Five Year Development Plan 2011 – 16.

### **Key land-based investment issues from the government**

- Land space is of significant importance for any development to take place
- Issues of access and rights to use land for development purposes are critical in addressing and orienting towards effective implementation of the Five Years Development Plan (FYDP) Phase I.
- Land requires massive investment to ensure an equitable and fair ownership and subsequently a productive utilization.
- It is always held that there is a large amount of land available for future investments, such as in the agricultural and human settlement development programmes. This does not match the real situation in Tanzania
- There are many areas with unutilized land in Tanzania, but this does not imply that the same is easily accessed and could be availed for development investments
- There is some land development in few high potential areas but many of the areas with less potential require major infrastructural investment if they are to become commercially viable and competitive
- Many areas of high agricultural potential, especially around wetlands, are important areas for biodiversity preservation purposes.
- All land is owned by the Government, on trust of the Head of State but the great majority of it is under customary law and controlled by villagers. For an investor seeking to acquire land for development (e.g. for commercial agricultural production) would be, up to a point, compelled to reach agreement with village governments as well as the individual villagers who would eventually be displaced.
- Villages' land is usually unplanned, with no title issued for individual farmers with traditional usufruct rights. Therefore investors have to negotiate for compensation and then undergo rigorous processes of obtaining title deeds.
- The problem of unplanned and non-titled land is very present in Tanzania: in 2010, the proportion of land which was surveyed and titled or designated for particular uses was estimated to be about 10% of Tanzania's total land surface, including game parks, forest reserves and other gazetted areas.
- Frequent land disputes among rural communities, Government agencies, investors and individuals are results of unplanned and non-titled land. These disputes constitute a hindrance to peace and harmony and deter investors by increasing the risk and cost of doing business.
- There is inadequate land administration system. Currently most of the storage and retrieval of information on land titles and transactions is done manually. Information pertaining to any particular parcel of land is not integrated.
- No one stop shop for land matters. For example, a parcel's land use planning, survey, title, transaction and land rent payment information is kept in separate files in the custody of different departments and units of the Ministry of Lands. Some of this information is kept by the Local Government Authorities (LGAs) and is not readily shared with the Ministry.
- Land-related files and their contents are frequently misplaced. As a result, the processing of land-related transactions is inefficient, resulting in increased costs to individuals, institutions and companies seeking land administration services
- There are many actors involved in village land use plans. These need to be coordinated and their approaches need harmonization
- Village plans in LGAs have to be submitted to the Land Use Planning Commission for Minister's Gazettment
- Before any land allocation in the village there should be a village land use plan. Since these plans are not readily available in many villages (only 850 out of about 12,000 villages) this is a big challenge
- Entries (updates) on village land plans should be made regularly as new data/information is available. This is not always the case

- Some investors do pay for village land use plan: This may interfere with objectivity, but paying for plans does not guarantee that a piece of land will be available
- Investors are not supposed to pay for village land use plans, because they have to get 'ready to use' land from TIC. But this is not always the case due to funds shortages on the part of the government
- The Land Use and Planning Commission is financially incapacitated to do village land use plans
- There are various land authorities with power in their jurisdictions (National, zonal, district, ward, village). These need coordination and harmonization
- Primary mining licenses (PML) are for Tanzanian small scale miners but all other licenses are for everyone. Therefore PML is an opportunity for small scale miners to benefit from mining activities
- All minerals can be mined by everyone but gemstones are for Tanzanians only except for the types that need high technology and capital where it should be a 50%/50% Joint Venture between Tanzanians and foreigners.
- Environmental issues are assured through Environmental Impacts Assessment (EIA). Investors have to submit NEMC certificate in order to get mining license if qualifies (but only for mining not prospecting)
- Compensation for mining (when people who have surface right are evicted) is under Village Land Act
- Land law prevails for surface right but minerals are under Mining Act. There is a need to harmonize and coordinate these laws
- Communities do not always benefit from land-based investments such as mining. Investors must do compensation and resettlement. In the new Act investor has to agree with communities on resettlement and compensation. There is a need to discuss on whether this is done or not
- Investors have to submit community development program (CSR) to the Ministry responsible for mining. It has to be a participatory and fair process. There is a need to discuss on whether this is done or not
- Minerals are not the base for compensation. This is among the issues of concern
- Benefits for people around mining areas: In contracts there are clauses on CSR of investors to local community, local procurement programme and localization program – employing locals (new Mining law requirement). There is a need to discuss how feasible all these are especially where there are no capacity building interventions for local communities and enterprises
- There is a need to increase linkages between the local economy and investors if locals are to make most out of such investments. Meaningful linkages call for capacity building on issues of standards of local suppliers (quantity, quality, delivery time,).
- Domestic/local processing/value addition is important for optimal benefits from land-based investments. For example, agro- and mineral processing<sup>50</sup>. Necessary conditions however should be in place
- There is a need for transparency in land-based investments if Tanzania is to benefit from its natural resources
- Industry-specific knowledge and skills by locals (example for specific types of agricultural or mining products) are necessary for monitoring and evaluation (M&E) purposes, for example under Tanzania Extractive Industry Transparency Initiative (TEITI) and the Tanzania Mineral Audit Agency (TMAA).

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<sup>50</sup>This is captured in the new Mining Act (2010) where local value addition (processing, smelting, refinery) licenses have been introduced as part of boosting local value addition

- Royalty based on gross value of outputs is better for the country than one based on netback value (value less Cost, Insurance and Freight - CIF - and processing). It takes care of windfalls in the sector
- There is a need to improve fiscal regime (including making it more stable and predictable) in land-based investments (for example windfall taxes in mining)
- There is a need to rethink investment incentives in general and tax incentives for land-based investments such as mining in particular
- Transfer pricing is a problem among some investors
- Law allows land-based investments in Protected areas so long as proper procedures are followed
- Regulations exist on how to use natural resources. Although there are expected to be 25 regulations, only 9 have been developed. The regulations need to be developed sooner than later
- Regulation now allows mining of uranium, gas and petroleum in game reserves. This does not seem to be known by some stakeholders such as CSOs that criticise such investments as uranium mining in Selous game reserve which is still being debated at national and international level including UNESCO because of world heritage status of the game reserve
- Over 50% of hunting blocks are owned by Tanzanians but there is sub-leasing to foreign investors by dishonest local investors thereby leading to natural resources revenue loss by the government
- Alternative Income Generating Activities (IGAs) to the communities paving way to natural resources-based investments should be developed and supported by investors.
- Capacity building for locals to benefit from existing natural resources in their areas is important (Eg. Groups formation, access to capital, market access, products development etc)
- The Forestry Act No. 2 of 2002 allows prospecting and mining after EIA but have to renew/replant the forest. Small scale miners are problematic in renewing forests. There is a need to identify and discuss why this is so.
- Investors in plantations and forestry cause some problems including changing of vegetation cover (for example removal of natural vegetation/forests such miyombo forests without introducing new ones. This is a challenge that needs to be discussed
- TIC causes problems when it gives investments areas/certificates for plantations/forests without involving the Ministry of Natural Resources and Tourism (MNRT)
- Large scale agricultural investments such as those proposed under Kilimo Kwanza and SAGCOT are potentially problematic for environment. They are among the potential sources of forestry encroachment, deforestation, extensive instead of intensive agriculture and shifting cultivation for small scale farmers
- There is a need to discuss the needed balance between resources availability and use on one side and development on the other.
- **Key issues**
- Views from the government admit that there are inadequacies in land administration issues. There are disparities between what is on papers and the practice on the ground. There are a number of challenges that make land administration in Tanzania cumbersome. These inadequacies make it extra challenging to attract and retain investors. The inadequacies are part of criticism that the government receives from various stakeholders including CSOs, investors, academia and the opposition parties. The inadequacies need to be addressed in a participatory way if the country is to benefit more from land-based investments. The multi-stakeholder dialogue is among the very important venues for the parties to meet and engage each other constructively.

#### **Best form of multi-stakeholder forum**

- Use media (radio, TV, newspapers, brochures, extension zones)

- Village meetings (various committees)
- Organize sector-wise workshops: land and mining; land and agriculture; land and tourism
- The dialogue is important and the various government institutions are very interested and ready to participate

### **Private sector**

Views from the private sector were collected from investors and investments experts and advisors. Below are some of the key issues that the private sector thinks that have to be discussed in multi-stakeholders dialogue.

- It is a big challenge to invest in large-scale farming in Tanzania due to challenges revolving around land issues in Tanzania.
- It is very difficult to get huge tracks of land that are ready for investment in Tanzania.
- Investors have to do a lot (including searching for available land, paying costs of surveys and land use plans) before they can eventually acquire land for various kinds of investments
- Possibilities to get land is relatively easy through direct negotiations with such land owners as JKT (*Jeshi la Kujenga Taifa* – a branch of the military) and other government institutions
- Getting land from the government is very bureaucratic. It takes long and may have elements of corruption
- There is no land bank. This makes acquisition of land very difficult. Investors have to identify where there is land. This is not easy especially for foreign investors. If land bank was there, it would easily facilitate the land acquisition process thereby making it less difficulty for investors.
- Challenges/problems within land acquisition area are among the factors that may scare away land-based investors as they make investment environment/climate in land-based investments more difficulty
- Investors have to do land survey at their cost without guarantee of getting the land for investment. This adds to costs and risks of investments
- Customary land ownership is a big problem for investors
- Land acquisition process is not clearly known/not transparent/not known even by some officials. At the local government level (LGA) District Commissioner (DC), District Executive Director (DED), and councillors, ward executive officers, village executive officers and village chairmen seem to be involved in land acquisition process but it is not clear who has which role
- Accusations of land grabbing by investors are unfounded and unfair. It is not so easy to grab land in Tanzania, despite of the chaos around land acquisition process
- It is very bureaucratic to get land, have it surveyed and getting title deed
- There is no one stop shop to deal with land issues for investors. One may need to deal with TIC, Ministry of Land; Land Use Planning Commission and Local Government Authorities, among others. This confuses investors, takes a lot of time and other resources such as finance thereby making investments climate in land-based investments less friendly, more risky and expensive
- The private sector is willing and able to share with communities returns from land-based investments (the case of *Maendeleo* (Development) Fund by Africa Barick Gold (ABG))

### **Private Sector Views on Multi-stakeholders' dialogue**

- The private sector/investors in general and investment advisors/experts in particular are very much willing to participate in constructive and intelligent multi stakeholders' dialogue on land issues. There is huge appetite for this

- In the dialogue, various stakeholders should participate. These include but are not limited to people at policy level (Ministries, Members of the Parliament, Regional Commissioners, District Commissioners, District Executive Directors etc)
- The dialogue should be a broader national debate going from the national to local levels
- There should be multiple discussion of issues by various stakeholders

### **Development partners**

Views from the Development Partners (DPs) were collected from embassies in Dar Es Salaam. Efforts to collect inputs from the World Bank were not successful. The Bank response was that the Ministry responsible for land is better positioned to respond to the questionnaire. It was found in the study that DPs have no working group or lead donor in land issues despite of the sensitivity and importance of land in the development process. Below are the key land issues from the DPs that were interviewed:

### **Key land issues from DPs perspectives**

- Land issues are essential in development process and need to be identified and discussed
- Development and dissemination of land use plans is among the key areas that DPs should focus on
- Supporting village registration is important for development cooperation
- Women rights issues including land issues are among key land issues of discussion in Tanzania
- There is a need to develop and support local and national information program on land issues
- Land programmes and projects by DPs and the government should be seen and discussed as key livelihood issues
- Land issues should be very broad including but not limited to tree farming
- Supporting development of land banks in general and land banks at all levels (regional, district, ward and village level) is important for development in general and for land-based investments in particular
- Land grabbing is a huge issue in Tanzania that needs to be made clear and understood: what it is, why and who are responsible as well as solutions for the same
- Emerging new ways of using land like using land for biofuel is an issue in the land question in Tanzania. There is a need to discuss this broadly
- Land-based foreign investments (with out-growers/contract farming schemes) is becoming popular. This needs to be clearly discussed, understood and necessary interventions to make this more beneficial for Tanzania should be identified.
- Environmental Impact Assessment is necessary for huge land-based investments – but EIA if done by NEMC and paid for by investors is likely to have conflicts of interest
- There is a need to discuss and raise awareness on how to do land use planning and do it fast for the benefit of the country
- Villages need capacity building to exercise their power on the minimum amount of land they can offer to investors
- There is a need for discussion on what should be done with huge tracks of land that are held but not being used: should owners loose it? Should they be taxed for none-use?
- There is a need to discuss the high centralization of land administration in Tanzania with a view of making it simpler if land is to be of more benefit for the country
- There is a need to discuss how the constitutional change debate should capture and incorporate land issues in Tanzania
- There seems to be a lack of political will in improving and implementing land policy, laws and procedures. There is a need to identify reasons for this and propose solutions
- Views of DPs on Multi-stakeholders dialogue



- There is huge interest among DPs on land issues
- Multi-stakeholder dialogue possibilities include:
- Use of participatory video filming in which the people themselves define what the problem is, why it is a problem, how it can be solved etc. Let the people do film discussions on land issues then debate on the outcome of the filming (Haki Ardhi does this)
- Basic awareness creating campaign

### **Religious Leaders' Views on Land Issues**

- Below are the views of leaders of various religious groups and denominations on land issues in Tanzania.
- Compensation in the mining sector is not proper. There is a need to identify and discuss broadly what fair and adequate compensations should be.
- Compensations should be based on actual and potential value (perpetual income stream) of land to be 'given' to investors instead of just the surface value of the land in question
- Large scale land-investors and the government are not realistic on actual benefits from investments. For example, how realistic will investments create employment for unskilled and uneducated population; how local firms with low capacities can benefit from local procurement arrangements without capacity building
- Discussions on how small scale miners should be considered in making decisions on large scale land-based investments are important
- Discussions on how local firms can be involved in delivering goods and services to multinationals as sub-contractors are needed. Issues here include their competitiveness based on their capacities to deliver required quantities, qualities and timely
- Discussions on local processing of land-based products (agriculture, mining) in order to benefit the country to the maximum are needed
- There is a need to discuss how development of local communities through CSR can be more meaningful not just peanuts. Issues here include how participatory and demand-driven the process is; should CSR be limited to the communities surrounding investments only? Is CSR alone enough or should it be more through taxation?
- There is a need to debate on how to avoid unnecessary conflicts between various groups of land users
- There is a need to discuss on whether and how CSR can be legally binding instead of being based on investors' discretion and mercy
- There is a need to discuss issue of investors that do not treat locals with respect and dignity
- There is a need to discuss how to make various land-based investments including contracts more transparent

### **Parliamentarians/politicians**

- The following are views of the members of the Parliamentary Committee on Land (Hon. James Lembeli, Chairman and Hon. Magdalena Sakaya, committee member and other Members of Parliament (MPs). The views were captured from various sources including television and newspaper coverage on the matter.
- There is a need for openness on various land-based investment contracts (like uranium mining)
- It is not proper to mine uranium within national reserve (Selou Game Reserve)
- There is a need to discuss how Tanzanians should benefit more meaningfully in land-based investments
- There is a need to identify and discuss broadly all unclear and controversial issues in land-based investments

- EIA must be very objective, thorough, participatory and transparent including dissemination of findings. Stakeholders will have themselves to blame for if they do not play their part in the EIA process
- Social and health impacts must be considered in mining activities especially in uranium because EIA alone is not adequate
- Before mining sensitive, dangerous, unknown and controversial minerals such as uranium, there is a need to discuss whether it is necessary to do so because Tanzania has not exhausted mining all other minerals
- The government should make thorough study of investors' plans before allocating foreigners land to ensure that they benefit the majority of Tanzanians.
- If the government will not be careful on foreign investment by making sure the investment benefits locals, people will be reduced to slavery in their own country which is another form of colonialism
- For better foreign investment, the government should be reviewing all the contracts after every three years because life is changing and the currency is also changing from time to time.
- Local leaders are at times being insensitive to land value.
- It is not proper for arbitration of disputes on land-based investments in Tanzania to be held outside Tanzania (pursuant to the rules of the International Chamber of Commerce - (ICC).

#### **Academia/researchers/experts views**

- Views of various members of the academia, researchers and experts on land and investment issues are captured below. The views were captured from various sources such as television and newspaper coverage.
- Land issues should be part of the constitutional debate and eventually be incorporated in the new constitution
- There is a need to discuss on whether free hold land system is better than the current system
- Debates should be on whether it is right to take land from citizens and give it to foreign investors
- Land is too sensitive to be included in the East African Community (EAC) common market protocol
- Investors must have duties to the country, not only rights
- There is need for transparency in land-based (and other) contracts
- There is a need for in-depth research on land issues
- There is a need to consider incorporating key land issues and questions in relevant curricula
- Under the current land laws and policies, land-based investment amounts to exploitation and a form of colonialism.
- Outdated laws that require investors to pay Sh200 as land rent per hectare per annum and Sh500 as revenue for respective district councils aim to exploit the resources at the expense of poor people.
- Application of laws that are exploitative in nature only shows the level of peoples' ignorance with regard to their own resources while investors take advantage of the weak laws to get super profits.
- Investors do business according to Tanzania's laws. Tanzania should change the outdated laws first before inviting more investors
- There is a big influx of large foreign companies in East Africa and Tanzania in particular. The government should be very careful when dealing with them.
- The government should empower small scale farmers, local farmers and livestock keepers and establish local markets in order to benefit from land resources

- There is no developing country where foreign investors have been able to ensure food security through large scale farming because usually the foreign investors are after returns.
- Once a land is leased to foreign investor, all associated resources such as forests which are the sources of water are also controlled by the investors.
- Foreign investors will not come to Tanzania to solve the problem of food security or provide jobs and markets; they are after investment climate and one may think they are attracting investors in land, but in actual fact they are allowing them to grab all biodiversities and other resources.
- Leaders have limited understanding, willingness and ability, if at all on how capital could be raised and wealth generated from Tanzanian mineral reserves.
- Environmental, social and health impacts of mining dangerous minerals like uranium do not seem to be taken into account in government and investors decision making
- There is a need to learn from other countries on the good and bad practices related to land-based investments

### Annex 3: List of Stakeholders Consulted

S/n	Respondent	Organization/position	Contacts
1	Mr. Bertram Eyakuze	Serengeti Advisors	+255 78463139; <a href="mailto:bertram@serengetiadvisers.com">bertram@serengetiadvisers.com</a>
2	Abdu Simba	Serengeti Advisors	+255 78463139, <a href="mailto:abdu@serengetiadvisers.com">abdu@serengetiadvisers.com</a>
3	Mr. Modest Kachubo	Ag. Director of Physical Planning, National Land Use Planning Commission	
4	Scholastica Haule	Action Aid, : Land Rights Advisor	<a href="mailto:Scholastica.Haule@actionaid.org">Scholastica.Haule@actionaid.org</a> , +255 754777065
5	Audax Rukonge	ANSAF	+255 754275576; <a href="mailto:arukonge@yahoo.com">arukonge@yahoo.com</a>
6	Ms. Regina	ANSAF	
7	Mr. Mango (Director General)	Land Use Plan Commission, Director General	
8	Mrs Esperesiana Tibasana	Land Use Plan Commission, Officer in-charge,	
9	Ministry of Minerals and Energy		
10	Bertha Nyanga	Ministry of Natural Resources and Tourism (MNRT)	
11	Mana Kwaumbara,	Ministry of Natural Resources and Tourism (MNRT)	
12	Mary Tambaza	Ministry of Natural Resources and	0762508438

## Tourism (MNRT)

13	Chritognas Nyingiri	Ministry of Natural Resources and Tourism (MNRT)	
14	John Kaaya	Ministry of Natural Resources and Tourism (MNRT)	
15	Kanisia Muadua	Ministry of Natural Resources and Tourism (MNRT)	
16	Jonathan Tangwa	Ministry of Natural Resources and Tourism (MNRT)	
17	Ms. Merja makela and.	FINIDA, Counsellor (natural resources)	<a href="mailto:merja.makela@formin.fi">merja.makela@formin.fi</a> , +255 754400046
18	Ms. AnuSaxen	FINIDA, Senior Management Adviser, Africa and the Middle East	<a href="mailto:Anu.saxen@formin.fi">Anu.saxen@formin.fi</a>
19	Simon L. Lazaro	Ministry of Land (Director of Policy and Planning - DPP)	<a href="mailto:lazaros@ardhi.go.tz">lazaros@ardhi.go.tz</a> , and <a href="mailto:lazaroslazaro@yahoo.com">lazaroslazaro@yahoo.com</a> , +255 754550041
20	Mr. Godwill George Wanga	National Development Corporation (NDC), Director of Research	0754577481; <a href="mailto:ggwanga@gmail.com">ggwanga@gmail.com</a>
21	Anne Kristin Hermanses	Norwegian Embassy - Tanzania	<a href="mailto:Anne.Kristin.Hermansen@mfa.no">Anne.Kristin.Hermansen@mfa.no</a>
22	Jeanethe Nsengwa	Legal and Human Rights Centr (LHRC)	<a href="mailto:njeanethe@yahoo.com">njeanethe@yahoo.com</a>
23	Marcos Alban	Legal and Human Rights Centre (LHRC) – Parliament Relations)	<a href="mailto:lhrc@humanrights.or.tz">lhrc@humanrights.or.tz</a>
24	Gloria Mafole	LHRC, (Government Watch Desk)	<a href="mailto:lhrc@humanrights.or.tz">lhrc@humanrights.or.tz</a>
25	Rose Mwalongo; Flaviane	LHRC, Corporate and Environment Desk	<a href="mailto:lhrc@humanrights.or.tz">lhrc@humanrights.or.tz</a>
26	Marc Wegerif	OXFARM, Economic Justice	<a href="mailto:mwegerif@oxfam.org.uk">mwegerif@oxfam.org.uk</a>
27	Mr. Semkae Kilonzo	Policy Forum	<a href="mailto:coordinator@policyforum.or.tz">coordinator@policyforum.or.tz</a>
28	Mr. Baha	Haki Ardhi	0713385756; <a href="mailto:baha@hakiardhi.org">baha@hakiardhi.org</a>
29	Mr. Francis Uhadi:	TALA Coordinator	
30	Edward Furaha	Tanzania Private Sector Foundation. Policy Department	<a href="mailto:Edward@tpsftz.org">Edward@tpsftz.org</a> , 0782516699
31	Mr. Mnyenzi	Haki Ardhi, CEO	<a href="mailto:myenzi@hakiardhi.org">myenzi@hakiardhi.org</a> ;

			<a href="mailto:info@hakiardhi.org">info@hakiardhi.org</a>
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## **Annex 4: Terms of Reference**

In light of the above observations, the following sections aim to refine the Terms of Reference for this assignment as a first step to identifying a mechanism for different actors from different levels of articulate their perspectives of the opportunities and challenges of investing in Tanzania, and for these perspectives to be documented to provide the basis for setting an agenda of subsequent action.

### **Assignment Objectives**

It is felt that the specific objective of this assignment remains relevant which is to undertake a scoping exercise to ascertain the feasibility and desirable shape of a mechanism for multi-stakeholder dialogue on land based investments. It should be noted that the original TOR was considering the possibility of holding a multi-stakeholder dialogue forum in October/November or the 1<sup>st</sup> quarter of 2012. From discussions held during the inception period it is felt that October/November may be too early and that the 1<sup>st</sup> quarter of 2012 would be more feasible.

### **Scope of Services**

In light of the observations made during the inception period the following specific activities are recommended as part of the assignment. They build on and further refine the activities originally identified in the TOR for the international expert. They effectively expand the scope of services to be covered jointly by Dr Ngowi and Melissa Makwarimba.

The two consultants will work together with support from TNRF and IIED to deliver the following:

#### **1. Establish Stakeholder Interest**

Consult stakeholders to establish the interest and appetite among stakeholders for a multi-stakeholder dialogue around land based investments in Tanzania. Establish what the motivating (political risk, investment risk, loss of livelihood) and constraining (rent-seeking, shareholder priorities) factors would be for different stakeholders to engage in dialogue to ultimately action more responsible land based investment. Stakeholders need to be consulted from the following key groups: Government; Civil society; Investment community; International development agencies and Research institutions. An initial list of stakeholders is given in Annex A which needs to be expanded on.

#### **2. Literature Review**

Undertake an extensive literature review of research, media reports etc. on land based investments and conflicts, good practice initiatives for the purpose of a) informing the framework for the multi-stakeholder dialogue; b) identifying key pieces of research that could be tabled to inform the dialogue; and c) to identify gaps in information and research needs that would facilitate meaningful debate and identification of ways forward.

#### **3. Review of data on land investments in Tanzania**

Identify and review sources of data held by different institutions (government/research) on land based investments in Tanzania. The primary intention of this activity is to see if more concrete data can be gathered on investments to inform debate, disaggregating the data by investor type (local, regional, foreign), the type and value of investment land is required for; the area of land requested (ha), the area of land acquired (ha) and project status. This activity will also aim to catalogue information about the databases identified such as what data is and is not captured and an overview of their limitations.

4. **Review of data/research on “land availability” and “land use planning” in Tanzania**  
Identify and review research/data inventories/mapping/plans on land use and suitability of land for different uses to interrogate the contention that Tanzania is in a group of countries with suitable land available for agriculture investments and also with a high yield gap, as suggested by Deininger et al (2010). To establish how much of Tanzania’s land use is actually planned and managed, how this is aligned with national economic growth and development strategies, planning processes and constraints to undertaking land use/development planning.
5. **Analysis of the policy and legal framework with a bearing on land based investments**  
This analysis should identify a) whether there is any bias inherent in the policy and legal framework and if so what is the source of this bias (policy, legal or administrative procedure) and towards which parties; b) the coherence between the various policies and laws governing investment and land (tenure, planning, management, use, acquisition) where these policies align or invite conflict; c) coherence between policies and over arching national economic and development strategies d) what debates around current policies are being debated; and e) who the key actors are.
6. **Identify other multi-stakeholder dialogue initiatives relevant to this initiative.**  
Identify any other initiatives that are providing a forum for debate on land related and/or investment issues that could have a bearing on this initiative e.g. International Conference on Land Policies in East Africa scheduled for 2<sup>nd</sup> – 4<sup>th</sup> November, in Uganda; activities under Tanzania’s Extractives Transparency Initiative.
7. **Analysis of possible mechanisms for multi-stakeholder dialogue**  
Identify, evaluate and recommend the most appropriate mechanism for triggering multi-stakeholder dialogue based on findings from stakeholder consultations.
8. **Develop framework for the multi-stakeholder dialogue**  
Identify the format and content for the first multi-stakeholder dialogue forum based on findings arising from the stakeholder consultations, literature and data reviews undertaken in the above activities. What are the key issues up for debate? What information could be tabled to guide the dialogue? Potential speakers? Who should be invited?
9. **Develop proposal for multi-stakeholder dialogue forum**  
Develop a costed proposal for the recommended multi-stakeholder dialogue forum. It is expected that this proposal will be developed in close consultation with REPOA, TNRF and IIED.

## Outputs

The outputs will be contained in three reports:

- i. Inception report based on the first visit to Tanzania, outlining methodology and preliminary findings
- ii. Final report presenting the findings on the pertinence, framing and content of the multi-stakeholder dialogue forum. Content to include:
  - a. analysis of the findings of the literature, data and policy reviews and the current debate on land based investment in Tanzania; ways of improving the debate;
  - b. recommended mechanism for triggering and facilitating multi-stakeholder dialogue including an initial dialogue forum, possible follow on activities and other complementary measures;



- c. recommendation for an initial multi-stakeholder forum indicating outcomes of forum; agenda; potential speakers and chairs and their expected input.
- iii. A draft funding proposal for the multi-stakeholder dialogue.

### Proposed Work plan for the Assignment

	July				August					September				October					
Week beginning	4	11	18	25	1	8	15	22	29	5	12	19	26	3	10	17	24	31	
<b>Inception period</b>																			
MM visit to Tanzania																			
Inception report																			
MOU TNRF & REPOA																			
Contract and TOR for Dr Ngowi																			
<b>Initial literature review &amp; data analysis (activities 2 – 6)</b>																			
<b>2<sup>nd</sup> visit by MM &amp; stakeholder consultations&amp; data collection</b>																			
Dr Ngowi leads stakeholder consultations and data collation																			
MM visit to Tanzania (24 <sup>th</sup> Aug – 6 <sup>th</sup> Sep)																			
<b>Analysis, reporting writing</b> including additional follow ups with stakeholders/key informants by Dr Ngowi																			
<b>Draft final report</b> (15 <sup>th</sup> October)																			
<b>Review of final report</b>																			
<b>Develop costed proposal</b> (4 <sup>th</sup> November)																			
<b>Key</b>																			
	Dr Ngowi input																		
	MM input																		
	REPOA/TNRF/IIED activity																		

### Breakdown of Specialist Inputs

The time inputs for Melissa Makwarimba are base on the original TOR for Melissa. Currently no timing inputs have been determined for Dr Ngowi. However, based on the activities above the following recommendations are made but will be finalised by REPOA and TNRF.

Activity	Dr Ngowi	Melissa Makwarimba	Sub-total
<b>Inception</b>	0	5	5
<b>Preparation</b> activities for stakeholder consultations, data collection	TBD – recommendation of 5 days		5
<b>Stakeholder consultations</b>	TBD – 15 days recommended	15	30
<b>Desk top work</b> – literature reviews, data analysis and report	TBD - 15 recommended	15	30

writing			
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