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**OF LOCAL PEOPLE AND INVESTORS:
THE DYNAMICS OF LAND RIGHTS
CONFIGURATION IN TANZANIA**

Emmanuel Sulle

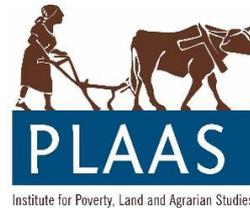
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ABSTRACT

This paper analyses the configuration of land rights among different users of land at various levels of land administration. It discusses the implementation of Tanzania's land policy reform. The key rights explored in the paper include the rights of both small-scale producers (farmers and pastoralists) and large-scale investors to agricultural land. The paper explores how the state defines, allocates, protects and compensates for land when it appropriates such rights. At the heart of this paper are the formal, informal and procedural rights that provide for and protect the rights of small-scale producers and investors, and the compensation offered to those who give up their land for investment purposes. The paper also discusses how these formal, informal and procedural rights are configured during the investment negotiation and implementation phases of land deals. It argues that, while the proposed draft National Land Policy of 2016 tries to address the core problems related to the poor coordination and implementation of the earlier Land Policy of 1995 due to a lack of political will, which derailed its performance, the current draft also has significant shortcomings. The ongoing land policy reform provides an opportunity to address the current challenges in the land sector, but it is only likely to be successful if the process becomes more inclusive, prioritizes small-scale local producers, and addresses issues of inequality and ethnic and class-based struggles over land in the country.

INTRODUCTION

Tanzania's land laws are among the somehow progressive in Africa because they recognize and respect land rights held under customary tenure and because any transfer of these rights requires the consent of local people. The Tanzanian Constitution clearly states that every citizen is entitled to own a 'property', including land. The constitution further prohibits discrimination on any grounds and emphasizes equality between men and women in respect of the ownership of land.¹ Both the National Land Policy of 1995 and specific legislation, namely the Land Act 1999 and Village Land Act of 1999, provide for and recognize the equal rights to land of men and women, including unregistered rights under customary laws. These laws also allow non-citizens (investors) access to land for investment purposes. In practice, however, land tenure rights are disputed among various users of land, between the village, district and national administrative authorities, and with respect to the three categories of public land: general land, which includes all public land that is neither reserved nor village land, except for unused village land; reserved land, which is under different kinds of protection; and village land, which generally means land within the boundaries of a village registered in accordance with the Local Government Act of 1982. This is because each category of land is administered by different and often contradictory and/or overlapping legislation (TNRF 2012).

Large-scale agricultural investments interact with these categories in different ways depending on whether they are on general land or village land. The rules, regulations and institutions are also different for domestic and foreign investors. Combined, how these formal, informal and procedural rights are configured during the investment negotiations and implementation phases of land deals can lead to confusion and conflict among users of land and various land administrations. This situation is currently causing widespread conflict between pastoralists and farmers, as well as between communities and investors who are encroaching on community lands (Nelson et al. 2012; Kimario et al. 2014). This is leading to further conflicts between communities and the state when the latter defends investors in some cases and local communities in others. This issue is a key shortcoming of the current policy, legal and institutional framework, which tends to protect the rights of citizens in policy statements, but often favours investors over citizens in the implementation of such policies (Tenga 2013).

In order to address these shortcomings in the National Land Policy of 1995 and its subsequent legislation and the quest to facilitate agricultural investments, the government decided to reform the current policy in April 2016, which, as the new draft suggests, will trigger further reforms in the country's land legislation. The draft National Land Policy of 2016 makes strong statements on equal access to land for both women and men, but it contains rather unclear and/or controversial statements on the need to recognize and protect the rights of indigenous people and to prioritize existing users of land, particularly small-scale producers (farmers, pastoralists, hunter gatherers, artisanal miners and fishers among others). Civil-society actors fear that if the on-going reforms are not properly addressed, the new

Land Policy will further undermine the rights of small-scale producers (Sulle 2016). Furthermore, the policy is likely to strengthen control over all categories of land by the already powerful executive branch of the government (Shivji 1999; Salcedo-La Viña 2015). This, the paper argue, may further undermine the rights of villagers and the role of their land governance institutions, most importantly the village assemblies and councils that have had direct although limited control over village land hitherto.

This paper is based on an intensive literature review and qualitative field research carried out in Tanzania between July 2014 and October 2016. It also draws on my previous work on land-based investments in the country (Sulle and Nelson 2009, 2013; Locher and Sulle 2013, 2014; Nelson et al 2012, Sulle 2016). It focuses on general land and village land, because these are the two categories of land in which individuals and groups of villagers, domestic and foreign investors, and different arms of the government are competing for land rights related to large-scale investment projects. Tanzania is an interesting case for the analysis of the configuration of land rights for a number of reasons. First, Tanzania's land laws allow the co-existence and interaction of different legal regimes, a situation often referred to as legal pluralism.² Secondly, the country has attracted a number of large-scale land-based investments since early 2000s and it is implementing large-scale regionally and internationally linked projects such as the 'Comprehensive Africa Agriculture Development Program' (CAADP) and the 'New Alliance for Food Security and Nutrition', both of which have implications for land policy. Thirdly, Tanzania has also recently embarked on a land policy reform which will trigger reforms to the land laws. Given these reforms, it is therefore critical not only to assess the configuration of land rights for different users, but also to understand the implications of land-based investments, ongoing policy reforms and their wider social and political implications for the users of land.

The rest of the paper is structured as follows. Section 2 provides an overview of Tanzania's policy and legal framework, which underpins the governance of land and tenure rights for rural Tanzanians. Section 3 first lays out the policy and legal frameworks governing large-scale land acquisitions in practice and then examines the implications of large-scale land acquisitions on small-scale producers and marginalised groups such as pastoralists. Section 4 critically explore the process of developing the draft National Land Policy, pointing out its improvement and shortcomings. The paper then ends with conclusions arguing for an inclusive and people-centred policy reform process and the need for further research into alternative means of strengthening the already recognized customary tenure rights of the rural population.

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING LAND TENURE

This section discusses the overall understanding of the governance of land and tenure security³ in Tanzania. Securing the land rights of rural populations is critical to ensuring their capabilities and assets because it is these rights which determine their daily strategies to increase agricultural productivity and improve food security (FAO 2002). Further, understanding land rights and the ways in which conflicting interests in land are reconciled is also important because it relates to how each party with a stake in land is formally given certain rights, as well as how such rights are recognized and protected by both formal and informal institutions. Although Tanzania has a single National Land Policy, dating from 1995 (currently under review), each of the three land categories – general land, village land and reserved land – is governed by a number of different pieces of legislation. These include the Land Act of 1999, which governs general land, and the Village Land Act of 1999, governing village land. Reserved land is governed by a variety of statutes such as the Wildlife Conservation Act (WCA) of 2009 for wildlife resources and the Forest Act of 2002 for forestry.

The 1999 Land Act, which supersedes the Village Land Act of 1999, identifies the Commissioner of Lands as the ‘principal administrative and professional officer of, and adviser to, the Government on all matters connected with the administration of land...’ who ‘... shall be responsible to the Minister for the administration of this Act and the matters contained in it’. Appointed by the President and based at the Ministry of Lands, Housing and Human Settlement Development (MLHSD) (thereafter Ministry of Lands), the Commissioner thus oversees all categories of land, although some of his or her powers have been decentralized to local authorities, including district councils, village councils and village assemblies.⁴

However, as in many other African countries (Peters 2013, 2016), the land rights and tenure security of many villagers in Tanzania who inherited their land under customary law remain at risk because of the state’s *de facto* failure to recognize their customary tenure rights. This is due to the weak recognition of customary and communal land rights during most of the large-scale land appropriations that have occurred in many places in Tanzania (Kamanga 2008; Chachage and Baha 2010; Sulle and Nelson 2009; 2013). According to Ringo Tenga, this contradiction arises because the real problem in Tanzania is the enactment of laws that “focus partly on the protection of the citizen’s right to land, and partly allow the erosion of the same protection in favour of foreign investment” (Tenga 2013: 121). As I elaborate below, this situation is real, and it leads to the infringement of people’s rights to access, control and own land, as well as their future rights to other resources attached to land, such as water, forests and wildlife, to mention just a few.

Policy and legal framework governing large-scale acquisitions

Tanzania’s existing land legislation (Land Acquisition Act 1967, Land Act 1999 and Village Land Act 1999), provides the legal and procedural framework for

transactions to acquire and dispose of land. Whereas there is some protection of existing rights to land, the framework has some ambiguities in terms of how these rights are protected during investment processes (TNRF 2012). The different categories of tenure described above and the different rules create different types of dynamics, which, however, also share some commonalities. A long-established tradition of compulsorily acquiring land for 'public' investment purposes under the Land Acquisition Act, which may also include a wide range of private investments, has contributed to administrative practices for non-compulsorily acquired land as well that do not always accommodate local rights to land. Finally, the legal and administrative framework differs for domestic and foreign investors. The latter are not allowed to own land, but they can secure derivative rights to land held by a Tanzanian citizen, and or company, typically through the Tanzanian Investments Centre. However, the procedures are not always clear, and deviations are common. As such, researchers have expressed concern that the country is not fully prepared to handle foreign direct investment (FDI) in land (Kamanga 2008; TNRF 2012; Tenga 2013; Sulle and Nelson 2013; see Box 1 below). Each of these types of investment and tenure dynamics is outlined in the following sections.

Large-scale agricultural investments in general land

Overall, the Ministry of Lands oversees all general land, which often includes all surveyed urban land and those under granted rights of occupancy for 33, 66 or 99 years. Any holder of the granted right may sell it to any willing buyer, but any action to transfer a right over the land is subject to commissioner's approval (Sundet 2005). Because this land has already been transferred *de jure* and is outside of village control, it is in theory easier to access for investors than village land, which requires the consent of village bodies (SAGCOT undated). In practice, however, there are often people living on the land who believe that they are the rightful owners. Indeed, some of the existing general land, such as former estates, consist of land alienated from villagers, who tend to return to them if they have been abandoned for a long time (Chachage 2010; Mwami and Kamata 2011). Therefore, investments in general land can also create conflicts between investors and communities on the one hand, and communities and the government authorities on the other.

In Tanzania, a number of companies and individuals have had title deeds (GROs) for estates and plantations on general land since colonial days. Some of these estates, however, have either ceased production or been abandoned since nationalisation, attracting nearby villagers to occupy them. This situation led to the privatization of most farms owned by the state parastatals in the 1990s. Assessing the process of privatizing the farms owned by the then National Agriculture and Food Corporation (NAFCO), ranches under the National Ranching Company (NARCO) and land belonging to absentee landlords, Chachage and Mbunda (2010: viii) observed that the process was "marred by controversies that have elicited animosities between investors and small-scale producers on the one hand, and between small-scale farmers and pastoralists on the other hand". Experience also shows that investors and/or parastatals that have transferred their title deeds to new investors have sometimes infringed on others' rights (see also Greco 2015). For instance, in 1995, villagers in Kapunga Village, Mbarali District, gave 5,500ha to

NAFCO for a rice production project, but when NAFCO was dismantled, for reasons that are unclear it offered a title deed for 7,370 ha to the Kapunga Rice Project Limited. The extra land offered to the new investor includes the whole land of Kapunga Village, laying the ground for endless tensions between the investor and more than 4,000 villagers. To solve this problem, in September 2015 the Ministry of Lands revoked the ownership of 1,870 of the original 7,370 ha and returned it to Kapunga village (The Citizen, 2015).

Box 1 Controversial biofuel investments in the 2000s provoked new guidelines

The government's guidelines governing land-based investments are unclear. Currently, the only guidelines in place are the Guidelines for Sustainable Liquid Biofuels Development in Tanzania, released in 2010. These guidelines were formulated by the government in response to widespread criticism of the lack of coordination and regulation for biofuel investments, which violated community land and human rights from the mid-2000s to 2010 (Sulle and Nelson 2013). These guidelines require any developers and investors to consult local, regional and national stakeholders during the feasibility study and project planning phases and to sign a memorandum of understanding with the relevant local (village) authorities in all the areas that fall within their project boundaries. The guidelines also introduced the concept of a land ceiling of up to 20,000 hectares (ha) for biofuel development projects (URT 2010). To date, however, some proposed allocations of land under the 'Southern Agricultural Growth Corridor (SAGCOT)' project exceed this ceiling, and it is unclear whether the biofuels guidelines, which are not backed by a legal framework, will be used in the future by the state. This regulatory uncertainty contributes to tenure insecurity for both local residents and investors.

Large-scale agricultural investments on village land

The category of general land currently accounts for a relatively small proportion of total land in the country, and, as I discuss in this section, the category that is targeted the most for large-scale land-based investments are village lands. The Village Land Act states that 'any rule of customary land and any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall have regard to the customs, traditions, and practices of the community concerned' (URT 1999b, Section 20, 2). The Act empowers village councils and village assemblies to deal with administrative and management issues regarding village land. This includes the allocation of land to villagers and entering into joint ventures with investors⁵ through leases, using a type of lease called a 'customary lease', the 'mode of creation and incidents of which including its termination are governed by customary law' (URT 1999b, sections 7-21). Nevertheless, the village assembly can only allocate up to 250 hectares of land to an investor. All land transfers that exceed this limit require the authorization of the Commissioner for Land.

Since the current laws do not permit the direct purchase or ownership of land by foreigners or a company owned by foreigners, customary rights over land cannot be granted to them. Rather, any parcel of village land that is to be offered to a foreign entity must first be transferred to the category of general land to extinguish pre-existing rights (Sulle and Nelson 2009; USAID 2016). As such, in Tanzania foreign investors have two options when accessing land for investment in the country:

1. Through the Tanzania Investment Centre (TIC). Under the Tanzania Investments Act of 1997 an investor investing in land is required to act through the TIC. However, not every investor has (had) to obtain land in this way, indicating that there has been some deviation in the past where investors have managed to bypass TIC and have received their land directly from the Ministry of Lands (see Sulle and Nelson 2013).
2. Through the village authorities. The investor can also negotiate directly with villagers and receive up to 250 ha of land from them. This needs to be approved by the Village Assembly comprising all villagers 18 years of age and over, as provided for in the Village Land Act No. 5 of 1999. For any investment project of more than 250 ha of land, the land must first be transferred to the category of general land (Section 4 (6)), and for this to happen a number of procedures must be followed.

However, the procedures for how to transfer village land to general land and allocating it subsequently to an investor are not very clearly laid out in the legal framework. In theory, the transfer of land should involve consent by villagers, something that was strengthened by the Land Acts of 1999. In practice, as discussed in the next section, villagers often feel pressured by government officials when investors arrive. A typical procedure in which village land is acquired by investors is described by Sulle and Nelson (2009; 2013) and TNRF (2012) as follows:

- a. A prospective investor identifies an area where suitable land is located, usually with the help of local brokers, or possibly officials from TIC, or a local MP;
- b. The investor, facilitated by the broker, approaches the District Council (usually through the land officer) and makes his or her intentions known;
- c. District officials identify suitable locations and approach the villages in whose jurisdiction the land lies to secure their approval;
- d. The village organs of governance, principally the Village Council, must approve the request and convene a full Village Assembly meeting to approve it also. Once the Village Assembly has done this, the minutes of the meeting will constitute evidence that the village has given consent for its land to be used for investment purposes;
- e. These minutes are then submitted to the Commissioner of Lands for the land to be transferred to general land;
- f. The transfer of village land to general land for investment purposes is then published in the Government Gazette, coming into effect ninety days later;
- g. The village land transfer can then take place subject to compensation being paid.

Compulsory acquisition of land for large-scale investments

The legal ability to transfer village land into the category of general land with the approval of the village authorities is provided for in the Land Acts. However, another mechanism for the compulsory acquisition of land for 'public purposes' can be found in the Land Acquisition Act of 1967, which was not amended or replaced during the land reforms which took place in 1990s. This Act remains the main legal tool that the executive can use to acquire land for investment purposes and to determine the level of compensation to be paid to affected individuals or communities.

The Land Acquisition Act places extensive discretionary powers in the hands of the President as the Trustee of Public Land, including the power to transfer village land into the general land category, where it can then be made available for large-scale investments (Sundet 1997) in the 'public interest'. This is because, under the Land Acquisition Act of 1967, 'the President may, subject to the provisions of this Act, acquire any land for any estate or term where such land is required for any public purpose' (URT 1967, Section 3).⁶ In practice, therefore, the President has legal powers to acquire any land for any estate or term where such land is required for any public purpose (URT 1967, Section 3; Jacob et al. 2016). This includes land with a granted right of occupancy or a customary right of occupancy.

The extent to which the executive uses the ample powers bestowed on it in practice is a politically contentious issue, and it is not fully clear how often these powers are used. This is clearly a field that requires further research. Recent studies have suggested that safeguards against the discretionary power bestowed on the executive is put in place to regulate land-based investments, especially because the majority of land in Tanzania is held under customary tenure (Knight 2010). The point is that, despite the legal recognition that customary owned land enjoys, unregistered customary rights of occupancy are still regarded as informal in a commercial sense (Mkapa 2013). This creates vulnerability for local residents because their rights can be disregarded when village land is transferred to the general land category for investment purposes. The next section describes the situation with land registration in the country.

Registration of land in Tanzania

The issue of 'unregistered land' in Tanzania is also contentious. In 2004, in an attempt to register and thereby formalize customary lands, the government introduced the Property and Business Formalisation Program or *Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania* (Mkurabita). Since its establishment, Mkurabita has been commissioning and facilitating land-use planning, land demarcation, the creation of land registries and the issuance and registration of CCROs in several districts. Once village land is demarcated and a land-use plan has been drawn up, villagers may apply for Certificates of Customary Rights of Occupancy (CCROs) for their parcels. Although villagers are not required to apply, proponents of formalization argue that the formal documentation of rights may provide a greater sense of security. This documentation may provide villagers

with a stronger basis on which to enter negotiations with the state and/or investors when land is transferred from the category of village to general land. To date, however, progress with registration under Mkurabita has been slow.

In an attempt to encourage land registration in the country, various development partners are currently supporting land titling in different ways and in selected areas, though with limited coordination. For instance, the Ministry of Lands is implementing the Land Tenure Support Programme (LTSP) in three districts, Kilombero, Malinyi and Ulanga, in Morogoro Region. LTSP is a hundred percent funded by three development partners: the United Kingdom's Department for International Development (DfID), the Swedish International Development Cooperation Agency (SIDA) and the Danish International Development Agency (DANIDA) (DFID 2016). Among other things, LTSP aims to improve the transparency and benefits of large land deals by establishing a national database for land-based investments and registration.

In addition, the United States Agency for International Development (USAID) has implemented a pilot project called 'Mobile Application to Secure Tenure' (MAST), which enables villagers to identify property boundaries and gather the information district land officials need to issue CCROs.⁷ This pilot project was implemented in Iringa District, one of the main agricultural districts that is also being targeted for foreign direct investments (FDIs), and it placed an emphasis on securing women's land rights. USAID is currently supporting the Land Tenure Assistance (LTA) Activity, which is working in 41 villages in the Iringa region to map and document land rights. Moreover, some civil-society organizations (CSOs) are carrying out limited land-use planning and facilitating the issuing of CCROs for marginalized rural communities.⁸

Yet, while most of Tanzania's land formalization initiatives have included a capacity-building component for the village and district authorities, it is unclear how well they address the risks associated with land titling. First and foremost, this includes the danger of losing their land completely if they use it as collateral and later fail to repay such loans, increasing the possibility of land accumulation by wealthy individuals and firms. Furthermore, the implications of land titling for women's access to land are critical, as studies have found that titling, registration and individualization, all carried out as the means to secure legitimate rights, but coupled with a growing shortage of land, largely concentrates lands in the hands of men (Odgaard 2005). The current inheritance law favours male siblings in matters relating to inheritance, and many customary laws remain problematic, with gender discriminatory impacts at the household and community levels (Dancer 2015; Dancer and Sulle 2015).

THE IMPLICATIONS OF LARGE-SCALE LAND ACQUISITIONS ON SMALL PRODUCERS

As described above, small producers have different rights related to the different tenure categories for the land they farm. In practice, however, the differences in rights and procedures for large-scale land acquisitions are not always very clear, and creating a grey zone with much ambiguity. Thus, whereas the acquisition of village land *de jure* requires the consent of the village authorities, they cannot freely negotiate the proper compensation. Previously, there have been examples of investments where villages were paid poorly, and increasingly the compensation value is set by valuers under the influence of government officials, as is the case when village lands are transferred to the general land category for investment purposes (Sulle and Nelson 2009, 2013). Furthermore, the acquisition of land for investment purposes reduces the land available to villagers, for instance, for grazing. This can create local conflicts that are indirectly related to investments. In recent years, land and large-scale investments have indeed become an important political topic in the country. These issues are discussed in greater depth in the following sections.

Conflicting configurations of rights and compensation

Compensation is a fundamental requirement for all land that is acquired by the state and/or an investor. Based on the former colonial legislation, both the Land Act and the Village Land Act of 1999, together with Land Acquisition Act of 1967, provide procedures to be followed for land acquisition and the negotiation of the compensation to be paid to affected individuals and/or communities. These include the appointment of a government valuer to conduct a survey and assessment of the land and agreement by both the government and the affected villages or individuals on the type, amount, method and timing of compensation payments (URT 1967; Locher 2017). The amount of compensation is supposed to reflect the market value of land and unexhausted improvements, such as crops, trees and buildings or any other construction. Yet, individuals or communities that have given up their land, whether voluntarily or under compulsion, have often received unfair compensation from government or investors. This is often one of the key causes of disappointments and land-based conflicts involving rural communities (Sulle and Nelson 2013).

Empirical evidence indicates that communities and individuals are grossly underpaid for acquired village land because the compensation paid barely captures the real economic value of the resources located on expropriated land (Sulle and Nelson, 2009, 2013; Kulindwa 2008). Furthermore, the existing methods of calculating compensation for individuals or communities that have given up their land for land-based investment purposes are often inadequate and controversial. For example, the calculation of compensation does not take into account intergenerational impacts, and the 'real' market-based value of the land is not used. Instead, individuals and villagers are merely paid for any development they have made on the land (Sulle and Nelson 2013). This often leaves individuals and rural

communities worse off than before and can lead to intergenerational conflicts because of reduced access to land for the current and future generations.

Moreover, most compensation deals fail to place a value on the ecosystem services that underpin economies both in the area of the land acquisition and outside of it due to far-ranging effects on soils, tree cover and water. In summary, compensators often fail to provide accurate, prompt and adequate information about the value and real benefits of the project to affected communities. The case of the Dutch company Bioshape, which acquired 34,000 ha of village lands in Kilwa District on a 99-year lease, demonstrate this. Bioshape paid compensation amounting to US\$324,000 for the land (34,000ha), of which the district council received 60 percent and the villages earned a mere 40 percent (Sulle and Nelson 2009; 2013). In principle, this payment of compensation marginalized villagers and was a violation of the Village Land Act, which bestows the management of village land on the Village Assembly. The main role of the district council was to facilitate the process by empowering the community to understand investments and participate effectively in land-use planning through its land and natural resources department.

Pressure on land and ensuing land conflicts

In Tanzania one often-cited problem associated with large-scale land acquisition for the establishment of agricultural farmland and areas of nature conservation and tourism (Mung'ong'o and Mwamfupe 2003; Tenga et al. 2008; Mwamfupe 2015; URT 2015) is that it generates land-based conflicts between pastoralists and farmers, local communities and investors (with large-scale farms), and sometimes local communities and government authorities. This is because, in most cases, the allocation of large chunks of farmland tends to exclude the affected communities from accessing land and other resources for cultivation and nomadic livestock production (Sulle and Nelson 2009). Yet, at times, all these groups struggle against each other to protect their interests in land (Ippmedia 2016). Often a chain of events is set in motion. For example, it is often argued that the government tends to ignore the claims of pastoralists and evicts them from traditional pasturelands to make way for foreign investors (Tenga et al 2008). This forces pastoralists to look for other grazing areas, which in turn increases the pressure on farmers in different parts of the country, who now have to share lands with pastoralists or else defend themselves against unwanted incursions by them (Mung'ong'o and Mwamfupe 2003).

In 2015 the Parliamentary Probe Team investigating conflicts between pastoralists and farmer in Tanzania established that there were high rates of conflicts in a number of districts in different regions.⁹ For example, Kilosa and Kilombero districts in Morogoro region, where the highest production of sugarcane and rice is taking place, are also the areas with the highest number of deaths, injuries and loss of property resulting from persistent fighting between pastoralists and farmers (Mwamfupe 2015). The available evidence shows that land-based disputes in 2015 constituted about 46% of all the cases of old clients being assisted by the Tanzanian Legal and Human Rights Center (LHRC 2016: 131). While some argue that there is abundant land in Tanzania, this overlooks the fact that most users are competing

for a limited quantity of highly fertile land with access to water and infrastructure. The land targeted by investors is often the same prime land that farmers and pastoralists depend on for their livelihoods. In the absence of strong dispute resolution mechanisms, conflicts often escalate into violence.

Land rights and investments: hot political issues

Land-related tensions between investors and villages have become a hot political topic in Tanzania. In September 2013, the then Prime Minister Mizengo Pinda delivered a keynote speech at the International Conference on Land Justice for Sustainable Peace held in Dar es Salaam. Among other things, the Prime Minister emphasized that it is because of the injustices that are created by land dispossessions that protecting the land-use rights of ordinary citizens should be prioritized as an ideal engine producing economic growth and sustainable peace in the country. He explained that all the land reforms that have taken place in Tanzania were intended to insulate Tanzanians against land-grabbing by foreigners:

Land acquisitions by foreign entities are made flexible only in instances of joint-ventures with Tanzanians or when the purpose is investment which is subject strictly to [...] its development. (Pinda 2013, cited in Kimario 2014: 2)

The Prime Minister argued that by then about 22 large-scale land investments that had either been abandoned prematurely or did not follow the National Land Policy Act of 1995 had been taken back by the government in order to safeguard the rights of access to land by ordinary Tanzanian citizens.

The political implications of land rights and investments are partially evident in the actions of the current government, which, although it is too early to predict how far they will go in addressing the problem of land-based conflicts, suggests there are signs that the government is introducing some new measures. For example, in an attempt to avoid further conflicts between the owners of 'idle estates' and invading villagers, President Magufuli has used his powers to revoke several title deeds. Indeed, the number of title deeds he has revoked since taking office on 5 November 2015 is remarkable. On 12 January 2016, in Coastal (Pwani) Region, the title deeds of seventeen farms, mostly owned by ordinary villagers (not heavyweight politicians or businessmen) were revoked. Again, on 17 January 2016, it was reported in the media that the President had revoked the title deeds of five estates in Tanga Region alone. In addition, according to the Ministry of Agriculture, the title deeds of at least seven farms with a total of 1,880.6 hectares have been revoked in Morogoro Region, which has the highest number of conflicts between pastoralists and farmers. According to the Deputy Minister of Agriculture, these farms will be redistributed to citizens in an attempt to tackle land-based conflicts, particularly conflicts between farmers and pastoralists. In addition, local government authorities have reportedly received and submitted to the Ministry of Lands and Human Settlement Development for revocation the title deeds for farms with a total area of 549,000 hectares in the same region of Morogoro (Daily News 2016).

Further, in a politically controversial move, the President revoked the ownership of a thirteen-hectare (32 acre) farm owned by the former prime minister Frederick Sumaye, who in 2015 decamped from the ruling party and joined the opposition Chama Cha Demokrasia na Maendeleo (CHADEMA) (Reuters 2016). Indeed, it seems that President Magufuli's attempts to protect the rights of ordinary citizens go beyond idle farms. In December, the President ordered a stop to a plan to evict artisanal miners in Shinyanga Region who were claimed to have invaded an area allocated to a Canadian Mining Company called Acacia (formally known as Barrick Gold). In his order, the President asked, "How do you kick out more than 5,000 people in favour of just one investor? This is unacceptable, and it doesn't even make sense" (Ippmedia 2016b).

While the act of revoking a title deed for underdeveloped or idle farm is one of the legal measures (URT 1999a: section 48(d)) that can be used to ensure that resources are redistributed to those who need them and to resolve emerging land-based conflicts, this alone is unlikely to end such conflicts. This is because of the existing inequalities between the rich and poor (Arndt et al 2015) and the government's plans to allocate new lands to investors are likely to fuel new conflicts over land. Yet, popular though the revoking of title deeds may be, it may also derail trust between investors and the government on the one hand and communities and investors on the other. As such, the government and other stakeholders must ensure that the revocation of land rights is informed by due diligence and research, and is carried out in a transparent manner. The paper now turns to on-going reforms in the land sector in Tanzania.

THE DRAFT NATIONAL LAND POLICY 2016: AIMS AND GAPS

At first glance, Tanzania's proposed draft National Land Policy 2016 has several positive features. It aims to stamp out ongoing land grabbing by local elites and investors in village land, which is currently a big threat to land tenure security. It seeks to address persistent land-based conflicts between different land users, particularly pastoralists and farmers, and also local communities and investors (See Box 2 below). The policy provides strong statements on equal access to land for both women and men, and it has, for the first time in the history of Tanzania, recognized the rights of the most marginalized and indigenous communities, such as hunter-gatherers. The current draft policy further acknowledges that the National Land Policy of 1995 was "hampered by ineffective policy implementation occasioned by ineffective land administrative machinery, lack of the implementation strategy, plurality of land institutions and limited political will" (URT 2016: 16). To address these shortcomings, the new draft has incorporated sectoral policies and paid attention to the national development framework by carrying out consultations in eight zones and drafting an implementation strategy alongside the new policy. The impetus for this policy reform and its main shortcomings are detailed in the sections below.

Box 1 The justification for the Draft National Land Policy 2016 include:

- Greater security of tenure to landholders, starting with recognition of current claims, through a comprehensive titling exercise of all lands in Tanzania and clearly defining the set of land rights entitlements to a landowner;
- Land use for crop and livestock farming are undertaken in a harmonious manner;
- Catering for large land tracts that are required for large-scale investment purposes, particularly for mining and agriculture in a manner that promotes sustainable investment which is equitable to investors, the country and the local population;
- Promoting equitable access to land for all Tanzanians irrespective of gender or ethnicity; curb land hoarding and effect land re-distribution to Tanzanians; and
- Alignment of the country with national and international overarching policies, mindful of the central role of land in such initiatives that include the Tanzania Development Vision 2025 aiming at transforming the country into a mid-income country by the year 2025; the Sustainable Development Goals, Second Five Year National Economic Development Plans and now the Tanzania for Industrialisation drive. (URT 2016: 34).

The impetus for reform

Although several researchers (Shivji 1999, 2009; Chachage and Mbunda 2009; Sulle and Nelson 2009, 2013; Nelson et al 2012; Tenga et al 2008; Tenga 2013) and CSOs (Myenzi 2005; TNRF 2012; TALA 2012) have suggested that there is a need to revisit parts of the National Land Policy of 1995 and of other land-related legislation, the current reforms have also been influenced by recent global initiatives. In 2012, Tanzania was among the first six African states to enter into an agreement with G8 (now G7) countries to implement the New Alliance for Food Security and Nutrition (hereafter 'New Alliance'). The New Alliance, which is described as an addition and as complementary to the G8's L'Aquila commitments to improve food security (One 2012), aims to pull fifty million people out of poverty over the next ten years. It proposes to use a 'collective approach of pro-poor policies committed by African governments as its springboard focusing on substantial private sector investments in order to increase agricultural productivity and farmer incomes, with donor aid supporting country-led plans, and international agreements such as CAADP' (One 2012). Since then, four more African states have joined the initiative.

In Tanzania, the New Alliance is aligned with the implementation of SAGCOT, which brings together the government, donor countries and their aid agencies, global agribusinesses, financial institutions and other service providers in new private-public partnership to commercialize farming. First introduced at the World Economic Forum in Davos in 2010 and later at the World Economic Forum Africa Summit in Dar es Salaam in 2011, SAGCOT has been called *Kilimo Kwanza* (Agriculture First) in action. *Kilimo Kwanza* is the slogan adopted by the Tanzania National Business Council to express the aim of transforming agriculture through enhanced productivity in the country.

The New Alliance implementation framework called for legislative reforms on land, seeds, fertilizers and tax. As a response, and to implement this, the Tanzanian government swiftly embarked on land formalization programmes in the SAGCOT region, where villagers were offered CCROs (Dancer and Sulle 2015; Sulle 2016). In the formalization programmes the government agreed to provide a certificate of land rights (granted or customary) for smallholders and investors by demarcating all village land in Kilombero and in the SAGCOT region (New Alliance 2013).

However, in June 2013, following heavy criticism of the threats the New Alliance poses to the land rights of the poor in Africa, the then G8 swiftly adopted a new initiative, the 'Land Transparency Partnership'¹⁰ (LTI). The LTI brings together the African governments that are implementing the New Alliance Initiative, the G8 governments, development partners, the private sector and civil society to work together to address the challenges of transparency, accountability and inadequate resources in the land sector. In the Tanzanian context, the focus of the initiative is to guarantee that the land sector becomes a 'transparent, efficient and better resourced sector to ensure that current and future demand for land leads to beneficial and equitable outcomes for rural populations, and continues to attract and support high quality investment' (G8 2013: 2). Among other things, the LTI aims to:

- Build on existing processes and activities in line with long-term government plans, with an emphasis on the activities or reforms that will achieve the change aimed for with greater transparency.
- Support the implementation of the Voluntary Guidelines for Responsible Governance of Land Tenure (VGGTs) agreed by the Committee on World Food Security (CFS) in 2012 and the African Union's Framework and Guidelines on Land Policy, adopted in 2009.
- Respect the spirit of the Open Government Partnership to which the government of Tanzania signed up in September 2011 (G8 2013: 2).

The main shortcomings of the draft National Land Policy (2016)

As the drafting team clearly stated, the old National Land Policy of 1995 does not provide the clearer policy framework required for rights in land and investments that the proposed policy aims to reform. Since the reform has direct consequences for the ways rural populations maintain their rights over the land, this section considers some of the key challenges that remain.

First, the draft policy document, obtained on 23 November 2016, suggests that a review of the definition of the registration of CCROs and of transactions under the Land Registration Act and the Village Land Act of 1999 is required. This is deemed necessary because the Village Land Act of 1999 does not allow transactions of village land with non-villagers, thus making it difficult for holders of CCROs to access loans from financial institutions, since banks could not easily sell such lands they had acquired through defaulted loans. The current law requires any financial institution which has granted loan against a CCRO as collateral to auction such land in the same village to enable communities to benefit from their land as a resource. Moreover, the draft calls for harmonization of the Land Act and the Village Land Act regarding the definitions of general land and village land. The current definition of general land includes 'all public land that is not village land or reserved land and includes unoccupied or unused village land' (URT 1999a).

These proposed changes have significant implications for villages and rural communities. For example, it is tempting to suggest that the government is likely to want to transfer what it perceives to be unused village land to general land in its efforts to establish a land bank suitable for large-scale investments, including foreign investments. This is to meet the draft policy objective of ensuring that land is allocated to supporting medium and large-scale agribusiness. However, the importance of village land cannot be underestimated. As the draft policy states, about 69.5% of the country's land is village land held under customary rights of occupancy, and it supports the livelihoods of 80% of the population. Currently, only 5.5% of general land in the country has been granted a title.¹¹ Therefore, any changes to the village land law will inevitably have significant consequences for millions of rural Tanzanians and the rights of the country's over twelve thousand villages.

Secondly, the new draft of the same legal framework under which village land is transferred to general land for either public or private investment goes against the

trend of many research recommendations over the years (Sulle and Nelson 2009; 2013) regarding what the needed reforms should address. The transfer of village land to general land extinguishes villagers' customary rights to such land, with far-reaching and adverse short- and long-term implications for peoples' livelihoods. This is because the proposed provisions in the draft policy for full, fair and prompt compensation do not go far enough, since they do not address the need to take care of the adverse intergenerational impacts of displaced people.

Thirdly, the draft policy further stresses the need to roll out land titling throughout the country. This form of securing land has existed in Tanzania since 2004, but as described above, it has not been very successful. One of its core problems is that titling in Tanzania is largely dependent on donors and, despite an earlier push by the former President Mkapa during his administration, it has earned little grassroots support. As Stein and his colleagues have argued in their recent in-depth field-based research in six districts in Tanzania, the CCROs titles that have been offered do not open new windows for farmers to secure bank loans as its proponents suggested (Stein et al 2016). The reason that rural land users cannot access credit is a lack of other creditworthy businesses (Ibid; Maganga et al 2016).¹² Emerging models for securing customary rights, such as rangelands and group registration, deserve research attention to test their successes, challenges and replicability. Presently, few organisations are collaborating with the government to implement participatory and sustainable land-tenure security programmes. These programmes prioritize participatory village land-use planning based on innovative and sustainable approaches such as sustainable rangeland management, rather than on individual titles, particularly in pastoral communities (Flintan 2012). These initiatives could be prioritized in districts with high rates of land-based conflicts and tenure insecurity such as Kilosa and Mvomero to reduce the risks of severe livelihood impacts and potential loss of life.

In summary, the main shortcomings of the Draft National Land Policy 2016 continue to be inadequate prioritisation, and an insufficient framework to secure the tenure rights of rural populations, and despite the good intentions of the draft policy in seeking to address the challenges that have been highlighted, the current document still needs further improvements. It contains statements that are either unclear or controversial, and there are also missing statements and provisions, which would be well addressed by the drafting team if they were to engage further with stakeholders and seek additional public feedback and comments. One last shortcoming, relating to participation, is elaborated on below.

The drafting of the National Land Policy: a less than participatory process

Given the importance of land to every citizen in the country, having effective citizen participation is a crucial step in the formulation of any policy or law related to land. In order to implement these reforms, the Ministry of Lands in Tanzania launched its own internal process to first review the current national land policy during 2015. The public was made aware of the review process in April 2016 when the schedule for the public consultation events in eight zones was released. The consultation process was led by a ministerial task team, and three consultants were hired to draft

the policy. The first two days of hearings were conducted in the southern zone in Mtwara Region, and the second in Dar es Salaam from 18–19 April 2016. All the ministerial team, the consultants, the other participants and the government officials who attended the Dar es Salaam event agreed that there was a need for an inclusive consultative process (see Sulle 2016).

Despite the call for a more inclusive review process, however, the consultations conducted in eight zones across the country have largely left many people uninformed about the policy and its review process. For instance, in the country's largest city of Dar es Salaam, the organisers claimed to have invited over a hundred stakeholders, but only 48 people participated, of whom some were just concerned citizens who had decided to gatecrash the event, including the author of this paper (Sulle 2016). Five months after the review process, the ministry released the first draft of the National Land Policy of 2016, but not in a way that invited broad-based participation. About four days before the planned consultation between the ministerial team, the consultants and NGOs, held on 23 November, a hard copy of the draft policy was shared with a few NGOs. About 21 civil-society organisations (CSOs) were invited to attend the first consultation event to be held on in Morogoro, among them the better-resourced 'big international NGOs' (BINGOs). Unfortunately, most CSOs received confirmation of their participation around 6pm on 21 November, less than two days before the scheduled meeting, with the result that some could not attend at such short notice due to logistical difficulties.

The decision to invite a limited number of CSO representatives at such short notice and after persistent requests by the latter did not accord with the government's formal commitment to inclusive and open government. To date, it remains uncertain how many consultation events will be held before the final version of the National Land Policy is tabled for cabinet approval. It is also unclear whether the new policy's implementation strategy will be shared for public review, comments and further improvement. If clear steps are not taken to make the process more consultative, the policy development might end up being little different from the first policy of 1995 by not fully engaging the public at large. The whole process should therefore be more inclusive and incorporate readily available regional and international frameworks and guidelines, particularly those released in 2009 by the African Union (AU) providing a Framework and Guidelines on Land Policy in Africa, and the United Nations Food and Agriculture Organization's (FAO) Voluntary Guidelines for the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security (FAO VGs), released in 2012 (see Box 3 below).

Box 2 AU and FAO guidelines on land-based investments

Many developing countries, including Tanzania, are promoting land-based investments. Both the AU and FAO published guidelines following the surge in large-scale acquisitions of land or 'land-grabbing' for the production of food, energy feedstocks and private forest plantations between 2005 and 2009. Though these voluntary guidelines still have several limitations, such as a lack of direct legal enforcement mechanisms in countries which do not domesticate them (Sulle and Hall 2014), they provide wide-ranging guidance on how African states should carry out their own land reforms and administer large-scale land-based investments. They recommend the implementation of well-articulated land reforms in developing countries. The AU guidelines in particular emphasise the need to ensure that the ongoing land reforms in Africa, most of which are pro-market, do not jeopardise the rights and access of vulnerable groups such as women, indigenous communities and the young, and that these groups are not adversely affected by expensive systems to transfer rights (African Union 2009). The guidelines further state that all parties involved in land-based investments should fulfil their rights and responsibilities. In addition, the FAO guidelines suggest the introduction of a land ceiling for investments and the promotion of 'investment models' that do not lead to the 'large-scale transfer of tenure rights to investors', but instead that partnership should be forged with local resource rights-bearers (FAO 2012: 21).

The principle recommendation of these two guidelines is that countries must implement legal and policy reforms to land governance and large-scale land-based investments and ensure that such investments do not displace the existing land rights holders. They further advocate protection of the right to access, use, control and own land by vulnerable groups such as women, indigenous communities and the young. Although both the AU F&G and the FAO VGs remain *soft laws* (not legally binding), they still provide solid grounds for improvements to the governance of natural resources and the protection of the rights of various rights holders. In the Tanzanian context, this is more important because research has documented cases in which investors who have acquired community land have failed to meet their promises, and also because the relevant authorities have failed to take appropriate remedial action (Sulle and Nelson 2013; Locher and Sulle 2013; 2014).

CONCLUSION

This paper has shown that the Tanzanian legal system *de jure* provides for equal rights of access, use and control over property, including land, for all. The different types of land tenure are further recognized under different pieces of legislation. In practice, however, poor administration and inadequate implementation of the existing legislation, poor coordination and overlapping roles of the government institutions dealing with land and land-based investments complicate land governance on the ground. All these limitations are resulting in conflicts between investors and local communities, state and local populations, as well as violent land-based conflicts costing the lives mainly of pastoralists and farmers struggling to defend their rights in land across the country. More importantly, the analysis suggests that, despite its formal laws, the country is presently engaged in an inadequate draft policy in which the challenges to the main legal and institutional framework in governing large-scale land-based investments are not being addressed systematically.

The paper has also revealed that, despite the tenure security provided by the country's existing land legislation, the central state's executive branch still has the ultimate power to acquire land from individuals and/or communities for any project it deems to be of public interest. This in turn not only undermines the legitimate rights of local communities, it also detracts from efforts to decentralize land administration and governance to ensure that individuals and communities have equal access to land and can have sustainable livelihoods contributing toward national development. The paper has highlighted the inadequacy of the compensation mechanisms currently employed by the state. Given the significance of land, the paper argues that displaced people should instead be recognized as stakeholders in each land-based investment in relation to the land assets they contribute, and that they deserve equitable ongoing gains from the economic, environmental and social benefits that result from such investments (Sulle et al 2016). The inclusion of displaced people is critical because, for most Tanzanians, land forms the basis of their family's livelihood and its intergenerational well-being.

The current contradictions between national and international priorities in addressing land tenure security and support for small-scale farmers in Tanzania need to be resolved. This is because the diverting of land resources away from small-scale farmers in favour of medium- and large-scale farmers will potentially neither solve food insecurity nor improve national development goals. Instead the government and other stakeholders should invest in small-scale producers, improving their farming skills and knowledge, and providing them with the public goods and services they need, including hard and soft infrastructure. This should go hand in hand with a holistic sectoral reform that should target all policies and laws that limit and discriminate citizens' rights of access, use, control and ownership of land. In terms of laws, the Land Acquisition Act of 1967 and the Inheritance Law, which remained unchanged during the land reforms implemented in 1990s, need to be prioritized.

The ongoing land policy reform provides an opportunity to address existing shortcomings in the Tanzanian land sector, but it is only likely to be successful if the whole process becomes more inclusive and is targeted to addressing issues of increasing inequality and ethnic and class struggles over land in the country. Since Tanzania is a member and an active signatory of both the AU and FAO statutes, and fully participated in the formulation and adoption of these guidelines, it is critical that these important reference documents are used to inform policy-making processes such as the ongoing writing of the national land policy. The guidelines need to be interpreted in relation to Tanzania's own situation, and they must also be used to inform the national land implementation strategy, as well as the subsequent reform of land laws. Domesticating key lessons from these guidelines thus provides an avenue for the protection and enhancement of the land rights of both small- and medium-scale farmers, fishers and users of other resources such as forests and water in Tanzania.

Within the land policy, the focus should be on removing statements that are silent about women and thus limit their capacity to inherit and own land. The new policy should strengthen, not limit, the powers of the village authorities, making explicit the definitions of both the village and general land categories. It needs to clearly spell out the risks to the general public associated with land titling and registration programmes, such as the danger of them losing their land completely if they use it as collateral and later fail to repay the loans thus supported. Until people have an adequate understanding of this new environment of rights to land, the danger of disenfranchisement and the likelihood of land accumulation by wealthy individuals and firms is very high. Therefore, instead of relying only on these contested approaches to securing tenure rights, such as individual titling, emerging models of securing legitimate rights to land need serious attention and robust research.

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ENDNOTES

1 See Article 24 (1) of the Constitution of the URT 1977 as amended from time to time.

2 As Locher (2011, 2016) illustrates, Tanzania has the highest level of legal pluralism, whereby the land has both statutory and customary laws, which work in parallel and often in a contradictory manner. I elaborate more on this too in the later sections of this paper.

3 This paper adopts the FAO definition of land tenure as 'the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. [...] Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints' (FAO 2002:7).

4 The Village Assembly is a meeting of all villagers eighteen years of age and above, while the village council consists of 15-25 elected village residents.

5 The Village Council with the approval of Village Assembly can also allocate plots of village land to foreign or non-citizen investors for a limited time under certain conditions (URT 1999b).

6 According to the Land Acquisition Act, 1967 some of generalized meanings of public purposes include, among others, use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development and/or for or in connection with mining for minerals or oil to mention, just a few such provisions.

7 Do land titling efforts address the requirement for tenure security and the needs of the rural poor more generally? A recent systematic review of property rights interventions across the three continents of Africa, Asia and Latin America, published in 2014, found that secure tenure is not by itself a sufficient condition for the improvement of farmers' incomes: the 'context' is what 'matters' (Lawry et al. 2014: 6). The review further establishes that, while there has been almost zero success in titling in Africa in terms of promoting economic growth, the associated success of land titling in Latin America was the result of direct state investments in public infrastructure, all of which is lacking in the African context (ibid.).

8 Masai leader Edward Loure is recognised for protecting land rights in northern Tanzania. See:

<https://www.irishaid.ie/news-publications/news/newsarchive/2016/april/tanzania-goldman-prize-oxfam-ireland/> (accessed 19 May 2016).

9 The Parliamentary Probe Team suggested that conflicts were rife in Kilosa, Mvomero and Kilombero districts in Morogoro region; Kilindi and Handeni districts in Tanga region; Mbarali districts in Mbeya region; Rorya and Tarime in Mara region; Mwanza and Arumeru districts in Arusha region; and Simanjiro, Kiteto and Babati districts in Manyara region (OSIEA and OSF 2013: 43, quoted in URT 2015).

10 See G8-Tanzania Transparency Partnerships on Lands and Extractives:

<https://www.gov.uk/government/world-location-news/g8-tanzania-transparency-partnerships-on-lands-and-extractives> (accessed 20 March 2017).

11 This section is heavily based on Sulle et al., 'Making Tanzanian land policy inclusive and people centred', PLAAS Blog, 24 November 2016.

12 It is crucial to note that studies have further established that the causes of the current land administration maladies in Tanzania are poor administration, incompetent staff, corruption (G8 2013) and widespread ethical decline among both civil servants and the wider society, which has become particularly acute in recent years. These research-based critiques are further reinforced by extensive evidence from across Africa (Okoth-Ogendo 1976; Peters 1984, 2016; Davison 1988; Shipton 1988; Haugerud 1989; Attwood 1990; Shipton and Goheen 1992), notably in Kenya, to the effect that individual land titling does not achieve its goals of securing tenure, but rather accentuates inequalities among rural communities, with particularly negative impacts on women (Ensminger 1997).