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# **An Assessment of Concerns Related to Land Tenure in the SAGCOT Region**

**For USAID/Tanzania**

**April 9-20, 2012**

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## **Purpose**

Development experts argue that an important, perhaps essential, step in the process of moving people out of poverty and towards middle-income status is to increase agricultural productivity and expand market opportunities. When productivity increases and markets open and expand, smallholder farmers are better able to trade any surplus they produce. This trade generates additional income at the household level that can be invested in a variety of ways. Spending and investing create positive spillover benefits and helps drive economic growth.

Increasing agricultural productivity and expanding markets in developing countries such as Tanzania often requires creating or strengthening institutions that support an “enabling environment.” Enabling environments create conditions supportive of relatively low-cost and mutually beneficial voluntary exchange: they provide predictability, stability, and security to all members of society. These environments are characterized by a respect for the rule of law and by relatively open and transparent governance institutions.

One of the key institutions that buttress a strong enabling environment is the institution of property rights. Clear, enforceable and tradeable property rights create incentives that promote investment, discourage misuse or abuse of resources, and encourage mutually beneficial exchanges. In addition, property rights also serve the important function of empowering property owners or rights’ holders with some degree of autonomy and so can help to both democratize governance and limit arbitrary actions that often follow when control of resources rests in the hands of a few. Property rights are, therefore, an important part of what is needed to achieve inclusive growth. As many now recognize, property rights that broadly empower are a necessary, if not sufficient, condition for economic development.

Tanzania has adopted policies that approach the challenge of improving agricultural productivity through an integration of medium and large-scale commercial agricultural activities with the very widespread, small-scale subsistence-level production that currently characterizes the majority of agricultural producers in the country. Improvements to smallholder production will flow from improving access to inputs and technology, primarily through collaborative contracting – typically out-grower schemes – and improving infrastructure, education and extension services, expanding access to

credit and support for farmers' associations. The centerpiece of this strategy is the GOT's Kilimo Kwanza (Agriculture First) policy.

Kilimo Kwanza is a "national vision" that seeks a dramatic transformation of the economy and livelihoods of millions of Tanzanians. The policy is composed of 10 "Pillars" that create a roadmap to improve financing and infrastructure within the sector, streamline or rationalize the institutional environment for agricultural, strengthen diverse value chains, reduce the costs of doing business in the sector, improve trading opportunities, expand local production of needed inputs, adopt a science-based approach to meeting needs in the sector and address concerns related to access to and use of land in Tanzania.

SAGCOT, the Southern Agricultural Growth Corridor of Tanzania, is the program that the GOT, together with donors and private-sector partners, has created to implement Kilimo Kwanza. The key premises driving SAGCOT are: a) the country has abundant resources that can be marshaled relatively easily for agricultural production; b) there is at least some infrastructure to support expanded production and more can be built; c) there is political will to make this happen; and, d) given current worldwide economic conditions, particularly strong increasing demand for farmland, commercial investors will recognize the opportunity that investing in a "land-rich" country represents and so will want to do business in the country. Put more succinctly, the GOT believes that there is a unique opportunity at this moment in time to unlock Tanzania's economic potential by developing clusters of agricultural production (for cattle and a variety of crops), processing, and support institutions.

At their heart, both the Kilimo Kwanza policy and the SAGCOT effort assume that one key factor of agricultural production, fertile land, is widely and relatively easily available. We were told by several high-level SAGCOT officials that land is "not a problem" in the Corridor. These officials stated that there are hundreds of thousands of "unused and unoccupied" hectares of land in the area. It is these "unused and unoccupied" hectares that the GOT hopes to put into productive use. Promotional materials suggest that if >300,000 hectares of land are used according to SAGCOT's plans, Tanzania would achieve food security.<sup>1</sup>

It may be factually accurate that land is widely available for investment, but the claim begs a crucial question: from whom will these hectares come? The SAGCOT region includes "untouchable" reserve land and some amount of general land.<sup>2</sup> It seems fair to say that most land in the Corridor is village land. To state it bluntly, most of the lands that the GOT wishes to see developed in SAGCOT will need to be taken from villagers by government and leased to investors. At a public meeting during our visit the General

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<sup>1</sup> "SAGCOT Investment Blueprint: Key Messages," Chris Isaac, AgDevCo, January 13, 2011. On file with author.

<sup>2</sup> The GOT is the radical title holder of all lands in Tanzania. Lands are categorized into three classes: general land, which is mostly urban and/or lands the national government controls for particular purposes such as to run the prison system, military bases, etc. Reserve lands are those put aside for national parks, forest reserves and other protected areas. Finally, village lands are lands that are "reserved" for use of local people, smallholders, pastoralists, shopkeepers, etc.

Director of the National Commission for Land Use Planning, Mr. Gerald Mango, confirmed that the government's target is to transfer 17.9% of village land into the general land category, raising the overall percentage of general land to approximately 20% (from the current 2%) to facilitate commercial development in SAGCOT.<sup>3</sup>

Under existing law, foreign investors may not contract directly with villages to lease village lands. All lands foreign investors use must first be legally transformed from village land into general lands after which the GOT contracts with these investors, providing derivative use rights, and setting terms and conditions of investment. Domestic investors (or companies with majority Tanzania ownership) may contract directly with villagers to acquire derivative rights to land, however the Land Commissioner is required to "advise" on transactions involving more than 30 hectares or 30 years.

Because achieving SAGCOT goals will almost certainly require the transfer of village lands into general lands (unless the current legal framework is amended) – stripping villagers of their land – the question of how these transfers are conducted, and their short and long-term socio-economic impact, is of vital import. If villages enter into voluntary and informed agreements that include fair compensation and that avoid harmful resettlements, villagers and investors may both benefit from these exchanges.

However, if transfers are coerced (as some research suggests),<sup>4</sup> if villagers are forcibly resettled or resettled in less favorable situations, or if villagers consent without understanding the consequences of the transfer (villages lose their lands in perpetuity as there are no reversionary rights under the law) then such initiatives threaten real harm; harm that makes local people (particularly women) worse off; that risks local backlash and conflict, and that risks reputational damage to investors (and the USG) associated with the underlying project. This suggests that if the assumption of readily available land is incorrect, or if the costs associated with accessing and securing rights to land are prohibitively high, Kilimo Kwanza and SAGCOT may have only limited positive impact or may actually do harm.

These concerns are highlighted by the following comment about SAGCOT from a recently released report by the US German Marshall Fund:

There are some concerns being raised about SAGCOT by some potential partners, relating to its commercial viability, whether big commercial farms will dominate the landscape at the expense of the region's poorest farmers, the

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<sup>3</sup> Roundtable Discussion with DPG/Private Sector – Trade at DfID, April 18, 2012, Mr. Gerald Mango, General Director of NLUP Commission.

<sup>4</sup> Laura German, George Schoneveld & Ester Mwangi, "Process of Large-Scale Land Acquisitions by Investors: Case Studies from Sub-Saharan Africa," paper presented at the International Conference on Global Land Grabbing, April 6-8, 2011.

transparency of investments, fears of land grabbing, and the need to set up transparent processes for investments and auditing.<sup>5</sup>

The concern that the SAGCOT effort may inadvertently result in a situation where large-scale commercial producers receive support at the expense of the poorest farmers is legitimate. Avoiding this outcome will require involving villagers more directly in opportunities to lease lands to investors and/or directly benefit from investments. Indeed it is difficult to understand how Kilimo Kwana's stated policy (1.2.1) of transforming peasant and small farmers to commercial farmers by focusing on productivity and tradability will occur if these farmers are barred from trading their most valuable asset: their land.

By securing land rights in the hands of villages and by supporting capacity building of farmers and pastoralists in order to strengthen representative organizations, local people will be empowered to pursue the new entrepreneurial opportunities that these arrangements can create. Direct control of resources (land) and benefits (lease payments) is the key to this process. With a stronger local voice that comes from stronger local rights, smallholders and pastoralists would be better placed to leverage benefits to become commercial producers, provide local services, build local businesses, and expand local access to credit. It is more difficult to enhance potential positive spillover benefits at the local level if smallholders are relegated to the role of outgrowers or employees.

The purpose of this assessment is to analyze how the Tanzanian legal and policy environment related to property rights in land support or hinder the kind of inclusive and robust agricultural growth that Kilimo Kwanza and the SAGCOT project hope to generate. As they are currently configured, do the property rights to land that exist in Tanzania create strong enough incentives for investors all along the agricultural continuum – from smallholders to large-scale foreign investors – to invest, trade, conserve, and protect against harms and fraud? These questions lie at the heart of this assessment.

## **Methodology**

This assessment was conducted between April 10 and April 19, 2012 at the request of USAID/Tanzania. The purpose of the assessment was to analyze the legal and policy framework related to land tenure and property rights, particularly in the SAGCOT region and to identify possible entry points for USAID/Tanzania support through existing or new projects.

This assessment builds on work done in August 2011 to prepare a "Land Tenure Constraints Review" for the Partnership for Growth/Tanzania effort and on reports from a March 2012 visit to Tanzania by BFS Policy Advisor David Atwood. Additional desk research was conducted at USAID/Washington before arriving in Dar Es Salaam. During this visit, interviews were conducted with a number of stakeholders including

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<sup>5</sup> "Transformational Partnerships: Innovative Approaches for Addressing Food Security in Africa," The German Marshall Fund of the US, April 2012, p. 28.

government officials at the national and district level in the Ministries of Lands and Agriculture, with leaders of Rubada and SAGCOT, with representatives of civil society organizations dealing with land, natural resources, human rights and women's rights, with foreign investors and with other donors. We were able to question the General Director of the National Land Use Planning Commission and representatives of the Tanzania Investment Center at a Round Table forum held at DfID offices. Unfortunately, we were not able to speak with a sample of village representatives. We did interview a Tanzanian PhD candidate who is researching effects of the Land Act and the Village Land Act at the local level to gain additional, if mediated, perspective.

## **Background**

The current land tenure and property rights environment in Tanzania reflects the country's historical experience of colonial rule and post-colonial socialism. The original European colonizers, the Imperial German government, declared all lands in the country crown lands in the late 19<sup>th</sup> century. After control of the colony was transferred to Great Britain following World War I, the British retained crown ownership of land and created a system of "granted" and non-registered "deemed" rights of occupancy. Deemed rights were prevalent in rural areas where principles of customary land law were applied by traditional authorities.

Following independence in 1961, the Nyerere government kept most of colonial land laws in place and, importantly, retained the idea that the State, in the person of the President, is the ultimate title holder of all lands in the country. The justification for such a policy is that the President serves as a trustee for all citizens. In fact, such a policy places ultimate control over an extremely valuable resource into the hands of a political leader who might use the power impartially and judiciously to benefit all or who might use the power to benefit allies and punish opponents or less powerful groups and individuals. The President of Tanzania retains this power under the 1999 Village Land Act (Section 3) – and has very broad authority to reclassify land. The Nyerere government also abolished the executive powers of chiefs and shifted responsibility for the administration of village lands to village councils.

In the 1970s the GOT implemented a policy of "villagization" which forced rural Tanzanians to give up their houses and lands and move into villages of between 2,000 and 4,000 people. The goal of the policy was to modernize the country and reduce costs associated with providing social services by clustering people closer to infrastructure. However this forcible resettlement, like others in Africa and elsewhere, failed to achieve the government's desired outcomes. Rather than promoting economic growth, growth and output shrank under this policy.

Among other reasons, the villagization failed because it created disincentives for resettled people to invest to improve their new homes and the farms. Many did not want to be in the new locations; they did not want to engage in activities that indicated they were willing to stay; why invest in these lands if they government might resettle them again in a year or two? When people are forced to participate in collective actions, they often shirk and "free rider" problems lead to a downward spiral of poor productivity. If

not conducted in a participatory manner that results in a voluntary transfer of rights and fair compensation, resettlement often leaves people feeling deeply resentful of the intervention. Resentment over central government heavy-handedness relating to land and relocations continues to be a concern, even a flashpoint for violence, in Tanzania.

Recognizing that the villagization policy was a failure, the Mwinyi government (elected 1985) began to reform land use planning and land administration in the late 1980s. This effort lasted through the late 1990s. In 1991 the government created a commission to address problems of land conflict, insecurity, and poor land administration. The Shivji Report (1994) argued for a new Land Policy. The Policy was issued in 1995.

Beginning in 1999, the GOT issued a series of new land laws. The three key land laws are the Land Act No. 4 of 1999, the Village Land Act No. 5 of 1999, and the Land Disputes Act No. 2 of 2002.<sup>6</sup> The Land Act and the Village Land Act entered into force in 2001. Other legislation that relates to and informs these statutes includes the Local Government Act, the Land Acquisition Act, the Land Use Planning Act, the Valuation Act, the Grazing Act, the Mining Act, the Wildlife Act, the Tanzania Investment Act and the Rufiji Basin Development Authority (Rubada) Act— not to mention acts related to farmers' cooperatives, contract farming, and access to credit.

Although these laws create a somewhat sound framework for securing use rights for citizens of Tanzania, important gaps, overlaps and ambiguities exist that make this suite of laws less effective than it might be. The problems associated with legislative and regulatory ambiguity increase tenure insecurity and create opportunities for the government to transfer lands in an opaque and costly manner that does not broadly benefit local communities and is difficult and potentially risky for responsible investors to navigate. These problems raise concerns about the potential for investors and rural citizens to suffer harms such as loss of rights, inadequate compensation, and damage to reputation associated with operating in a system that does not support clear and open dealings.

### *Village Land Act*

In general terms, the Village Land Act (VLA) creates rules and processes to allocate land use rights to most rural lands, while the Land Act (LA) covers general and reserve lands—2% and 28% respectively of the lands in the country. General lands include urban areas as well as land occupied by parastatals and by government agencies such as the prisons and the National Service. Reserve lands are the lands set aside for national parks, forests and other protected areas.

Village land makes up approximately 70% of the land in the country (the exact figure is uncertain given problems of old maps, rapid urban growth and spread of some protected areas) and supports approximately 80% of the population (farmers and pastoralists). The VLA creates the framework for legal recognition of customary rights to land; this framework requires villages to create village land councils responsible to the village for overseeing the process of formalizing land claims. Village land councils

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<sup>6</sup> In case of conflict between these laws, the provisions of the Land Act are controlling over provisions in the Village Land Act (Sec. 181 of Land Act).

report to district land councils. The Ministry of Lands is responsible for issuing documents that formalize claims: in rural areas these are Certificates of Village Land (CVLs) and Certificates of Customary Rights of Occupancy (CCROs).

Securing these rights is cumbersome. Villages must be registered before their land can be registered. It is difficult to get an exact figure for the number of villages that have been registered and the number of villages whose boundaries have been demarcated (we heard figures ranging between 11,000 and 14,000 and one outlier claim of upwards of 20,000), but it seems that the majority of villages in the country and in the SAGCOT corridor do have demarcated borders. Demarcating boundaries is a necessary first step in the process of securing use and occupation rights for villagers.

Once its borders are demarcated a village is supposed to establish a land registry and prepare a village land use plan (VLUP) with support from district technical officials. There seem to be relatively few villages in Tanzania that have completed village land use plans. The reasons for this gap are not surprising: villages lack maps from which to work, they lack technology to demarcate areas within the village for various uses, district-level staff may be stretched thin and so are not able to meet the demand for assistance, and planning requirements are quite complex. For example, on a field visit to the District Land Officer in Ifakara we were told that of 81 villages in the district, only 12 had VLUPs.

The VLUP process should allocate land into the following three categories: (i) communal village land such as land for schools, pasture or forest land; (ii) individual and family land for housing and for farms; and (iii) land which is reserved and may be made available for either communal use or individual occupation and use. Within limits, village councils, with the approval of village assemblies, can allocate category iii land to villagers or to non-resident domestic parties. Once allocated, the rights' holders can begin the process of applying for a CCRO. It should be noted that although this process involves multiple steps, surveying, and payment of fees, the costs associated with the process do not seem to be prohibitive and the number of steps have been reduced to make it easier for villagers to register claims. Whether villagers choose to register or not depends upon both resources and the perception that registration provides additional valuable security worth the effort of registering.

One major problem in the current legal framework in Tanzania revolves around category iii village lands. In a nutshell, the problem is that the VLA and the LA do not define "general" land the same way. In Section 2 of the VLA, "general land" means *all public land which is not reserved land or village land.*" However, in Section 2 of the Land Act, "general land" means all public land which is not reserved land or village land *and includes unoccupied or unused village land.*"

As a result of these differing definitions, the Land Act may allow the government to consider category iii lands as general land because they are "unused or unoccupied." This creates real uncertainty and insecurity for villagers. Because it is the national government that determines the allocation of general land and that directly benefits from leasing general lands, adopting this broad definition of general land places villages at risk of loss of land, use rights, and potential revenue or other benefits; it also creates

opportunities for corruption. There is widespread agreement among civil society, land tenure experts, and many Tanzanians that this ambiguity in the definition of “general land” needs to be resolved.

Further compounding this problem of uncertainty and insecurity, is Section 4 of the VLA, which states:

(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.

The SAGCOT effort fits within this definition of “investments of national interest” and so if the GOT believes it is necessary to transfer village land into general land to accomplish the goals of SAGCOT, the VLA as currently drafted allows for this. Notice of such transfers must be gazetted and there is a minimum 90-day comment period. However, for transfers above 250 hectares the Minister of Lands shall approve or reject the transfer after considering recommendations of the village council and village assembly, whereas for transfers of less than 250 hectares the village assembly shall approve or reject the transfer. This means villagers have less control over larger transfers.

Once village lands are demarcated and registered, individuals, families and groups may, *but are not required to*, register individualized claims to village land. Women can register claims as heads of household or as joint tenants with husbands. As noted, this process requires demarcation/surveying, settling any boundary conflicts, payment of certain fees and registration with the government. To date, best estimates indicate that perhaps 160,000 CCROs have been issued across Tanzania, through government, donor or CSO pilot projects. A relatively small percentage of women (+/- 20%) are registered as rights holders.

Thus, while a formal legal and regulatory framework does exist to provide some protection of the rights of smallholders, pastoralists, and women to use, inherit, and trade land, in fact, relatively few rural people have acquired formal use rights which puts them at risk of displacement and loss of land. High costs, lack of capacity to engage in land use planning and to create and operate registries, opaque processes related to transformation of village lands into general lands, and gaps and overlaps in the legal framework mean that the land tenure environment in much of Tanzania remains insecure and highly informal.

### **Key issues and concerns**

The goal of the SAGCOT effort is to attract larger-scale investors, foreign and domestic, who will provide capital and technology to support robust, transformative growth in agricultural sector. The project assumes that many public-private partnerships will be developed. These partnerships will lead to the creation of agri-business clusters designed to support smallholder farmers in a “hub and outgrower” model. Investors will

build and operate processing, storage, and other facilities (the hubs) and supply surrounding smallholders with improved inputs, education, access to credit, and reliable sales outlets thereby linking them to modern, global value chains. The public sector will provide infrastructure to benefit both smallholders and large investors and fiscal benefits to investors. Foreign investors will gain longer-term derivative rights to land through the Tanzania Investment Center (TIC). In the case of small transactions (>30 hectares) domestic investors may gain leasehold rights directly from villages, but in cases of leases of >30 hectares or longer than 30 years the Land Commissioner must also “advise.” Donors, including USAID, will provide funding for a catalytic fund, as well as support for capacity building, strengthening value chains, supporting partnership development and improving the enabling environment.

SAGCOT suggests this virtuous triumvirate will result in 140,000 on-farm jobs; 120,000 jobs in agro-processing; 160,000 jobs in agricultural value chains which will benefit 1.9 million families members and others. The very strong suggestion is that the project will provide a development “win-win”: benefits to smallholders, increased food security, and good profit opportunities for investors.

Unfortunately, given the current state of affairs in Tanzania, the SACGOT project risks creating a “lose-lose” situation: villagers lose land, future opportunities to use and benefit from land, and are not sufficiently compensated. Investors lose time and money in a complex process that leads to long delays starting projects. Investors may inadvertently displace villagers or participate in corrupt dealings and so may face reputational and other risks (for example, liability under the US Foreign Corrupt Practices Act) operating in Tanzania.

This assessment concludes that there are three broad categories of concern, each of which contributes to the persistence of a weak enabling environment:

- **Institutional problems.** These include overlapping authority among various agencies and ministries dealing with land for investment; bureaucratic inertia; and capacity problems that contribute to substantial bottlenecks at critical junctures in the certification process, particularly in land use planning.
- **Legal problems.** These include legislative provisions that create ambiguities and opportunities for overreaching, abuse, and misuse of authority. Legislation that limits rights of villagers to transact their land; silence on the question of reversionary rights to land; and complex land use planning requirements.
- **Political problems.** These include opaque legislative and policy reform processes (particularly around questions of amended land laws); lack of coordination and/or cooperation among key ministries and agencies; concerns around arbitrary decision making and excessive concentration of power in official hands which is perceived by media and civil society as facilitating land grabbing.

Although investors are being told there is a great deal of land available for development, in fact, there is not a reliable database of available land. TIC’s land bank has been described as “notional.” Rubada does control some land under the terms of its enabling

legislation, just how much is not public information. In addition to the lands Rubada directly controls, the agency is working with district officials to facilitate transfers of land from villages to the GOT. Further, we hear that a new proclamation would extend Rubada's authority to cover all lands in SAGCOT, muddying the lines of authority between TIC, the nascent SAGCOT Center, Rubada, and the Ministry of Lands. Although the Ministry of Lands does not currently have a land bank, we were told on a visit with the Minister that a new draft of the land laws awaiting review will provide for a third land bank.

Such institutional confusion frustrates the development of an enabling environment. It is not clear where investors should go to begin the process of acquiring land. It is not clear that Rubada has processes and policies in place to ensure truly participatory engagement with villages that transfer land. The process of transfer, once started, can take years to complete, imposing high transaction costs on potential investors. And finally, fees assessed for facilitating transfers seem redundant (both TIC and Rubada charge fees) and excessive.

**The on-the-ground reality is that there is little land that is legally available even for government to transact so investors are experience long and frustrating waits to acquire lease rights (33, 66 or 99 year leaseholds) while villagers are being pressed to relinquish rights to speed up this process. Such an environment creates substantial risks.**

The US government should be attentive to three key risks:

- Unless Rubada is reformed to improve transparency and accountability, problems related to excessive charges, self-dealing, and potential violation of villagers' rights will likely persist.

Rubada's policies and processes related to facilitating land acquisitions by investors are unclear, not publicly available, and suggest opportunities for corruption. As currently constituted, the agency does not seem to have the capacity to facilitate transfers in an open and participatory manner. The agency may lack up-to-date maps (maps we saw on our visit with the General Director did not, for example, show any Wildlife Management Areas). If the agency is given expanded authority to facilitate transfers across all of SAGCOT, as was being discussed during this visit, it essentially becomes a monopoly provider of these services in SAGCOT. In sum, **in its current form this agency is not supporting an enabling environment in the country.**

The GOT should be encouraged to provide for: a) outside, independent audits of Rubada activities; b) public posting of a fee schedule for services; c) creation of an ombudsman or other grievance facility to address complaints related to Rubada; d) change of agency leadership; and e) a new board structure that would include representation by SAGCOT stakeholders, including representatives of donors and, if risk of retaliation can be limited, farmers' associations and local CSOs.

- GOT's publicly stated policy, captured in the National Land Use Planning Framework,<sup>7</sup> to transfer 17.9% of lands from villages into general land category will lead to displacement of villagers, loss of grazing rights, migratory corridors and water sources for pastoralists, and risks igniting land-based conflict.

The GOT's policy of shifting lands from village to national control is extremely troubling. The General Director of the NLUPC stated that the policy "will" lead to the displacement of some people.<sup>8</sup> This may not be a problem if resettlements are done in an open, participatory, and non-coercive manner that ensures that the needs of vulnerable groups are addressed, that provides fair and timely compensation, and that does not leave villagers worse off than their position *ex ante*.

Today, the GOT does not have policies and procedures in place to ensure that harm to local communities is prevented. The government has not adopted and implemented much-needed safeguard provisions, there seems to be political pressure from district and national level officials to transfer lands; some villagers (perhaps many) lack understanding of the consequences of transfers (they lose legal claim to these lands in perpetuity); levels of compensation that villages are receiving for land transfers are low, in part because regulations relating to compensation attach low value to unused and unoccupied land (precisely the kinds of land that have a high likelihood of transfer to general lands), and lack of technology and capacity means that transfers that do occur may be based on inaccurate surveying, further exacerbating problems of village losses of lands (though this problem could also work in the opposite direction). In sum, **this policy renationalizes a significant percentage of Tanzania's lands, runs counter to the process of decentralization, and runs counter to best land tenure practices by taking responsibility for resource governance and opportunities to directly benefit from resource use out of the hands of villagers.**

The GOT should be encouraged to: a) undertake a rigorous, independent analysis of the potential costs and benefits of this policy in order to have a clearer sense of the social, economic, and environmental impacts of this process for all stakeholders in SAGCOT; b) amend the VLA to expand opportunities for villages to provide derivative rights to investors, foreign and domestic, that are interested in leasing village lands. The current prohibition on transactions with foreign investors, and the requirement for "advice" on larger transactions with domestic investors, disempowers villages and limits their opportunity to benefit from their key asset—their land; c) revise the VLA and the Land Act to provide for more substantial safeguards for villagers and other vulnerable populations, including pastoralists, who

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<sup>7</sup> Unfortunately, we were not able to obtain a copy of the Framework document. Although mentioned on GOT websites and listed as an available pdf file, links to the file were not active. For this reason we asked the General Director at the April 18, 2012 Round Table Discussion DPG/Private Sector-Trade forum to confirm the projected transfer targets.

<sup>8</sup> Such a policy would seem to be a serious violation of the USG's general position on land takings that are not for purposes of national security or other purposes generally recognized as appropriate uses of the power of eminent domain.

might be subject to resettlements OR draft and implement a new safeguard policy to address these concerns; d) amend the VLA to provide reversionary rights to villages to land transferred to general land in cases of investor bankruptcy and at the end of leasehold term; and e) revise the VLA and the Valuation Act to bring these statutes into line with one another – repealing the Valuation Act if needed, and revising the VLA to address the problem of low compensation for unused and unoccupied land, taking into account likely future incomes streams from uses of land for agribusiness.

- The GOT’s “Land for Equity” policy, a part of the Kilimo Kwanza initiative and apparently included in a new draft of the VLA (or LA?) will require that foreign investors (it was not clear if all foreign investors or just some) provide a minimum 25% equity stake to the GOT in exchange for land leases. This policy is designed to increase local ownership of and voice in commercial activities but it does this at the expense of villagers who will only benefit indirectly from such arrangements.

As described for us by the Minister of Lands, the Land for Equity policy will require that at a minimum, the GOT will receive a 25% equity stake in agribusinesses. The Minister noted that this 25% will be shared out as follows: 15% to the central government, 5% to Tanzanian investors; and the final 5% to either municipal authorities or to district (village? – this point was also unclear) authorities. Very little if any equity would be placed directly in the hands of villagers who give up land for investment purposes.

This policy seems to reflect a trend in the country to require equity stakes in exchange for the opportunity to operate commercially. For several reasons this policy may or may not be acceptable to potential investors and the extent to which it will act as a barrier to investment remains to be seen.

The impact of this policy on investors is one concern. More troubling is that this policy is inequitable for villagers (the *de facto* land owners) and reflects a fairly general mindset among the GOT officials with whom we spoke that villagers cannot and should not be allowed to transact for themselves—a position that is contrary to best practice. Indeed, the general reaction to the suggestion that villagers be allowed to contract directly with investors was that this was unwise (villagers might be “conned”) and that government should continue to serve in its long-standing role as trustee/guardian for villagers.

Clearly, however, such a policy creates a significant risk of rent-seeking and corruption among government officials as well as the unnamed Tanzanian investors who will receive a 5% equity stake in investments. It is not at all clear why higher-income Tanzanian investors should receive a larger share of any such investment than should the villagers whose land provides an essential contribution to such projects.

A counter argument might be that by limiting villagers' direct involvement in such arrangements the government limits the risk to which villagers are exposed. Businesses may and often do go bankrupt and equity stakes may not generate expected returns. This is in no way a compelling argument for cutting villagers out of such arrangements. If villagers are educated they can choose, themselves, to assume such risk or they can sell their equity stake to investors after receiving shares. The decision should be placed in the hands of villagers, not in the hands of government officials. An alternative would be to place equity shares into an independently managed and audited trust for the benefit of villagers. In sum, **this policy will create new opportunities for corruption, may create disincentives for some needed investment, and will not directly benefit villagers who lose land.**

The GOT should be encouraged to: a) carefully study equity sharing arrangements in other countries, such as South Africa, that provide direct benefits to community members. Such arrangements may provide investors with greater confidence that their commercial activities are making a positive difference in the communities where they operate. In addition they would provide more tangible opportunities for villages to benefit from investor success; b) revise the Land for Equity policy to allow villages from whom lands are taken to receive a substantial equity stake in commercial activities. Villages who contribute land for such activities should receive at least as great a share of equity as central government. More equitable arrangements would provide villages with 15%, district level government with 5% and central government with 5%. An alternative would be to place villages' equity shares into an independent audited trust fund to be managed for the benefit of villagers by trustees who have clear fiduciary duties; and c) revise the Land for Equity policy to remove a percentage share of equity for Tanzanian investors. This is a windfall for individuals who are likely among the wealthiest local citizens.

### **The Way Forward – Mitigating Risks and Encouraging Positive Change**

Although there are serious concerns related to the land tenure and property rights of smallholders and investors in Tanzania, there are also opportunities to encourage improvements that would mitigate risks for both groups and for the US Government—and eventually lead to the desired goal of improving food security.

In preparation for the upcoming G8 meetings, USAID/Tanzania has worked with the GOT to develop a policy matrix of agreed-upon targets. Importantly, these targets do include reform of key land agencies and offices to promote transparency and accountability. Hopefully this commitment will facilitate reform of Rubada and will develop guidance on reporting and auditing requirements for Rubada, the SAGCOT Center, and TIC. While reform of agencies to improve transparency is highly desirable, this effort, by itself, will not clarify the concerns related to institutional overlap of duties. This suggests that **donors including USAID could provide support for a process of dialogue and any needed legislative amendment that**

**would clarify roles and responsibilities of agencies and ministries in SAGCOT involved in land allocations.** This would be especially helpful for investors.

More specifically, USAID/Tanzania should consider providing additional support for policy and legislative reform efforts in the following areas:

- To address concerns related to the varying definitions of “general” land in the VLA and the LA
- To incorporate robust safeguards for the protection of villages whose lands are transferred into the general land category
- To strengthen valuation/compensation requirements for villages whose lands are transferred
- To allow villages to provide derivative rights to village lands to a wider variety of investors and for larger parcels of land
- To provide villages with reversionary rights to land in cases of bankruptcy and at the end of leasehold terms
- To reduce the complexity, to the extent consistent with environmental and social concerns, of the current land use planning process to facilitate the use of methodologies such as rapid rural appraisals and participatory rural appraisals as a means to address the serious bottleneck created by the current LUP processes. This bottleneck is a major source of concern and should be addressed by donors in a coordinated manner
- To harmonize the variety of laws dealing with land and with attention to the connections between the VLA, Land Act, A, the Wildlife Act and the Mining Act
- Working on the assumption that the “Land for Equity” policy is forthcoming, facilitate a national dialogue on this policy and support analysis that would identify the costs and benefits of such an approach.

A related suggestion is for USAID/Tanzania to consider support for the development of a policy framework for collaborative contract farming and outgrowing. Developing a policy that clearly articulates the rationale for the model, obligations and responsibilities of investors (which may include provision of services, regular reporting, and/or local representation), obligations and responsibilities of farmers and farmers’ associations (regarding production, sales and participation), obligations and responsibilities of the GOT at each level of government and, importantly, that provides for appropriate grievance mechanisms would be very useful.

Pursuing policy and legal reform will be extremely important in this context. It might also be expedient to field test the implementation of a set of the land governance and investment principles and norms contained in the recently concluded Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGs). Such a project could work with villagers to develop their capacity to contract directly with investors, to meet investor requirements for consistent product quality, quantity, and related needs, to manage benefits from contractual arrangements in a transparent manner that provides accountability to the local

community, and that allows villagers to effectively enter into globalized value chains based on their contribution of land to agribusinesses in Tanzania.

Finally, the suggestion made at the Round Table Forum to create and regularly convene a Working Group on Land composed of GOT representatives from the Ministry of Agricultural, Ministry of Lands, TIC, Rubada, and SAGCOT, along with donor organizations and CSOs is a very good one and should certainly be considered.<sup>9</sup>

## **Conclusion**

There are real and serious concerns related to the land and property rights environment in Tanzania. Press reports of land grabbing in the country are common and government officials are often implicated. It seems reasonable to anticipate that if SAGCOT development proceeds along the lines outlined in Kilimo Kwanza and by the General Director of the Land Use Planning Commission, significant areas of village land will be transferred to control of the national government. This might be done in a transparent fashion with adequate compensation to villagers however, there is a risk that at least some transfers will continue to be managed in an opaque fashion with inadequate compensation and so lead to harm and deep resentment on the part of villagers. To avoid conflict, harms to villagers, harms to investors and harm to the USG, action is needed to mitigate risks and encourage more open and responsible governance of land and more responsible investing.

The G8 meetings provide a basis for encouraging the GOT to shift policies in these directions. If the GOT agrees to implement the VGs, virtually all of the recommendations made above can be couched as “facilitating VG implementation efforts,” particularly a field test to empower villagers with more robust land rights that allows them to transact and benefit from the use of their land. Further, as the G8 may also call for support for the Principles for Responsible Agricultural Investment (RAI), many of these suggestions, including the suggestion to develop a new policy framework for the hub and outgrower model, would also help facilitate RAI.

This suggests that there is a unique “window of opportunity” in Tanzania, thanks to the New Alliance effort, the G8 meetings, the conclusion of the VGs, mounting concerns related to land and property rights in the country and USAID engagement, to work with the GOT and other donors to address these concerns.

If the USG wishes to help improve the enabling environment in Tanzania, addressing the problems outlined above will strengthen the property rights of all Tanzanians – smallholders, medium-sized producers and larger commercial interests – by creating more predictability, stability, and security. Improvements along these lines should reduce transactions costs/costs of doing business and support more accountable governance institutions. Improving the property rights

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<sup>9</sup> Should USAID/Tanzania find this of value, the Land Tenure Division will be happy to assist in the development of a more detailed SOW to address these concerns.

and land governance institutions will also benefit responsible foreign investors who demand transparency and reduced risks but now must choose between operating in a confusing, institutionally murky and costly environment or not operating at all.

Taking steps now to address these problems will help ensure that the SAGCOT project is better placed to achieve its laudable goals of transformational growth in the Tanzania's agricultural sector.