

# Land and investment laws: How can communities influence investment models and get a better deal?

## What is investment?

Investment is simply defined as directing money or capital into an activity that is expected to generate returns. In recent years, many companies in Tanzania have acquired long-term rights to land to invest in plantation agriculture. This includes both foreign and domestic investors. This brief discusses ways for local communities to influence investment models and get a better deal.

## How can local communities influence investment processes?

Land based investments have recently been on the increase in Tanzania and in other African countries where it is believed that land is currently underutilised. The growing interest in land for investment has to do with demand for alternative sources of fuel, demand for food and more generally expected returns from commercial agriculture. Yet land is a very important asset in rural areas. It is estimated that 85% of Tanzanians live in rural areas and are dependent on land for their livelihoods. Any uncontrolled acquisitions for land based investment risk undermining the land rights of rural communities. Ensuring that local communities get a fair deal in investment processes in potential investments is key to making those investments work and reduce potential conflicts with investors.

However, in many of the investments witnessed to date local communities have not adequately participated in discussions and negotiations concerning proposed investments. Central government authorities and District Authorities have had the upper hand in decision making concerning some of the leading investments in the country. The reasons for non-involvement of local people relates to the lack of clear procedures but also to a tendency of different actors to by-pass prescribed procedures.

Yet these are a number of ways in which villagers can participate in decision making more effectively.

The participation of local communities in agricultural investments can occur at different levels - from the level of setting aside land for investments and its ultimate allocation to investors to the actual participation of local communities in investments as shareholders or as stakeholders in development clusters and agricultural value chains.

This briefing note uses the case of the Southern Agricultural Corridor of Tanzania (SAGCOT), a high-profile development with potentially far-reaching repercussions for agricultural development and land tenure in Tanzania, to illustrate the ways in which communities can seek to influence investment processes.

## The Southern Agricultural Corridor of Tanzania (SAGCOT)

SAGCOT is a Public Private Partnership project designed to achieve higher rates of income growth and job creation through the development of competitive agribusiness value chains across the Southern Corridor of Tanzania. The project seeks to concentrate on agricultural enterprises along the rail and road infrastructure leading to Dar es Salaam from Iringa, Mbeya, Morogoro and West-Sumbawanga. SAGCOT was launched in 2010 by the Tanzanian President at the World Economic Forum in Davos, Switzerland. It has enjoyed good support and backing from public and private sector actors like Norway, USAID, World Bank, Monsanto, AgDevCo, SAB Miller, Tanzania Sugarcane Growers Association and Syngenta. Core funding for SAGCOT is comes from a Specific Investment Loan (SIL) from the World Bank.

SAGCOT has a set of targets which are expected to be achieved by 2030, including creating employment for some 420,000 people and lifting some 2 million people out of poverty. SAGCOT should also be understood in the context of national policies which seek to contribute to the growth of the agricultural sector, and to ultimately alleviate poverty. SAGCOT has clear policies on how to involve local communities in different aspects of the process. Of course, much will depend on how these policies will be implemented in the coming months and years. The extent to which local communities know in advance of opportunities for participation will affect their ability to negotiate effectively and in an informed manner.

## Participation of local communities in the SAGCOT

According to information available from the SAGCOT project documents such as the SAGCOT Blue Print and the Strategic Regional Environmental and Social Assessment (STRESA) local communities are meant to participate in key processes ranging from the identification of the land for investment to the actual implementation of the investments. Land acquisition for SAGCOT will take place on the basis of the usual procedures prescribed by national law, albeit with administrative modifications to fit the scale and nature of investments that are expected to take place. Targeting about 350,000 hectares by 2030, the SAGCOT land acquisition process will be supported by government and several donors, including a substantial loan facility from the World Bank. The acquisition will involve six steps.

## Participatory land use planning

A participatory land use planning process is to enable communities to organise their land and resource use and identify land that could be available for investments. Already, important work has taken shape in pursuit of functional land use plans in the districts targeted for the SAGCOT. The Ministry of Land has already trained some 25 district participatory land use plan Management Teams in SAGCOT districts, and has completed 391 Village Land Use Plans in SAGCOT districts. In the land use planning exercise undertaken so far, land availability of family and village use was given prominence over land to be set aside for investments. As can be seen from the diagram below, land for investment constituted on average 27% of the entire land surveyed. Yet the land use planning processes have already led to the identification of very large areas of land that could be allocated to investors. So far more than 900,000 hectares of land for potential investment have been identified.

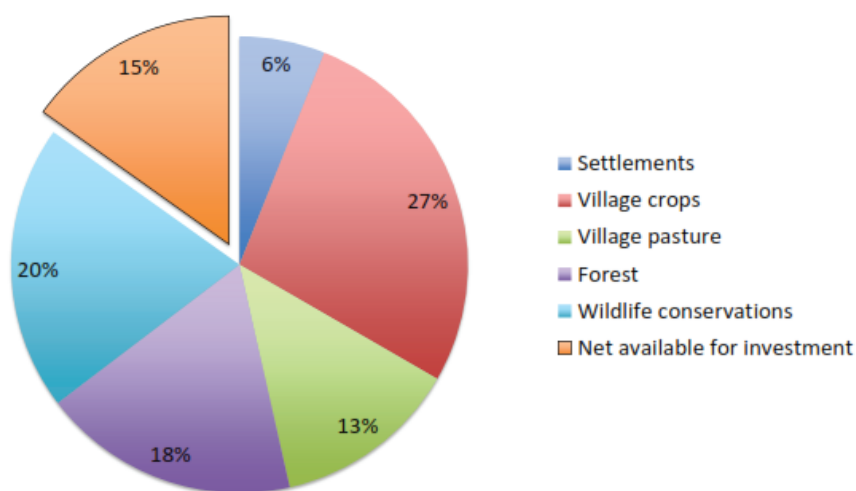
While the emphasis on participatory land use planning is very welcome, the quality of participation is critical. One wonders whether the aim of identifying land for investments risks taking over the planning process, and why models which would minimise the amount of land to be allocated to investors have not been prioritised. While the nucleus-estate outgrower model is what the government is proposing for SAGCOT, the land identification plans suggest that large scale agriculture will dominate the show, with small holders being brought into the picture at a peripheral level.

*Diagram 1: outcomes of land use plans for 391 villages*



In the villages where land use plans have been completed, on average 85% is reserved for village use, forest and wildlife, before any investment.

**Average land use mix in 391 villages with completed Land Use Plans**



## Survey and valuation of land to be set aside for investment

Significant in the land allocation process is the need to undertake a careful survey and valuation including in order to know the value of the land. This is important because the next step of paying fair compensation will be depend on how carefully and diligently the valuation has been carried out.

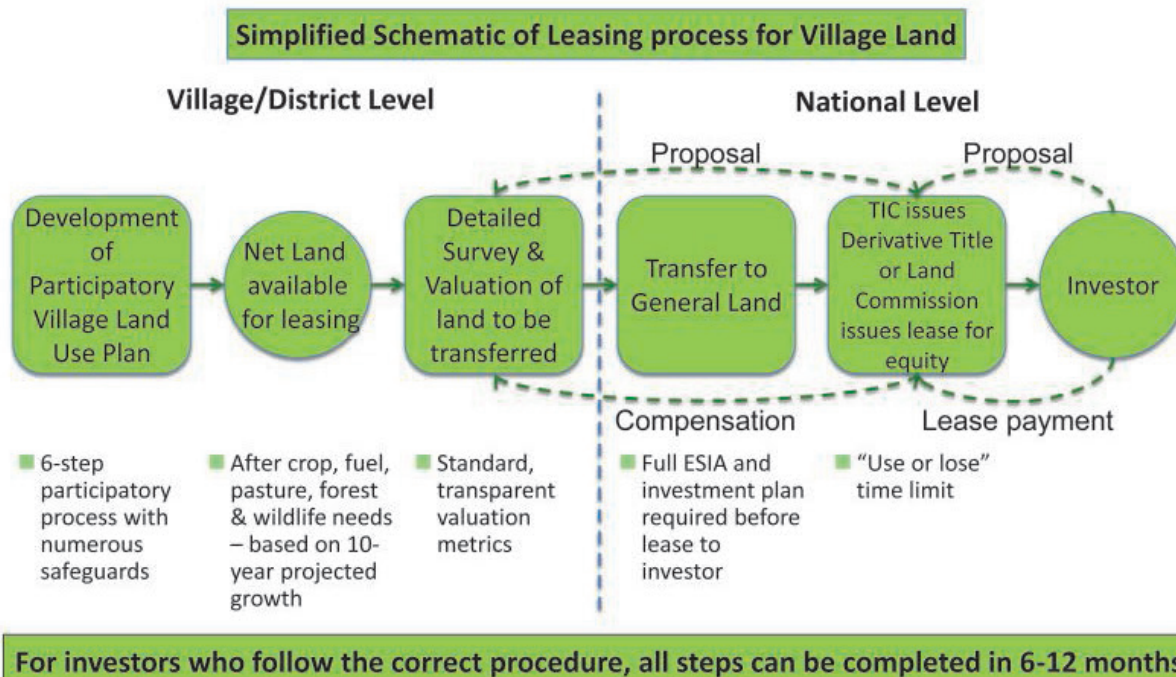
## Compensation for land lost

It is clear that significant land acquisition from villagers will be inevitable. While large chunks of land for investments will come from government enterprises and institutions such as NAFCO, TBL, NARCO and the prison department, village land is expected to form the biggest reservoir of investment land. While compensation for land in the SAGCOT area will take place largely according to the land laws of Tanzania, the fact that SAGCOT is going to be partly funded through World Bank loan means that higher standards of compensation and resettlement must be in place. SAGCOT has developed a Resettlement Policy that is aligned with the World Bank standards.

## Transfer to General Land, Derivate Title and ultimately, Leasing to investors

When compensation has been paid and resettlement has taken place, the land in question will have to be transferred to general land so that a derivative title can be created and given to the Tanzania Investment Centre, TIC. The derivative title will then be allocated to willing investors subject to payment of applicable fees to the government, and in the case of SAGCOT subject to agreeing to enter into equity ventures with Tanzanians.

Diagram 2: Steps to accessing land for investments in SAGCOT



## Participation through equity

Another mechanism for local communities to participate in the SAGCOT initiative is by becoming partners in investments through joint ventures.

The Ministry of Lands is in the final stages of developing a land for equity policy. Because the policy is not out yet, it is impossible to say with precision what it will contain in terms of procedures to be followed for such equity to take place. It has been indicated by the Minister that through the policy of equity, the government and local communities will be able to hold up to 25% stakes in agricultural investments. By this move, it will mean that all investors who will acquire land in the SAGCOT will have to give up to 25% of the shares of their investments to Tanzanians as compensation for the land. According to the same information, the 25% equity stake will be divided in a manner still to be decided between the central Government, District Authorities and Village Authorities. In practice, much will depend on the exact design of the scheme, including the equity stake held by villagers and the nature of their representation in the board of directors of relevant companies.

It is important to note that evidence from other country contexts, including Malaysia and South Africa, shows that significant risks can be associated with land for equity deals. For example, if villagers contribute much of their land, they will have little land left to cultivate. Yet agricultural ventures may not prove profitable and may therefore not distribute any dividends, at least in the early stage of implementation.

## Participation through development clusters

It is also envisaged that local communities participate in SAGCOT as producers who are linked to the agricultural value chain to be created. Local communities will be involved through what is known as cluster development, meaning that there would be a concentration of inter-connected companies that will bring together suppliers and service providers. This way, local farmers will be able to access a variety of services and goods that are brought about the presence of large scale farming. Closely connected to the advantages of cluster development is the agricultural model that is going to be implemented in SAGCOT. The government has made it clear that it will prioritise a model that combines nucleus estates and outgrowers since this model has a higher chance of giving small farmers the opportunity to benefit from the markets to be created as well as through transfer technology and other extension services.