

Southern Agricultural Growth Corridor of Tanzania

Appendix III: Land Development

Draft

1. INTRODUCTION

The purpose of this paper is to identify some of the major issues relating to land development in the context of SAGCOT. SAGCOT's overall aim is to contribute to the growth of modern, commercial agriculture in the corridor and to stimulate local development. Land is an essential element in this process. The development process would be designed to be socially and environmentally responsible.

It is often said that there is a large amount of land available for future agricultural development. In reality, this is not true. Although there are significant areas of unused and underused land in the Southern Corridor, the assumption that this is available for immediate development may not be correct. Most of the high potential areas have been developed, and many of the areas with less potential require major infrastructure investment if they are to become commercially competitive. Also, many areas of high agricultural potential, especially around wetlands, are also important areas for biodiversity.

The current land tenure and land use situation in Tanzania is as complex as it is sensitive. Furthermore - although the issue is of immense political, social and environmental importance - authoritative and reliable information on the overall situation is usually very difficult to find. SAGCOT will therefore approach the issue with care, appreciating that there are often different, sometimes conflicting, views of the same piece of land: for example smallholder cultivation/grazing/biodiversity/large scale farming.

While each situation has its own important characteristics, the underlying constraints to a rational and transparent system of land tenure, land administration and land use planning are generally well recognised. That is why Kilimo *Kwanza* has placed land reform very clearly on its agenda (see section 2.6). The constraints to investment in future agricultural development are also recognised, which is why the Government is establishing Regional Land Banks to increase the availability and improve the accessibility of land to investors.

For SAGCOT to be able to make progress, it is not necessary to wait until all the underlying problems are resolved. Rather, by focusing on large and small scale farms and farmers who are already established, and looking to develop land that already has 'title' there are immediate ways in which SAGCOT can move forward.

2. THE CURRENT SITUATION

This section summarises some of the current opportunities and constraints related to agricultural land development in Tanzania.

2.1 Land Availability

It is generally held that Tanzania has 94.5 million ha of land of which 44 million ha are classified as suitable for agriculture. The Ministry of Agriculture, Food Security and Cooperatives (URT, 2009) estimates that 2.3 million ha have high development potential, and a further 4.8 million is of medium development potential. As will be shown later, some of these figures might need revision and updating.

Within the approximate 300,000 km² of the Southern Agricultural Growth Corridor there are 7.5 million ha of arable land, of which only 2.2 million ha (30%) is currently cultivated. The human population is about 8.8 million people.

All land is owned by the government. However, the great majority of agricultural land¹ is controlled by villagers and their rights are protected - up to a point - by the provisions of the Village Land Act of 1999. However, within the corridor, there are also significant tracts of land owned by private organisations (such as churches), as well as public institutions (prisons, research stations and others) that are not being developed. Furthermore, there are abandoned, but titled, farms such as old Brewery farms and deserted sisal estates. Also, there are many farms that are titled, but not farmed. These are the property of absentee landlords, or more formally 'Non-Farming Land Owners' (NFLO). These are usually urban-based professionals working in other sectors with very little capacity to start farming. This is a potentially rich source of available land for rapid development, and bringing the non-farming landowners themselves into agriculture would be a great step forward in developing commercial Tanzanian agriculture.

2.2 Land Laws

All land in Tanzania is public land, held in trust by the Head of State. While the provisions of the Land Act and Village Land Act (both of 1999) and their regulations are complex, from the perspective of SAGCOT there are two main land types that are of interest. The first is land that is said to have a 'title': though this is actually a long-term lease assured by a Certificate of Occupancy, issued under Section 29 of the Land Act No 4 of 1999. The other is village land, which is usually unsurveyed and without any title. Access to this land is controlled by the Village Government, with traditional usufruct rights recognised and organised within the village itself.

Only a very small proportion of agricultural land in the corridor has a Certificate of Occupancy. The vast majority is therefore Village Land. The main legal instrument currently controlling access by outsiders to village land for development is *Hati ya Kimila*. This allows the Regional Administration to allocate Indigenous Land Titles of up to 500 acres (c. 200 ha) to companies with majority Tanzanian ownership. A *Hati ya Kimila* lease will only be issued once the village has agreed and documented a sale of land. Under this system, the landlord is the village, and the Regional Lands Office oversees the lease and ensures that both the village and the individual are protected by the lease (the *hati*).

In areas where the *Hati ya Kimila* system is not predominant, investors should be able to access land through the Tanzania Investment Centre (TIC). This is a long process, which starts with negotiation at the village. This system is summarised in Annex 1. These regulations are making it difficult for farmers wanting to invest in land get a Certificate of Occupancy, unless they purchase a farm that has already been surveyed and registered, though the process of sale can also be cumbersome. In addition, in response to corruption problems, there is currently a freeze on land registration in much of the Southern Highlands. This has further exacerbated the problems of using land as collateral for bank loans.

The current concerns about the practical difficulties of existing land laws and their impact on overall development are reflected in the Government's own analysis: "*agricultural challenges we witness today could be due to the land law which does not give full ownership to individuals*" (URT, 2009b).

¹ There are very large areas of National Parks and Game Reserves, as well Catchment Forests, Forest Reserves and Village Forest Reserves.

2.3 Land Administration

Weak, and at times corrupt, land administration systems have compounded the complexity of the land laws. It can take an honest investor up to ten years going through the official channels to obtain a Certificate of Occupancy. Inevitably, there is the temptation for investors to take a short-cut, which only fuels of the underlying problem. Once a Certificate of Occupancy is issued, the titleholder is expected to develop the property, usually within three years. This places a burden on the title holder to finance immediate development on the land, which is often without access to supporting infrastructure or proper long-term financial instruments.. Failure to do so risks confiscation, though this does not often happen. Fear of confiscation also deters land owners not wanting to farm, without the necessary skills, or unable to raise start-up capital from putting undeveloped, titled land into the Regional Land Banks.

These problems are not being ignored. Steps have recently been taken by the government to tackle endemic corruption in land administration.

2.4 Land Banks

TIC is not operating a Land Bank. This responsibility has been transferred to the Regional Authorities². The SAGCOT IBP Preparation Team obtained information from several Regional Land Banks in the Southern Highlands. Very little land suitable for large-scale development has so far been registered. In part, because owners fear they will be accused of not having failed to develop the land. This is one of the many problems that must be tackled if the Land Bank system is to become an effective instrument for agricultural development.

2.5 Land Use Planning

Although there are a number of institutions collecting information on land and land use, there is no obvious central point coordinating access to land use information. Neither, for the moment, is there an efficient cadastral system recording the legal status of land throughout the country.

At the district level, with support from ASDP, Local Government Authorities are working on District Land Use Framework Plans (DLUFP) and Village Land Use Plans (VLUP). These will record crop production, livestock production, forestry, irrigation and human settlement. The plans are guided by Land and Village Land Acts of 1999, and Land Use Planning Act No. 6 of 2007. With support also from the Ministry of Land, Housing and Human Settlement, 26 District Land Use Framework Plans and 702 Village Land Use Plans have been prepared. Also, the National Land Use Planning Commission (NLUPC) gazetted and developed land set aside for settlement in 21 villages with growing settlements/trading centres as according to Urban Planning Act No 7 of 2007.

However, most of the land use planning that is underway is sectorally-focused. The SAGCOT team has not been able to locate or access any fully integrated overall land use plans (incorporating agriculture and livestock, infrastructure, forestry, protected areas, human settlement and environmental concerns in one interactive system.)

² Mr Ole Naiko, Executive Director TIC, *pers comm*. 16th July, 2010

The lack of an authoritative and accessible focal point for information results in misinformation and misunderstandings about land use and land availability. An example is provided by the Table below, which is a standard Table for land in Tanzania used by the Ministry of Agriculture, Food Security and Cooperatives.

	<u>Million ha</u>
TOTAL LAND	– 94.5
Arable	– 44.0
Cultivated	– 10.1
Suitable for Irrigation	– 29.4
High Potential	– 2.3
Medium Potential	– 4.8
Low Potential	– 22.3
Under Medium/Large Scale farming	– 1.5
Rangelands*	– 50.0
Suitable for Livestock	– 26.0
Tsetse Infected Area	– 24.0

Source: MAFC Power Point Presentation to ASDP Stakeholders, Bagamoyo, March 2008.

This table reflects a stronger bias towards sectoral interests rather than respect for geographical or agro-ecological accuracy. There is, for example, no recognition of the 39 million hectares of forest, of which 13.5 million hectares are formally gazetted as national or local government forest. Furthermore, the table ignores some 6 million ha of inland water and 10 million ha of national parks and reserves. Such numbers are misleading and lead to false expectations about opportunities. There is therefore an urgent need for a system of effective, unbiased and accurate land use data for the nation as a whole.

An immediate opportunity arises through the initiatives being launched by ASDP at district and village level; ASDP is planning to recruit a team of Land Use Planning Experts to work on improvements of the district and village LUPs. The intention is to establish five Land Use Planning Zones to bring land use planning services closer to Local Government, farmers and other stakeholders. SAGCOT should cooperate with this initiative, so as to contribute the existing information that has been collected and collated, and to learn more about the future process. Without this, it will not be possible for Tanzania to plan and implement a rational programme of agricultural (or forestry or rangeland or protected areas) development. Not only must this information be accurate and unbiased, but it must also be readily available to all who would like to use it.

It will also be necessary to work with other local initiatives, such as wetland planning in the Kilombero Valley³.

Coordinating Land Use Planning is not part of the mandate of SAGCOT. On the other hand, in the course of preparing the Investment Blueprint, the SAGCOT team has collected and collated a vast amount of relevant - though not always accurate - information. This is a resource that could be made available to a suitably qualified and capable institution to establish the basis of a Southern Corridor Land Use data set.

³ The Belgian Government is supporting an Integrated Land Management Plan for the Kilombero Floodplain.

2.6 Land Reform

The need for land reform is understood. Nonetheless, land reform will be difficult and will take time. There are many different interests at stake. The primary concern of the government is to protect smallholders against exploitation. But the government is also wanting to protect biodiversity as well as encourage large-scale commercial agriculture.. These are all sensitive and important issues. But there is no hope of rational, wise use of the available resources if there is no reliable information on which to base plans.

Like land use planning, land reform is not an area where SAGCOT has a mandate. SAGCOT is not a policy project or an advocacy organisation. It does not get directly involved in this important aspect of agricultural development: there are other organisations which focus on that.

It is therefore useful to note the set of proposals already established in *Kilimo Kwanza's* Pillar 5. As the Government is the owner of all land in the country, the *Kilimo Kwanza* proposals are directly focused on government actions to improve the current situation. No one else can bring change other than the Government. The *Kilimo Kwanza* recommendations require the Government to:

- a) Amend the Village Land of 1999 to facilitate equitable access to village land,
- b) Strengthen capacity of District Land Officers and empower District Councils to execute their land related tasks,
- c) Enforce laws on rural land use planning and town planning to include processes leading to issuance of title deeds,
- d) Allocate enough resources to District/Town Councils to be able to implement planned activities in relation to land,
- e) Build capacity of Land Offices in Local Government Authorities to efficiently and effectively administer land matters and strengthen supervision by District Executive Directors,
- f) Re-examine land surveying costs for provisioning of Certificates of Registration.
- g) Review and streamline the existing arrangements of granting land allocation,
- h) Regional Commissioners to establish Land Banks for commercial production and investments.
- i) Identify and record underutilized land for agricultural investments
- j) Legislate measures to enable villages and villagers to use their land as equity in joint ventures with investors
- k) Review Tanzania Investment Centre (TIC) Derivative Rights to facilitate Tanzanians to enter into joint ventures in land based investments
- l) Work out a land valuation formula to reflect current market value for investment purposes
- m) Enforce the provision of the law to avoid land hoarding and speculation and
- n) Utilize land belonging to Government Institutions for agricultural production.

This set of recommendation provides a stark indication of the weakness of the current situation. It underlines the need for fundamental and substantial change. Without change, commercial agriculture - as well as many other land management operations - will fail.

2.7 Land Grabbing

There is a fundamental difference between the approach to agricultural land use as proposed by SAGCOT cluster development (average farm size 2.0 ha) and the mega-farms being developed for bio-

fuels or following state-to-state agreements (Collier and Dercon, 2009). Not only is the scale of operation significantly different, so is the long-term objectives of the two types of development. The mega-farms often have little connection with, or concern for, the farming communities in the area where land is acquired. In contrast, SAGCOT will work with, and ultimately depend on, close cooperation with the neighbouring small-scale and emergent farmers. The land farmed through SAGCOT investments will be developed as a partnership; where all sides will take part in a sustainable rural development process: and do so 'without regrets'.

SAGCOT will develop mutually profitable co-existence of developed farms owned by a wide range of different people and organisations and neighbouring smallholders. This is essential to the long term development approach.

3. THE SAGCOT APPROACH TO LAND DEVELOPMENT

This section outlines the overall strategy SAGCOT will use in relation to accessing land, and working with established farmers in the clusters. The situation in each cluster will be different, so flexibility is needed to adapt to the opportunities and constraints of each site.

SAGCOT aims to support a mixture of large scale, emergent and small scale agriculture. This is the approach which appears to be relevant to the Tanzania's needs and potential. However, there is much debate on the comparative advantages of small scale and large scale farming. There many opposing points of view (see, for example, Binswanger-Mkhize , 2010; Vermeulen, and Cotula, 2010; and Collier, 2009 for the academic analysis of different views). The approach of SAGCOT is not to develop one, or the other; but both, together.

There have been serious failures with approaches. The large-scale mechanisation schemes developed in some African countries in the 1960s and 1970s have been substantial failures; often only the roads survive to show that something was done. And the massive failure of the colonial Tanganyika Groundnut Scheme provides an immediate and eloquent example of large-scale agricultural development gone seriously wrong. On the other hand, a vast amount of money has been spent on supporting smallholder agriculture in Tanzania, with very limited success. Continued rural poverty of the majority of Tanzania's farmers is an equally eloquent example of that failure.

Tanzanian government policy firmly supports the development of both large and small-scale farming, and recognises that large-scale farming has an important role in stimulating agricultural growth. This is also an opinion strongly supported by *Kilimo Kwanza*. On issues of land, therefore, SAGCOT will work within the current policies, and the law and customs of Tanzania, taking particular care to respect the rights and interests of smallholders as well as the environment and wise management of natural resources.

There are many reasons not to violate existing land rights and customs, and two practical constraints to getting the approach right. First, there is often dissention, even within a village, about who is the rightful owner of a particular piece of land: especially when investors appear. Second, there are many instances where communities themselves do not respect the existing laws and agreements. There are times when the legal and traditional systems are poorly synchronised, and this can lead to considerable conflict. For example a company investing in the corridor has recently agreed to pay US\$500,000 in compensation to 'illegal' users of land they had purchased.

Flexibility, leading to use of the right approach to the specific situation, is an essential element. For example, Vermuelen and Cotula conclude *'no single model emerges as the best possible option for smallholders in all circumstances. Rather, what works best for smallholders while still being attractive to investors is very much context-specific, and is contingent on tenure, policy, culture, history as well as on biophysical and demographic considerations.'* The advice provided by Binswanger-Mkhize, (who holds a different overall view on the merits of large scale development) is that *"the lesson is that only careful analysis and weighing of the options, associated with social, land rights, and environmental safeguards, can lead to success"*. SAGCOT will take heed to these recommendations.

LAND LEASING LESSONS FROM CHIANSI, ZAMBIA

The Chiansi Scheme is being used as land tenure for modeling three irrigation Public Private Partnerships to be funded by the World Bank. The communities in the area have recognised the need to develop commercial agriculture. The process starts by acknowledging that existing farmers, active or inactive, have a historical right to the land. Under this model, people with traditional land rights are not only directly compensated, but also become participants in the project. Importantly, the model recognizes that although not everyone living in the area might want to farm, they do want to maintain their traditional identity with the land.

Chiansi farmers already have a type of informal title. The project therefore formalizes this on their behalf. Subsequently, areas suitable for commercial farming and emergent farming are identified and consolidated. A single title for this consolidated area is then issued to the individual, or group of people, who have had the traditional land rights. Now officially recognized owners of the land, they get paid rent for its use. In the development stages of the project, the rent is based on an agreed fixed amount. Once the project is operational and generating income, the rent can be as a dividend or a percentage of crop sales.

At the end of the agreed lease period of 25 years or earlier should the project fail, the land reverts to the original owners, who anyway now hold the title.

Although the land is not used by the traditional owners during the lease period, it is always recognized as belonging to them. There is therefore no doubt that, at an agreed time in the future, it will return to them. This is the crucial positive point in negotiations between the project and the community that leads to agreement.

At a later stage, SAGCOT will explore the opportunities for greenfield site development. This will be done responding to the current land use situation in the area, and ensuring that both social and environmental concerns are respected. In relation to greenfield sites, special consideration will need to be given to factors affecting land availability. These include: i) existing land is already owned, ii) existing land is already farmed, and iii) areas with high population density.

The options are not limited to land that can be purchased by the investor and Right of Occupancy obtained. Long term leasing of large areas of land from villagers is an alternative route to development. This will require a number of villagers owning contiguous plots of land to come together and agree, jointly, to lease the land on a commercial basis. This system would currently be constrained by the *Hati ya Kimila* limitations of size of holding (200 ha) and the need for the leasee, or tenant, to be a Tanzanian company or

individual. An example from Zambia is discussed in the box.

SAGCOT investors will not need to have direct access to or use of land production. There are other opportunities for local communities to become long-term partners through outgrower and contract farming arrangements.

One factor of land negotiations with local communities is that it usually takes time to come to an agreement. Investors and villagers usually proceed at a different pace: investors are in a hurry, villagers very often are not. Failure to understand this leads to frustration and conflict.

The first five years of SAGCOT development will be focussed on the immediate opportunities offered by areas secured by Right of Occupancy, (focussing on existing and emergent farmers, institutions with under-used land and Non-Farming Land Owners). This will be accompanied by possible land leasing and by negotiated agreements with neighbouring outgrowers and contract farmers who will produce for the new markets established in each cluster. During this time, further work will be undertaken to identify areas to encourage further development of titled land, as well as exploring the possibilities of opening up greenfield sites.

4. CONCLUSION

Land development is central to the future agricultural growth in Tanzania. It will need to be undertaken in a wise, fair and transparent manner. It will also need to take important socio-economic and environmental considerations into account. It must be effectively administered, free of corruption, on the basis of clear, well-understood regulations.

Although all these conditions are not yet in force in Tanzania, there is a high level of interest, strong incentives for action, and some basis for progress.

References:

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ANNEX : PROCEDURES FOR APPLYING FOR LAND (from URT, 2009a)

The procedures to be followed by both local and foreign investors when applying for Tanzania Investment Centre (TIC) Derivative Rights. It applies to both urban and farmland

1. Land identification by, Ministry of Lands, Urban Authority, District Authority, TIC or an Investor.
2. Land gazettelement by the Ministry of Lands
3. Land designation to TIC by the Commissioner for Lands
4. Submission of application to the Executive Director TIC
5. Application approved or rejected by TIC
6. Investor(s) notified
7. Preparations of Derivative of Rights for approved application
8. Derivative Title registered
9. Duplicate Derivative title given to occupier of land.

Procedures for acquiring land for foreign investors

Occupation of land by non-citizens is restricted to lands for investment purposes under the Tanzania Investment Act, 1997. Under the Land Act, 1999 a foreign investor may occupy land through:

- Derivative rights under section 20(2) of the Land Act, 1999
- Application to the Commissioner for Lands for grant of Right of Occupancy under section 25(1)(h) and (i) of the Land Act, 1999
- Sub-leases from private sector
- Licenses from the Government
- Purchase from other holders of granted Right of occupancy.

Land designated for investment purposes shall be identified, gazetted and allocated to TIC, which shall create derivative rights to investors. Instances of grant of right of occupancy to a non-citizen are recognized under section 19(2) of Land Act, 1999. Section 22(1) (ii) allows the granted right of occupancy to be capable of being a subject of disposition.

In this later case a right of occupancy can be disposed off from one holder to another provided the land will be sold to and acquired by a non-citizen if it is for investment purposes endorsed by TIC. Another way in which non-citizen investors can acquire land is by obtaining sub-leases from the private sector or through Government Licenses.

The procedures to be followed by foreign investors when applying for grant of right of occupancy. It applies to both urban and farmland

1. Application submitted to the Commissioner for Lands accompanied by Certified copy of Certificate of Incentives issued by TIC and photograph of the applicant(s)
2. Application approved or rejected by Commissioner for Lands
3. Investor(s) notified

Note: The acquired land either for farmland or urban land is subject to payment of stamp duty, survey fee, registration fee, preparation fee and land rent charges. These fees are subject to changes with time and location.