

# FOCUS ON LAND IN AFRICA BRIEF

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## Tanzania

### Lesson 1: Biofuels

#### INTRODUCTION

*Concerns over biofuel production are contributing to land use debates in Tanzania. Biofuel production can act as a source of agricultural income and economic growth in rural areas. Large-scale biofuel plantations, however, can also lead to rural land loss, landlessness, food insecurity and environmental degradation. This lesson explores alternative biofuel production schemes in Tanzania and their impacts on rural land rights and local livelihoods.*

## INTEREST IN INVESTMENT

Global demand for biofuels, especially liquid biofuels (ethanol, biodiesel), is being driven by growing concerns over high oil prices, energy security and climate change. In Tanzania, biofuels have emerged as a major issue for agricultural development, energy policy and natural resource management. Biofuels have the potential to provide a substitute for costly oil imports (US \$1.3-1.6 billion per year, 25% of total foreign exchange earnings) and their production may act as a source of agricultural income and economic growth in rural areas. However, there are concerns that biofuel production can lead to landlessness, food insecurity and environmental degradation. Much of the land suitable for biofuel production is Village Land and used by rural communities.

The government promotes biofuels principally through the Tanzania Investment Centre (TIC) which has identified agribusiness as a priority sector for investment. TIC maintains a database of suitable growing areas and offers a facilitation center for land acquisition, permitting, and the registration process necessary for biofuel investment. According to TIC, Tanzania has 94.5 million hectares of usable land and 44 million hectares of arable land, but only 10.2 million hectares of land is under cultivation. Under the Tanzania Investment Act of 1997, qualified investors are entitled to exemption from VAT and import duties on imported inputs and 100% repatriation of profits and capital investments after taxes and other obligations are met. The Act also provides for full protection of all investors agreements.

In 2009, over 4 million hectares of land in Tanzania was requested by investors for biofuel production. Some companies proposed biofuel projects involving initial investments/capital outlays of over US\$ 1 billion, and several billion dollars over the next 10-20 years. A total of 640,000 hectares had been allocated and of these, around 100,000 hectares had been granted formal rights of occupancy. The discrepancy between requests and allocations was partly due to the recent government-imposed moratorium on new allocations until the National Biofuels Task Force completes its work on a new biofuels policy and formal guidelines for biofuel investments. Moreover, most investors had not completed the full process of securing rights of occupancy to the land.

Oil palm, jatropha and sugarcane are the main crops used for producing biofuels in Tanzania. Oil palm has been cultivated for decades in some parts of the country as a food crop, while jatropha has been used in certain areas for hedges or grave markers, but not for commercial uses. Sugarcane is widely cultivated in Tanzania to produce sugar, and many proposals have been developed to diversify and expand the use of sugarcane for biofuel production. There is the potential to produce biofuels from other cultivated oil food crops including coconut, sunflower, avocado and sorghum. While there are plans for biofuel projects using these crops in Tanzania, none are operational.

## PRODUCTION MODELS

Biofuel production models in Tanzania vary considerably. On one end, smallholder farmers engage in biofuel production as cooperatives or participate in outgrower schemes organized by factories or plantation estates with no land directly farmed by the biofuel investor. At the other end, biofuel production is carried out entirely on large-scale commercial plantations, sometimes of several hundred thousand hectares of land. Oil palm cultivation in Kigoma involves some large landholdings, but the crop is also widely grown by smallholders. Jatropha is widely cultivated under outgrower schemes, but is also the biofuel crop currently responsible for some of the largest land allocations to foreign-driven plantation schemes. Sugarcane is typically grown in large plantations for commercial sugar production, but these companies also have developed outgrower schemes in places such as the Kilombero Valley.

There is growing interest from foreign private investors in establishing biofuel projects in Tanzania, and several European biofuel companies are now operational. According to government figures, about 20 companies had requested land for commercial biofuel production by March 2009. Other analysts, however, have put the figure at 37 companies with land requests ranging from 30,000 hectares to 2 million hectares. Investors highlight the time-consuming and costly nature of acquiring land for biofuel investment in Tanzania. Many of the largest requests and allocations of land have been for jatropha cultivation and sugarcane production in coastal areas to the north and south of Dar es Salaam.

The European companies differ in their investment approaches and, therefore, in their relative effects on local populations. Sun Biofuels Tanzania Ltd is a local affiliate of a British company which is widely investing in developing nations, including countries in East and Southern Africa. Sun Biofuels has acquired 8,211 hectares in Kisarawe District, Coast Region, to plant jatropha. The land is Village Land and, as a result, directly or indirectly affects more than 10,000 people in 12 villages. The project has been stalled due to allegations that the villagers were not consulted and their compensation was not adequate.

Sekab Bioenergy Tanzania Ltd, a Swedish bioethanol producer, is seeking to engage in large-scale sugarcane production, with about 22,000 hectares in eastern Bagamoyo District and 400,000 to 500,000 hectares planned for acquisition in nearby Rufiji District. Sekab's long-term plan is to retransfer production lands to small-scale producers under a franchise block-farm model in which contracted farmers agree to follow company procedures in return for guaranteed purchase at agreed-on prices.

Farming for Energy for Better Livelihoods in Southern Africa (FELISA), a Tanzanian-Belgian joint venture, is targeting production of 10,000 hectares of hybrid oil palm in Kigoma Region.



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*Private investors include:*

*CAMS Agri-Energy Tanzania*

*Diligent*

*Farming for Energy for Better Livelihoods in Southern Africa (FELISA)*

*Sekab Bioenergy*

*Sun Biofuels*



About half of this land is expected to come from local smallholder outgrowers; the other half will come from a plantation. To date, FELISA has acquired 4,358 hectares, established an oil palm nursery (42,000 seedlings), installed processing equipment, and mobilized 990 outgrower farmers, who have been given 10,000 seedlings and trained on oil palm cultivation. The farmers are under no obligation to sell to FELISA and the price is negotiable, however, the contractual agreement may bind them to supply a certain amount of crop of a specified quality over a given period of time.

Finally, Diligent Tanzania Ltd, a Dutch biodiesel company based in Arusha, is one of the few biofuel companies in Tanzania which does not directly produce its own fuel crops and instead relies entirely on contracted smallholder production. Currently, Diligent is processing jatropha produced by more than 5,000 contracted local farmers from across northern Tanzania. These suppliers have planted about 3,500 hectares of jatropha as farm hedges, on contours and on degraded land, but the land area is expected to soon reach 10,000 hectares.

## CONCERNS OVER INTEREST

The spread of biofuels in Tanzania, especially of large-scale operations, has raised a number of concerns from local communities and civil society organizations. These include concerns over the impacts on the environment, food security locally and nationally, and local access and rights over land. Of particular concern is the loss of rights over customary lands (more than 70% of Tanzanians are rural and derive their livelihoods from smallholder agriculture and pastoralism). The Land Rights Research and Resources Institute (LARRRI/Haki Ardhi), a Tanzanian NGO, recently warned that “one of the biggest and real threats of bio-energy is land grabbing and the resultant displacement of village communities along with shattered livelihoods.”

There are concerns that Tanzania’s land laws and institutions do not adequately protect smallholders against land alienation for biofuel production. Land tenure insecurity is a widespread problem and source of political tension. Growing commercial pressures on rural lands create economic incentives for government to allocate more land to large-scale investments. Balancing national interests in promoting investment and in protecting property rights of rural farmers and pastoralists has been a contentious aspect of land tenure debates in Tanzania over the past 20 years. Complicating matters are the private interests of some government policy-makers who are themselves involved in the biofuel business.

There are also concerns that the compensation payments provided for in the Village Land Act of 1999 are insufficient to promote alternative livelihood opportunities. The compensation process, in particular, is fraught with problems. Local people do not understand their legal rights and opportunities; land valuations are often carried out

using inadequate criteria; and benefits are promised by companies but not incorporated into written contracts. Also of concern are the risks taken by communities when the proposed investment uses the transferred land as collateral for bank loans, prior to paying compensation.

The Land Act and Village Land Act of 1999—which came into force on 1 May 2001—provide the overall framework for the exercise and administration of land rights. Under the Land Act, all land in Tanzania belongs to the state, with ‘radical title’ in the hands of the President as a trustee for all Tanzanians. As a result, land tenure is a matter of usufruct rights. The Land Act makes “customary rights of occupancy” legally equivalent to “granted rights of occupancy,” a measure designed to remove the dualistic character of land rights that had prevailed since the colonial era. The Land Act also creates a land administration framework that facilitates making land available for private or foreign investment.

The Land Act establishes three basic categories of land—Village, Reserved and General Land. Village Land is land held under customary rights of occupancy in perpetuity. It is the land within the demarcated or agreed-on boundaries of Tanzania’s 10,000+ villages. The Village Land Act provides the legal framework for the management and administration of Village Land. Village Land is under the managerial authority of each elected Village Council (VC)—the corporate entity of a registered village comprising of a chairman or chairperson elected by the Village Assembly (VA). The VA includes all residents of a village who are over the age of 18 years. The VC is answerable to the VA for land management decisions.

It is envisioned that General Land will be used primarily for allocation to commercial biofuel investors. The two land laws, however, define General Land differently. Under the Village Land Act, General Land is a “residual category”; it is any land which is not otherwise defined as Village Land or Reserved Land. The Land Act includes “unoccupied or unused village land” in its definition of General Land. This distinction is of particular importance for communities with land held under customary tenure arrangements, and has created considerable confusion and conflict. General Land is under the authority of the Commissioner of Lands in the Ministry of Lands, Housing and Human Settlements Development.

The Tanzania Investment Centre (TIC) plays a central role in identifying which land is available for investment. TIC maintains a “land bank” of more than 2.5 million hectares for investors. Much of the land identified as suitable for biofuel investment is, however, Village Land. Some of this Village Land is occupied or used by local communities for various purposes, while other parcels are “unoccupied or unused village land”—considered General Land by the Land Act, but Village Land by the Village Land Act. Even seemingly unoccupied lands traditionally may be important areas for seasonal livestock

grazing, extraction of forest products, or other important livelihood uses (transhumance).

According to TIC, citizen investors may acquire land by a granted right of occupancy, a derivative right or by obtaining a sub-lease from the private sector. By the Tanzania Investment Act of 1997, occupation of land by non-citizens is restricted to lands for investment purposes. Under the Land Act a foreign investor may occupy land by: 1) a grant of right of occupancy of General Land issued by the Commissioner of Lands; 2) a TIC-granted “derivative right” of General Land (a right to occupy and use land created out of a right of occupancy, including a lease, sub-lease, license and usufructuary right); 3) a sub-lease from the private sector; 4) a license from the government; or 5) a purchase from the holder of a granted right of occupancy. Long-term rights of occupancy periods range from 5-99 years and are renewable for not more than 99 years; long-term derivative rights and leases range between 5-98 years.

Village Land may be allocated to a Tanzanian individual or company (defined as a company with Tanzanians as a majority of shareholders), although allocations in excess of 250 acres of land require approval of the Commissioner of Lands. Amendments to the Land Act passed in 2004 provide for joint ventures to be established between private companies and villages, whereby land is used for commercial purposes but villages retain their rights over the land, subject to certain agreed-on limitations. The Village Land Act is silent as to whether Village Land can or cannot be allocated to foreigners or foreign-owned companies, although some lawyers have argued that locally-registered companies owned or controlled by foreigners can acquire Village Land.

For foreign investors to obtain Village Land, the land must first be transferred to General Land. Village Land can only be transferred to General Land by the President for public interest purposes (including “investments of national interest”). The Village Land Act provides the procedures for such transfers. The process can be initiated at the request of the village or by the government. The President then directs the Minister to send a notice of intent to the affected Village Councils and, to allow for comments, publishes it in the Gazette at least 90 days before the transfer. The village cannot veto the transfer, but the Village Land cannot be transferred to General Land “until the type, amount, method and timing of the payment of compensation has been agreed upon between the village council and the Commissioner” of Lands or “until the High Court has agreed on an interim measure.”

Companies have generally found it faster and simpler to obtain land through the Commission of Lands or TIC than to acquire Village Land. Yet, most of the land obtained or in the process of being obtained by biofuel companies is Village Land that is not permanently settled but nevertheless is used for economic activities. Companies negotiate with Village Councils (VCs), but many VC members and villagers lack a good understanding of the legal procedures for transferring Village Land to General Land or the compensation process, including how land value is determined, how payment is shared with the District and how the village portion is allocated and used. As a result, the legal procedures are rarely followed, and villages often do not receive fair and adequate compensation.

While many communities have been adversely affected by biofuel investments involving large plantations, biofuel production carried out by smallholder farmers and through outgrower arrangements have generally had fewer direct negative impacts on land access. In Tanzania's experience, biofuel production that engages smallholder farmers represents a positive model for local livelihoods and the environment. Biofuel crops such as jatropha can provide new opportunities for farmers to improve income from unproductive or infertile lands, and forming farmers' cooperatives can improve access to markets and strengthen negotiating positions with biofuel investors. Alternative landholding structures such as Village Land trusts or equity-based joint ventures can also stimulate private investment and allow for greater collaboration between local communities and investors.

## GOVERNANCE

At present, biofuel investments in Tanzania are not guided by any formal policies, strategies or regulations.

In April 2006, the government established the National Biofuels Task Force (NBTF) with the responsibility of developing a biofuels policy. The NBTF is comprised of 11 government officials and two private sector representatives. In August 2008, the NBTF released the draft National Biofuels Guidelines for public comment. NGOs suggested adding new safeguards for land access, environmental conservation, and food security. Some suggestions were incorporated into the revised draft released in November 2008, showing a willingness on the part of government to adapt policy provisions based on field experiences.

The draft National Biofuels Guidelines include specific provisions designed to protect property rights and safeguard rural livelihoods. Some of these provisions require that: 1) the land acquisition process should be transparent and coordinated at the national level; 2) communities must be adequately compensated for Village Land; 3) communities affected by biofuel investments should know their rights and obligations; 4) no forced displacement of people should be allowed for biofuel development; and 5) investors should be encouraged to use an outgrowers production model or a hybrid model (plantation and outgrowers).

The draft National Biofuels Guidelines also provide that the government should: 6) encourage smallholder farmers to form associations and cooperatives that can enter into contract agreements with biofuel companies; and 7) encourage outgrowers to invest in value adding to increase local revenue retention. The Guidelines are currently awaiting the Cabinet's approval. If approved and effectively implemented and enforced, the Guidelines will help encourage sustainable and beneficial biofuel investments in Tanzania.



Photo Credit: <http://www.farmland.org>

## SOURCES

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