

The Village Land Act's Regulation of Foreign Land Grabs in Tanzania

By

Emma Landy

Supervisor: Professor Dayna Scott

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Emma Landy
Student

Dayna Scott
Supervisor

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Foreword

The title of the Area of Concentration for my Plan of Study is “Land and Food Rights and Sub-Saharan Africa”. My master’s research paper (MRP) focusses on developing a more in-depth understanding of one aspect of land rights and Sub-Saharan Africa through the study of contemporary land grabs. My paper briefly frames the land grab phenomenon within the broader context of land reform in the region. Then to develop a more specific understanding of the governance of land grabs I examine the local level regulation of foreign land grabs in Tanzania.

My MRP meets objectives of each component of my Plan of Study (POS). The first component is Food Security and Land Use and Sub-Saharan Africa. My paper briefly frames land grabs within a larger context of land reform, land acquisition, and changing land use in Sub-Saharan Africa. A chapter of my MRP is also dedicated to providing a literature review of land grabs in the region.

The second component of my POS, International Trade and the Global Food System, was briefly touched on in this paper. My paper discusses pressures from international institutions’ with respect to land reform and how bilateral relations may encourage governments to liberalize their borders to foreign land grabs. The final component of my POS is Political Ecology. While I do not explicitly state that I am using a political ecology lens to examine land reform and land grabs, political ecology has guided my analysis. I briefly frame the land grab phenomenon in a larger historical, political, economic, and social context. Examining the ways that colonialism, for example, impact land distribution and subsequent land reform was guided by a political ecology lens with acknowledgement of the importance of examining events in the larger social, political, historical, and economic contexts in which they occur.

Abstract

The purpose of this major research paper is to examine how Tanzania's *Village Land Act* interacts with the current wave of large-scale land acquisitions in rural Tanzania. The paper assesses the *Village Land Act* in the context of how it protects local land users' land rights with respect to foreign land investments. Moreover, the paper frames the current wave of land grabs in the larger context of land reform in post-independence Sub-Saharan Africa and within the larger context of the current land grabbing phenomenon. The goal is to understand how the *Village Land Act* may protect local communities from risks associated with large-scale land investments including land dispossession, inadequate compensation for lost access to land, and poor consultation with local communities prior to the approval of land grab deals. I conclude that the *Village Land Act*, if it were adequately implemented, provides some level of protection to local communities through mandatory consultation and compensation with respect to foreign land investments. However, the ultimate decision to allow large-scale investments in land to go forward remains in the hands of the President, which reduces the ability of impacted communities to negotiate and retain their land access.

Introduction

In 2009, a nongovernmental organization working to provide clean drinking water to communities downstream from a spring in the Iringa region of Tanzania discovered their work was being undermined by a large-scale farming operation on the land bordering the spring (Arduino, Colombo, Ocampo, & Panzeri, 2012). Upon further investigation the group discovered that the operation was part of a large-scale land investment, of 1400 hectares, for agricultural production and cattle-raising undertaken by a retired Tanzanian government official and a Kenyan national (Arduino et al., 2012). The land was leased to these investors without the knowledge of the local community, despite the fact that the commercial activities were now having severe impacts on the quality of drinking water for the 45,000 people dependent on the spring (Arduino et al., 2012). This type of large-scale land investment, occurring sometimes with the knowledge and consent of land users and sometimes without, is commonly referred to as a “land grab”. Since the mid-2000s land grabs, such as this one, have become increasingly common in Tanzania and more generally throughout Sub-Saharan Africa.

Large-scale land acquisitions or “land grabs” involve the purchase or lease of large tracts of land in developing countries for agricultural production, biofuel production, and speculative land holding (Borras et al., 2011). These investments, both from foreign and local investors, have increased exponentially in Sub-Saharan Africa since the energy and food crises of 2008 (Cotula & Vermeulen, 2009). The increase in investments has sparked the attention of many groups concerned about how they impact host countries, local land users’ land rights, and the environment (Borras et al., 2011; Vermeulen & Cotula, 2010; Cotula & Vermeulen, 2009; Hårsmar, 2011).

Tanzania is a country with large amounts of fertile land and the Tanzanian government is actively encouraging land investment (Askew, Maganga, & Odgaard, 2013; Theting & Brekke, 2010), particularly in modern farming operations, as a means to increase agricultural productivity for food security and revenue from exports (Nelson et al., 2012). Tanzania has experienced and continues to experience land grabbing, including many biofuel land investments from 2005 to 2008, and since 2008 for food production. In addition to investments in agricultural land, Tanzania and other Sub-Saharan African countries have also experienced large-scale investments in land for game reserves, forestry products, and speculative land holding (R. Hall, 2011). Overall, the scale of this problem and the impacts on local communities are slowly becoming apparent as the land acquired through deals starts being developed.

Large-scale land investment is not a wholly new phenomenon in Tanzania, but fits more generally into the Sub-Saharan Africa reality, which has seen waves of land investments during both the colonial period and into the post-colonial period. Moreover, the forms of land investments and ways in which they receive or do not receive state support fits into a broader picture of changing and competing theories with respect to land reform and development since the 1960s.

This paper seeks to conceptualize what we define as “land grabs” in the larger context of land reforms in Sub-Saharan Africa and more specifically in the land reform context in Tanzania. In Tanzania, like many other nations in Sub-Saharan Africa, land law reforms reflect the tension between two vastly different perspectives on the nature of land ownership. The first is the *economic liberalization, or market-based, approach* of land reform, which fits in the wider agenda of 1990s’ liberalization policies, whereby the provision of formal land title is prioritized. The second is the *rights-based approach* to land reform, which emphasizes customary and

communal land rights over private land title. Understanding the fundamental conflicts between these two perspectives helps clarify how land reform occurred starting in the 1990s and how it impacts and continues to impact the current wave of land investments in Tanzania.

With the concept of land grabs established, the paper will examine one part of Tanzanian's land laws, the *Village Land Act, 1999 [VLA]*, in the context of the potential impacts of foreign investor land grabs on rural populations. The purpose is to develop an understanding of how and to what extent the *VLA* governs foreign land grabs in the context of rural land users' land rights in Tanzania. While there are also domestic investor land grabs taking place, this paper is focused more narrowly on the *VLA*'s regulation of foreign investor land grabs.

In order to understand the role of the *VLA* in this context, it is important to establish how land grabs fit into the larger picture of land reform and how the *VLA*, as part of Tanzania's recent land reforms, might address some of the potential issues with respect to foreign land grabs at the village level. The central aim of this paper is to examine the extent to which the *VLA* protects local land users' land access, land rights, and right to be compensated in the context of land loss due to foreign land grabs. This analysis will help develop an understanding of whether the law is strong enough and was predictive enough when it was being created to protect local land users' land rights in the face of contemporary land grabs and to ensure the benefits from such investments pass to local people and communities.

Sundet (2005) argues that there has been insufficient analysis of the *Land Acts* at an academic or technical level. This paper aims to fill some of this gap. However, it must be noted that regardless of the law on the books, the governance of land investment is often not undertaken in accordance with the law as it is written. Therefore, it is important to clarify that the purpose of this paper is not to look at adherence to the law during acquisition of land, but

rather to understand if the legislation with respect to land is substantial enough to protect local land users' land rights if it were to be implemented to its full extent.

It is also important to recognize that this paper's analysis is limited to the *Village Land Act*, 1999 with some cursory information with respect to other legislation that directly relates to the interpretation of the *Village Land Act*. Of course, land investments are governed by multiple pieces of legislation which work together to regulate different aspects of land acquisition.

The paper is organized into four chapters and a conclusion. Chapter 1 presents the land grab phenomenon and the potential impacts on the ground for communities. Chapter 2 outlines how land grabs have taken place in the context of Tanzania. Chapter 3 provides a brief history of postcolonial land reform in Sub-Saharan Africa, while Chapter 4 provides a more specific history of land reform in Tanzania and analyzes the *Village Land Act* in the context of land grabs. I conclude that the *Village Land Act*, if it were adequately implemented, provides some level of protection to local communities through mandatory consultation and compensation with respect to foreign land investments. However, the ultimate decision to allow large-scale investments in land to go forward remains in the hands of the President, which reduces the ability of impacted communities to negotiate and retain their land access.

Methodology

The research for this paper comes from primary documents, including legislation and academic literature, grey literature, and reports from NGOs, civil society organizations, and the media. While there is a quickly developing breadth of academic literature on the causes and impacts of land grabs in Sub-Saharan Africa, there is less scholarly work on specific land grab case studies because many deals have been made behind closed doors, information is difficult to access, and commentators have trouble catching up with the speed at which investments appear

to be occurring on the ground. Thus, specific land grab information is often compiled by civil society organizations and the media based on first hand experiences of land grabs, as often little is known about investments until they are actually being implemented. Moreover, Robertson and Pinstrup-Andersen (2010) argue that because of the newness of the current land rush information is coming from outside academic literature.

The methodology used to analyze the *Village Land Act* was to undertake a thorough reading of the Act in the context of the potential issues that the literature points to with respect to land grabs. Following this, the Act was assessed based on how it addressed the issues identified in the literature as potential problems for rural land users with respect to land grabs. The independent analysis of the Act was supplemented by a subsequent review of literature directly commenting on the Act.

Accordingly, the analysis is limited in several ways. First, the *Village Land Act* is not the only piece of legislation that governs land grabs. Second, the Act itself has not been implemented to the fullest extent which makes it hard to know how it would be operationalized on the ground and in the courts, instead the analysis relies on the text alone. Further research should examine the interaction between the *Village Land Act* and other Tanzanian legislation with respect to the governance of foreign rural land investments in Tanzania; however this paper focusses solely on the *Village Land Act*. Further research should also examine how the *VLA* governs large-scale domestic land grabs.

Chapter 1: Large-Scale Rural Land Acquisition

This chapter briefly examines the current trend of large-scale land acquisition in Sub-Saharan Africa, including an analysis of the similarities and disparities between contemporary large-scale land acquisitions, also known as ‘land grabs’, and historical types of land transfers. The chapter will describe the actors who are currently investing in land in Sub-Saharan Africa and some of the impacts of these investments.

Large-scale land acquisitions, commonly referred to as ‘land grabs’, are not a new phenomenon in Sub-Saharan Africa. For example, in the late 1800s plantations were created in West Africa for the production of palm oil. For decades Liberia has experienced million acre investments in rubber and in the 1970s Sudan experienced large-scale investments in sorghum (Alden Wily, 2011). Thus, the 20 to 30 million hectares of land in Sub-Saharan Africa that has been leased since 2007 is not unprecedented, but there are some new aspects to this most recent wave of land acquisition. Unlike under colonial rule, the land that is presently subject to investments is being leased and bought with the consent, and sometimes even encouragement, of sovereign host country governments (Hårsmar, 2011; Robertson & Pinstrup-Andersen, 2010). However, while some scholars argue this is different than the forced land investments that took place during colonial rule, in some contemporary instances it is unclear how much sovereignty African states have had in recent history regarding land investment decisions. In fact, many countries are encouraged to make leases to foreign investors in exchange for loans and aid packages from the very governments where these same investors and/or their capital originate (Alden Wily, 2011).

Contemporary investments tend to involve a wider range of actors than they did in the past, including private companies, governments, and government supported agencies. Hallam (2011) argues that current land investments differ from earlier forms of land investment because they are “resource seeking”, not “market-seeking.” This means that there is foreign control over the physical production of goods, instead of joint-ventures with foreign control over the export of what is produced. Moreover, Hallam (2011) states that exports are now in great part going singularly to investors’ home countries, especially where a government is the investor, whereas in the past they were widely exported to a variety of Western countries. Borras et al. (2011) suggest that current land investments are different from earlier forms because in addition to investment from the Global North they include investment from emerging countries in the Global South into other Southern, generally poorer, countries.

Most recent large-scale land investments have occurred in Sub-Saharan Africa. According to the World Bank, 274 million acres of land grab investments occurred between 2007 and 2011, 75% of which were investments in Africa (McMichael, 2011). Investments are for the production of food, biofuels, land speculation, and carbon offsets¹ (Alden Wily, 2011). Globally, it is unclear how much land has been bought and leased in this way. In 2011, the World Bank estimated that worldwide 120 million acres of land were subject to large-scale investments, the Global Land Project estimated 150 million acres, the Land Deal Politics Initiative estimated 200 million acres, and in the same year Oxfam estimated 560 million acres

¹ Carbon offsets through carbon sequestration projects represent one of the newest drivers of land investments. The increase in carbon offset projects is partly driven by international agreements to reduce and/or offset carbon emissions (Anseeuw, Alden Wily, Cotula, & Taylor, 2012). A common scenario is that carbon offsets are being realized by some nations and their corporations through the acquisition of foreign land for reforestation (Anseeuw et al., 2012). This represents a new type of foreign land investment in developing countries which deserves attention, but will not be examined in this paper.

(Pearce, 2012). The wide variation is a testament to an underlying lack of transparency around land deals.

What are land grabs?

The literature on large-scale land acquisition in Sub-Saharan Africa has evolved quickly since 2008. Much of the literature centers on defining “land grabs” and distinguishing them from other large-scale land acquisitions. This section briefly outlines some of the debates with respect to defining large-scale land acquisitions in the literature and for the purpose of this paper.

Since 2007, land investments for a variety of purposes including agriculture, speculation, and the production of biofuels have been increasingly referred to as global land grabs. The term is deliberately provocative and was initially used by activist organizations concerned about the impacts of transnational land investments on rural people and the environment (Borras& Franco, 2010). At present, however, the term has become widely used by civil society, nongovernmental organizations, and academics divided with respect to their positions on the merits and drawbacks of large-scale land acquisitions (Borras& Franco, 2010). Despite the now common use of the term global “land grab”, there is still no consistent definition of the phenomenon. As scholars criticize or praise what they term “land grabs”, it is important to ensure there is a common understanding of the type of investment to which they are referring. For example, some scholars do not consider investments by local elites or investments for purely speculative purposes as falling under the definition of “land grabs”. The debate over what constitutes a land grab includes questions around the minimum size of the investment, the purpose of the investment, and the identity of the investors in terms of nationality and institutional background.

Borras et al. (2011) understand the term global land grab as a “catch-all to describe and analyze the current explosion of large-scale (trans)national commercial transactions” (209). They

offer a comprehensive definition of land grabs as including investments from foreign and national actors and investors including governments, corporations, and private equity firms (Borras et al., 2011). Graham et al. (2011) in contrast argue that the most common definition of land grabs is the “large scale acquisition – be it for purchase or lease – of land for agricultural production by *foreign investors* [emphasis added]” (2). However, other scholars include both domestic and foreign investors in their definition as long as the investment is large-scale. Graham et al. (2011) explain that many actors use the term “(transnational) commercial land transactions” as an alternative to land grabs to describe these land investments because they encompass domestic and international investments (2). In his book on the subject, journalist Pearce describes land grabs as “any contentious acquisition of large-scale land rights by a foreigner or other “outsider,” whatever the legal status of the transaction” (Pearce, 2012, viii). This definition encompasses domestic investors if they are not local to the area where the investment takes place. Hallam (2011) does not use the term land grab in his writing, but terms the present wave of land deals as land investments. Under the broadest definition of land grabs, there are many actors involved including governments of emerging Southern countries and investors from emerging countries such as India, China, and Brazil as well as Western countries, transnational corporations, and investment firms (Hallam, 2011). For the purposes of this paper, the term land grab is used and is defined widely as large-scale acquisitions of agricultural land by domestic and foreign investors.

What is causing land grabs?

As with defining land grabs there is also debate in the literature over the reasons why, in both size and number, land grabs have rapidly increased since 2007. Zoomers (2010) views the current land grabbing trend as part of a greater process of the “‘foreignization’ of space or land”

(430). From this perspective, land grabs fit within a larger process of market liberalization and are a continuation of liberalization policies of the 1990s, which commoditized resources including land (Zoomers, 2010; Chachage, 2010). Essentially, from Zoomers' perspective land grabs fit into a broader picture of land reform creating formal markets for land and thus incorporating land into a capitalist market system. Theories around such land reform will be further discussed in Chapter 3.

Zoomers (2010) also believes one of the main differences between past land investments and the current process of land grabbing is that within the present land grab trend local and national governments play a more active role in the process because of the impacts of globalization, open markets, and increased foreign direct investment. This is supported by the creation, in 2003, of the Comprehensive African Agricultural Development Program, an undertaking by 26 African states that emphasizes foreign direct investment in agriculture to improve agricultural productivity (Hårsmar, 2011). Moreover, businesses undertaking land grabs are looking for new investments resulting in a large increase in direct investments in agricultural land in developing countries over the last few years (Cotula & Vermeulen, 2009). Investment companies are also seeking land in expectation of high returns because of increasing food prices and increasing investments in the biofuel industry (Hallam, 2011; Borras & Franco, 2010; Borras et al., 2011; Cotula & Vermeulen, 2009). On the other hand, investors who are foreign governments tend to participate in land grabs to ensure food security in their home countries by ensuring a consistent food supply and avoiding food price spikes (Hallam, 2011; Borras & Franco, 2010, Borras et al., 2011; Cotula & Vermeulen, 2009; Robertson & Pinstrup-Andersen, 2010). In other words, with the 2007 global increase in food prices a variety of

investors rushed to Sub-Saharan Africa as it held 60% of the world's uncultivated land (Jayne et al., 2014).

Overall, the private sector makes up around 90% of land investments with foreign government owned investments making up the remainder (Cotula & Vermeulen, 2009). Moreover, it seems that most large-scale investments come from foreign investors and not local investors; in a survey of investments in Mali, Ghana, Ethiopia, and Madagascar 75% of land leased/bought in deals was through foreign investment (Cotula & Vermeulen, 2009). However, with respect to private sector investments, investor country governments are often involved in diplomacy and trade aspects of private investor deals (Cotula & Vermeulen, 2009). Moreover, investor governments may provide loans, insurance, and subsidies to companies to help enable their private businesses to invest in foreign land as well as providing information and diplomatic services (Cotula & Vermeulen, 2009). Conversely, when foreign governments are themselves land investors the investments may be part of larger bilateral relations including government development aid packages (Cotula & Vermeulen, 2009).

Governments of the countries whose land is acquired, host governments, often play a central role in investments. However, this may cause problems if they do not take into account the perspectives of local land users. There have been situations where contracts are signed between host governments and investors prior to communication with impacted communities (Cotula & Vermeulen, 2009). In addition to host governments providing land to investors, communities may also provide land “whether acting collectively as legal entities in Tanzania and Madagascar, or through customary leadership in Ghana, but even these cases usually entail separate contracts with government” (Cotula & Vermeulen, 2009, 1239). Pearce (2012) believes that African governments are looking for agriculture investments after spending years ignoring

this sector and this makes the promises from foreign investors tempting. Moreover, Pearce (2012) argues that often governments “clear the land of existing inhabitants, and often don’t ask for rent” when investors present attractive deals and promises (viii). The people using the land that tends to be made available to investors often have no formal land tenure rights, but have customary land rights with the land being essential to their livelihoods (Robertson & Pinstrup-Andersen, 2010).

What are the impacts of land grabs?

There is much debate about the range of potential merits and drawbacks associated with land grabs. Ultimately each specific land grab must be examined in context to understand who benefits from investments and who loses, how investments are governed, how those impacted are compensated, and under what conditions investments might benefit the greatest number of people. For the purposes of this paper the main focus is on how the law may protect local land users’ land rights, including customary land rights, as well as their right to be compensated in the face of land grabs. Briefly outlined below are some of the potential merits and problems with land grabs.

Many scholars view large-scale land acquisition as having the potential to contribute to economic growth in developing nations by providing employment and improving access to technology (Borras et al., 2011; Vermeulen & Cotula, 2010; Hallam, 2011; von Braun & Meinzen-Dick, 2009). For example, benefits to host countries include agricultural investments, such as irrigation systems, but how much such investments benefit the people and communities disrupted the most is questionable (Cotula & Vermeulen, 2009).

At the same time there are also many potential problems with these deals. They may damage the livelihoods of people who lose their access to land (Borras et al., 2011; Vermeulen &

Cotula, 2010; Cotula & Vermeulen, 2009), as well as impact recipient countries' sovereignty and contribute to local conflict over resources (Cotula & Vermeulen, 2009). Moreover, the displacement of people from their land and increased land scarcity "restrict the potential of smallholder-led development, and put unrealistic pressure on the non-farm economy to absorb" the labour force that is no longer farming (Jayne et al., 2014, 35). While in the big picture land grabs may seem beneficial to countries by providing investment in agriculture, and more generally on a national level, on what is often represented as "empty land", at the local level they may be detrimental to local land users (Hårsmar, 2011; Robertson & Pinstrup-Andersen, 2010). Local land users hold many different types of rights with respect to a piece of land and their livelihoods commonly rely on access to land to which they do not hold formal title (Hårsmar, 2011). Smallholders do not have the same bargaining power with respect to land investments as large investment companies even where they are consulted or at least informed of investments, this is especially true where they do not have formal land tenure and their customary use of land is not formally recognized (von Braun & Meinzen-Dick, 2009).

Land grabs can also threaten to degrade the environmental resources of countries through intensive large-scale farming that threatens soil and water quality (Robertson & Pinstrup-Andersen, 2010). Moreover, land grabs impact the livelihoods of local land users including taking over farmers' land, appropriating customary land, and, for people who do not lose access to land, land grabs may deplete and/or pollute water and soil (Robertson & Pinstrup-Andersen, 2010; Arduino et al., 2012). Land use for export food production instead of domestic food production also has the potential to lead to or exacerbate food insecurity in host countries (Robertson & Pinstrup-Andersen, 2010).

In many countries there are few checks and balances, inadequate laws, and/or poor implementation of laws with respect to protecting people from being dispossessed of their land, ensuring people are compensated for loss of land, and ensuring that the benefits from land investments are passed onto local land users. This is especially problematic in land grab situations where the land being acquired is customarily owned or communal land because such land is often not legally recognized and where recognized may have weaker legal protections or receive less substantive enforcement of rights (Borras et al., 2011; Vermeulen & Cotula, 2010; Cotula & Vermeulen, 2009). Even when laws provide for local compensation and the recognition of local land rights, local land users struggle for enforcement because they have less capacity to fight for their legal rights compared to investors who have more resources and greater access to legal tools, “especially foreign investors who have access to international legal advice and arbitration mechanisms” (Vermeulen & Cotula, 2010, 913).

Secure land rights for local land users are thus an essential component of whether land grabs are detrimental or beneficial at the local level. Secure land rights protect local land users “from arbitrary dispossession and...give[s] them an asset to negotiate with” (Cotula & Vermeulen, 2009, 1240). While countries’ laws with respect to land tenure security vary, there are some general conditions that tend to undermine local land users. Factors undermining local land users’ rights include “insecure use rights on mainly state-owned land, legislative gaps, compensation only for loss of improvements such as crops rather than land, and often outdated compensation rates” (Cotula & Vermeulen, 2009, 1240). Moreover, land investments and the desire of host governments to encourage land investments fails to recognize the importance of small-scale agriculture, which, for example makes up 80 percent of Africa’s agricultural productivity (Pearce, 2012).

What is the role of recipient country governments, laws and institutions?

National governments in much of Sub-Saharan Africa have worked to ease the process of large-scale land acquisitions through policies and practices including land laws that favour formal title over customary land use and investment incentives such as tax breaks for foreign investors. For example, as discussed above, many states' laws do not formally recognize, and thus do not protect, customary and communal land rights as being equal to formal land title, which eases land investment processes to occur on customarily owned land (Alden Wily, 2011). Moreover, often the way that modern land laws have approached customary land rights is to apply rights to tenure in an ahistorical manner, failing to examine the context of peoples' long-term use of land, or failing to acknowledge their existence at all. This is based on the faulty assumption that "Africa was empty of owners prior to state-delivered entitlement" to land (Alden Wily, 2011, 733). Thus, national governments are able to classify large quantities of land as unoccupied and ready for investment.

In addition, many countries have formal processes to assist investors in making large-scale land acquisitions, at national and local levels, as well as a large number of established institutional and legal procedures for land grabs (Vermeulen & Cotula, 2010). Furthermore some land grab deals may be part of wider contracts with host governments or may be provided for in government-to-government agreements such as bilateral investment treaties (Vermeulen & Cotula, 2010). Some states in Sub-Saharan Africa may even hire promotion agencies to attract investors and facilitate land deals through different means including acting as an intermediary between investors and government or even allocating land (Vermeulen&Cotula, 2010). Even though in many countries laws require investors and/or those leasing/selling lands to consult with local people, such consultation is not required in every country (e.g. Mozambique) (Cotula &

Vermeulen, 2009). Moreover, “shortcomings in implementing legal requirements and in the accountability of local leaders are a recurrent problem” (Cotula & Vermeulen, 2009, 1240).

In examining the role of host governments in the land grab process, it is also necessary to examine the process by which land grabs most often come about. Land deals tend to come about through contracts that may be as simple as “framework agreement[s]” of the main parts of the deal where the country agrees to provide the land to investors to much more specific agreements transferring land (Cotula & Vermeulen, 2009, 1237). Thus, land contracts made with host governments “must be read in conjunction with other legal texts defining their broader context, including national law (on land, water, tax, investment promotion, and environmental protection, for instance) and international law (particularly bilateral investment treaties)” (Cotula & Vermeulen, 2009, 1237).

There are a number of suggestions with respect to how host governments, investors, and other institutions can better manage land acquisitions so that local people, especially smallholders, can benefit from these investments. Policies which should be implemented include regional host governments agreeing on the tax rates for foreign investors so that countries do not lose out on capturing taxes in a ‘race to the bottom’ to attract investment (Robertson & Pinstrup-Andersen, 2010). Moreover, providing land users, especially customary land users, with tenure rights might afford them some protections (if there is adequate enforcement) from the land they use being appropriated through land grabs (Robertson & Pinstrup-Andersen, 2010). Land deals should be undertaken with more transparency allowing impacted parties the chance to be consulted and provide input (Robertson & Pinstrup-Andersen, 2010; von Braun & Meinzen-Dick, 2009). Institutions, such as civil society organizations, collectively representing local land users may lend greater power to smallholders by drawing attention to land investments and

giving local people increased bargaining power (von Braun & Meinzen-Dick, 2009). Moreover, not all land grabs are the same. Local people may benefit more in cases where local farmers are contracted to grow food for the investor (Robertson & Pinstrup-Andersen, 2010; von Braun & Meinzen-Dick, 2009). However, this too would need to be implemented in a way to ensure local food security and fair prices. This type of approach to land investment is said to take stock of the risk land grabs pose to local land users and to try to create win-win situations (von Braun & Meinzen-Dick, 2009). Overall, “respect for existing land rights, including customary and common property rights” is essential policy goals to make land grabs beneficial for local people and host countries (von Braun & Meinzen-Dick, 2009, 3).

It is evident that land grabs, while offering some benefits to countries in Sub-Saharan Africa, are accompanied by numerous risks, especially for local land users who are at risk of losing their access to land and their livelihoods. However, the literature also shows that not all land grabs are the same and that managing how they are implemented and how land rights are protected for local people may mitigate some of the risks and allow countries to capture increased benefits for more people, especially at the local level. At the same time, even with strong local land rights there are still risks that land grabs may negatively impact countries through environmental degradation, exacerbating food insecurity, and creating water pollution. It is pertinent that countries weigh the different types of investments and the possibilities to manage and benefit from such investments against the risks they pose to land users, the environment, and to countries’ future land use needs.

Chapter 2: Land Grabs in Tanzania

This chapter examines how the current land grab phenomenon has materialized in the East African country of Tanzania. The chapter includes a brief introduction to who is advocating for increased land investments, what type of land investments are taking place, and the impacts of investments on local communities.

In recent years Tanzania's government has worked hard to attract land investors. Some government officials, including current Tanzanian President Kikwete, assert that land is plentiful stating that of Tanzania's 94.5 million hectares, 44 million are arable and only 24% are being used productively (Askew, Maganga, & Odgaard, 2013; Theting & Brekke, 2010). However, in local communities, in the press, and among researchers, the picture is not of abundant unused land but of competition and conflict over land resources and appropriation of rural lands (Askew et al., 2013).

The ways in which Tanzania has embraced the current phase of land grabbing fit within the broader history of Tanzania and Tanzanian land reform. The promotion of land investments came along with reforms at the end of single party rule in 1985. At this time the government also began to introduce new forms of land administration and regulation. The Tanzanian reforms with respect to land will be further discussed in Chapter 4.

Presently, the support land grabbing receives from the Tanzanian government fits into the larger "formal public development policy narrative that emphasizes the role of private investment, including prominently foreign capital inflows, in generating wealth and employment" and the private interests of local elites who control much of state's activity (Nelson et al., 2012, 19). In Tanzania, the new wave of land grabs began soon after the country's New Land Acts came into effect in 2001. These Acts put responsibility for land management and

administration into the hands of village level governments; emphasizing the registration of land rights including communal and customary rights, and at the same time working towards the promotion of formal markets in land (Pedersen, 2011).

Despite Tanzanian laws that were designed to protect the land rights of customary land users, communal land, and smallholders, land grabs in Tanzania are “encroaching on local rights, marginalizing rural farmers and pastoralists who depend on land, water and other natural resources, and further concentrating wealth and assets in the hands of political and economic elites” (Nelson et al., 2012, 2). Renewed concern about land grabbing started around 2005 due primarily to growth in biofuel investments in the country². From 2005 to 2008, mainly European companies expressed interest in investing in 4 million hectares of land in Tanzania for the production of biofuels and a total of 640,000 hectares were actually leased (Nelson et al., 2012; Theting & Brekke, 2010). Some of the biofuel projects were publicly promoted by President Kikwete, “effectively adhering to the prevalent post-liberalization Tanzanian development narrative which emphasizes foreign capital and modernized agricultural production” (Nelson et al., 2012, 12).

Although there was initial enthusiasm that biofuel investments would bring new agricultural technology to Tanzania the investments slowed with the 2008 economic crisis due to the loss of cheap financing and lower levels of profit than had been projected (Nelson et al., 2012). However, although biofuel investments in Tanzania decreased post-2008, land grabbing has increased overall especially for food production and speculative land holding.

² Biofuel investments are being driven in part by regional commitments to replace a certain amount of fuel with biofuels, for example in the European Union (Cotula et al., 2009). The impact this is having on driving the land grab phenomenon is hotly contested and worth further exploration, but is outside the scope of this paper.

Since biofuel land grabs began in 2005, Tanzanian civil society, media, and other organizations have had the time to increase their attention to the issues presented by land grabs. These institutions, as well as the growing strength of the political opposition in Tanzania, have drawn attention to the government's misuse of public resources and corruption in investment contracts such as undervaluing public assets before selling them to private investors (Nelson et al., 2012). This type of private capture of public resources by elite politicians and party supporters had been common since the end of Nyerere's presidency in 1985, which is further discussed in Chapter 4. At the same time the end of Nyerere's presidency also marked the beginning of multiparty democracy with stronger political opposition and more open dissent (Nelson et al., 2012). This has increased attention by many actors to issues with respect to land grabs (Nelson et al., 2012). The heightened attention and division within the ruling party itself has served to make corruption and misuse of public resources less hidden and reduced the elite of the ruling party's monopoly on power (Nelson et al., 2012). The increased role of civil society, the media, and political opposition in Tanzania has opened public discourse on resource use, policies with respect to resources, and corruption increasing the demand for government accountability (Nelson et al., 2012). It is under these changing politics that land grabbing is being discussed and approached in Tanzania. In 2011, for instance, politicians from both political parties stated that they would not approve the Ministry of Lands budget because of issues with respect to land grabbing by public officials (Nelson et al., 2012).

Scale of Land Grabs in Tanzania

It is difficult to assess the full scale of land acquisition in Tanzania because many land grabs are negotiated behind closed doors and therefore the details surrounding deals (and sometimes their very existence) are not evident until they are implemented. Moreover, even

where land grabs are discussed with village governments and villagers, the general public's awareness is often minimal. Makwarimba and Ngowi (2012) state that it is not possible for researchers to get accurate data on how much land has been acquired through land investments in Tanzania. A number of civil society organizations have attempted to compile information on land grabs by having local people report instances of land grabs they encounter and through the use of NGOs, civil society organizations, academia and media. Land Matrix is a land monitoring initiative that relies on information from research papers, policy reports, NGOs, personal findings, government reports, company reports, and the media to paint a picture of global land grabs (Land Matrix, 2015). According to Land Matrix, since 2000 there have been 29 land deals negotiated with respect to Tanzania; 23 have signed contracts and 3 are at the stage of oral agreements (2015). The reported land grabs range from a 204 hectare agricultural investment that has not yet been implemented on the ground to a 50 000 hectare palm oil plantation by the primary investor TM Plantations to a 250,000 hectare agricultural and biofuels land grab, 22,000 hectares of which has already been leased (Land Matrix, 2015). The 29 land grabs that the Land Matrix has on record for Tanzania are in a variety of stages of development and are primarily for agricultural production (27 investments) and biofuels (3 investments) (Land Matrix, 2015). The lower number of biofuel investments support Nelson et al.'s finding that biofuel investments have slowed since 2008 (2012). Usefully, the database separates investments based on the forms they take on the ground. For example, they disaggregate between investments that contract local farmers to produce outputs and investments where investors control and manage the land on a day-to-day basis (Land Matrix, 2015).

National and Local Level Impacts

In Tanzania the impacts of land grabs include risks to domestic food production and food security, the loss of communal and customarily owned land for rural people, the loss of woodlands and wild vegetation, loss of water and water quality, and inadequate compensation and benefits for people who lose land at the local level (Nelson et al., 2012). Moreover, benefits of land grabs have not been adequately assessed against the costs, especially the potential detriment to local communities and the unequal distribution of risk to local communities (Nelson, 2012).

In some land grab cases people at the local level are not consulted prior to an agreement being reached between the Tanzanian government and investors (Vermeulen & Cotula, 2010). In such cases villagers may not find out about land grabs until they are being implemented and their land appropriated. Land grabs occurring without any local level consultation is most common in cases where the land is not classified as village land and thus, even where people are occupying the land in question, the law does not require the consent of local people. Another common instance where local people may not be informed about a land grab agreement is when their land is not directly impacted, but nearby land is grabbed resulting in changes to water access and access to communal lands. For example, the situation described in the introduction whereby water quality was impacted by an upstream investment (Arduineo et al., 2012). Although the land in such instance may not form part of the formal village, local people may still depend on it for their livelihoods. The applicable laws differentiating when consultation with villages is legally required will be further explored in Chapter 4.

When land classified as ‘village’ land is the subject of investment, the law requires that villagers are consulted, are given the opportunity to make representations, and are compensated; a process which will be described in greater detail in Chapter 4. While this process is not always

followed as it is intended, when villagers do agree to giving up land rights they tend to do so for a number of specific reasons. One of the reasons cited is a belief that land grabs will provide stable employment and stable income, and sometimes this potential outcome is considered as compensation for loss of land. In reality, land grabs have not provided the levels of employment that is often promised by investors and host governments. Moreover, many people lose access to customary and communal lands, even where employment occurs for a limited number of villagers (Theting & Brekke, 2010). Furthermore, even where employment opportunities are available, they often pay local people extremely low wages giving them consistent low income instead of their previous inconsistent, but also generally low, income from subsistence farming. It is also risky to give up land in hopes of employment because once land has been transferred through a land grab villagers' land rights are permanently extinguished (Theting & Brekke, 2010).

This chapter briefly described the land grab scenario in Tanzania. At the local level, problems with respect to land grabs include a lack of transparency around investments leaving villagers without adequate information to be able to advocate for their rights to land. Moreover, there are concerns with respect ensuring adequate compensation for local loss of land and with respect to the environmental impacts of large-scale investments. However, at the same time there is increasingly open conversation and demand for government accountability with respect to land grabs from civil society, the media, and from within the government.

Chapter 3: Theory and History of Rural Land Reform in Sub-Saharan Africa

This chapter includes a brief description of the two main schools of thought with respect to land reform. The chapter will also briefly examine types of rural land reform that have occurred in Sub-Saharan Africa since decolonization. Much of this reform has involved formal land titling, but also included varying levels of recognition for and protection of customary and communally held lands. Understanding the ways in which rural land reform has taken place in Sub-Saharan Africa and the actors involved helps explain how the current processes of large-scale rural land acquisitions are being undertaken and the ease with which land acquisitions occur.

Schools of Thought on Land Reform

There are two main schools of thought with respect to land reform for development in Sub-Saharan Africa. The first is a *market-based* or *economic liberalization approach* that advocates for formal land titling and argues that formal land title allows for the creation of formal markets where land can be bought and sold. Alternatively, there is a *rights-based approach* that “seeks to improve, through greater security in land-holdings, people’s capacity to achieve human rights such as the right to food and the right to shelter” (Vermeulen & Cotula, 2010, 900). The two approaches are not mutually exclusive and many reforms to land legislation combine aspects of each approach. The following section will briefly describe the two approaches.

The *market-based approach* to land reform finds some of its greatest proponents in the World Bank and, influential Peruvian economist, Hernando de Soto. In 1975, the World Bank released a “Land Reform Policy Paper” which highlighted the main facets of the *market-based*

approach to land reform as “the desirability of owner-operated family farms; the need for markets to permit land to be transferred to more productive users; and the importance of an egalitarian asset distribution” (Deininger & Binswanger, 1999, 247). Overall, the *market-based approach* emphasizes the provision of formal land title with alienable land rights so that land can be bought and sold as a commodity on formal markets. Moreover, the position holds that formal land markets will encourage large land holdings, which are viewed as more efficient, providing higher returns and benefits for economic growth (Platteau, 1992). The underlying assumptions are that formal markets are the most efficient way to allocate land to people, and that formal land registration allows poor people to participate and invest in a formal market economy using land as collateral to access credit and earn income through the sale of their land (Musembi, 2003). Moreover, de Soto advocates for formalized land title because he argues that land must be “embodied in universally obtainable, standardized instruments of exchange that are registered in a central system governed by legal rule” (de Soto, 2000, 1). In the name of such reform, the Bank offered, starting in the 1970s, governments’ technical assistance and financing for land reform programs, especially for formal land titling (McAuslan, 1998).

However, despite the push for formalized land titling, the reality on the ground has been significantly different. First, the process of formalizing title has been fraught with problems. The proposed (and in many places implemented) reforms neglect to acknowledge the functions of informal land systems already in place in many countries (Musembi, 2003) and they silence conversations about the multiple, complex problems with respect to land and poverty failing to create substantive change for the poor (Tapscott, 2012). Instead formal land titling may lead to an ineffective one-size fits all approach to poverty alleviation through land reform.

Determining who should receive formal land title is not a clear process, as often multiple people use and make claim to the same piece of land, and the process is highly politicized (Goldman & Turner, 2011). Moreover, some land users, such as pastoralists, may rely on a particular piece of land for short times each year and may therefore be completely excluded from the process (Peter, 2007). This further complicates land reform processes often based on racial and ethnic divides (Tapscott, 2012). The reforms also assume that informal land owners, who are usually the poor, have the tools to formalize their rights and maintain control over the land they use in a formalized system under common or civil law (Egbuiwe, 2008). De Soto and those advocating for formal land title also make the assumption that without title “there is no legally recognizable set of rules” to govern peoples access to land (de Soto, 2000, 2). However, this ignores the character of customary regimes which have their own set of rules. Further, legal systems in many Sub-Saharan African countries recognize both common or civil law and customary law (Egbuiwe, 2008, 64).

Customary law gives authority to traditional rules and norms accepted by people at local levels and are the laws that “for the most part affect social and civil life in Africa especially as pertaining to property” (Egbuiwe, 2008, 64). Communities respect their locally established customary laws and they are applied to resolve disputes over issues including land rights (Egbuiwe, 2008). While customary law is imperfect at protecting the poor (as are other systems involving any type of power structures), it is a respected system of law, in place, and with pre-existing checks and balances (Musembi, 2003). As stated, most land in Sub-Saharan Africa is presently held customarily and is often governed by informal customary law (Musembi, 2003). The *market-based approach* to land reform ignores preexisting systems of customary land tenure

and instead attempts to bring all ownership into formal law with formal proof of land title (Musembi, 2003).

The *rights-based approach* to land reform begins from the position that land reform must, as its primary goal, ensure the protection of human rights, including the right to land, as this is essential to achieve goals of development such as poverty reduction (Treakle & Krell, 2014). The approach emphasizes access to land as necessary to achieve “a range of human rights, including access to food, livelihood, and shelter” (Tapscott, 2012, 29). The *rights-based approach* to land reform focusses on ensuring that people have tenure security, that they are confident that their access to and specific use of land is protected from appropriation, and that they feel confident that they will be able to reap rewards of the work they put into the land they use (Tapscott, 2012). The approach assumes that secure tenure increases peoples’ investment in land because they are assured that they will reap the rewards of long-term investments (Tapscott, 2012; Treakle & Krell, 2014). The approach measures tenure security through how much land a group/individual holds, if they are able to exclude others, the various uses they may make of the land, the length of protected tenure they receive, and how the protection of their land tenure is operationalized (Tapscott, 2012).

The *rights-based approach* is contrary to the *market-based approach*’s focus on using individual title supported by formal law to create environments that are attractive to investors thereby increasing investment in land, which is said to be good for development (Tapscott, 2012). Instead the *rights-based approach* prioritizes land reform that helps support poor, marginalized, and land dependent people gain and maintain secure access to land to realize development goals before focusing on issues such as creating formal markets for land or encouraging investments in a country’s land (Treakle & Krell, 2014).

The two approaches are not mutually exclusive. It could be that in some instances formal land title, which may lead to land markets, is one of the strategies used to provide people with adequate tenure security. However, the *rights-based approach* focusses more holistically on the process instead of applying a one-size fits all *market-based approach* to land reform. Many countries land reforms combine both approaches with a central focus on the provision of formal land title. For example, reforms may provide formal land title to people with customary land rights (providing them with increased tenure security), but at the same time the formal title does not give them the right to sell their land of their own volition (i.e. without community consent) or create alienable rights to land (Vermeulen & Cotula, 2010). This provides secure tenure, but also protects village land from outside interests that may, for example, have external impacts on the whole community's land and not just tracts that are purchased. A mixed approach may not create large formal markets in land, as advocated by the *market-based approach*, but creates title that is transferrable within a community and protects customary land rights.

Despite the shortcomings of land reform which emphasizes formal land titling, laws in many Sub-Saharan African countries have been shaped in great part to enable such reform. Many nations changed their land laws in the 1990s to prioritize formal land title and in line with the larger liberalization policies of the time. At the time, international donors and institutions increasingly felt that without guaranteed, formalized land rights and land ownership poor rural land users did not have incentives to invest in farmland or the ability to sell their land to more efficient users (Zoomers, 2010). Zoomers (2010) argues that this liberalization process, by commoditizing land, led to a foreign market for land which has served as a contributing factor to the current land grab trend (Zoomers, 2010). Moreover, countries were encouraged to create private land ownership laws, and there was a global push for increased foreign direct investment

to raise economic development, which lead developing nations to create incentives, such as tax breaks, to attract investors (Zoomers, 2010).

Land Reform

According to estimates, half of the land in Sub-Saharan Africa is governed by customary norms, equal to about 1.8 billion hectares (Alden Wily, 2011), and only 2% of land is held under formal land title (Vermeulen & Cotula, 2010). Most people without formal land title, a majority of rural land users, occupy land under customary law. In other words, for most rural people to access land requires the use of “rights that are acknowledged but not necessarily protected within national law, mediated by customary tenure managed at the local level” (Vermeulen & Cotula, 2010, 905). In general, states’ legal systems tend to have less powerful tools for the protection of customary tenure than formal land title recognized under national legislation (Vermeulen & Cotula, 2010). Generally, poor people have the least access to rights enforcing institutions, such as the courts, and the relationship between customary and formal legal systems “governing their access to entitlements makes the process of recognizing and claiming rights” to land difficult (Cornwall & Nyamu-Musembi, 2004, 1418).

While often viewed and represented as an ancient and outdated form of land holding, customary land holding has adapted and changed over time dependent on communities’ ongoing interpretations and reinterpretations of customary laws with respect to land (Alden Wily, 2011). The norms around customary land holding are “reconstructed by the state” as well as

generationally reinterpreted at the local level in light of current-day realities...As land shortage and commoditization increase, pertinent evolutions have included discernible hardening of the idea of ‘our land’ as ‘our *real property*’ and increasing rigidity of once relatively fluid boundaries between community domains (Alden Wily, 2011, 734).

As described with respect to the *market-based approach* to reform, the concept of customary tenure is being challenged by notions of formal title and land rights under formal laws. These changes and reinterpretations have contributed to the current status of land ownership, rights, and titling projects in Sub-Saharan Africa. Although land use patterns have changed and laws with respect to tenure have undergone reform, Sub-Saharan Africa continues to be organized primarily through customary land holdings (Alden Wily, 2011). However, because of the representation of customary land holdings as outdated, often those who hold land customarily are particularly vulnerable to their land being appropriated.

In addition to customarily held tenure, communally held land is widely prevalent in rural Sub-Saharan Africa and is accessed by a variety of actors. The Food and Agricultural Organization describe communally held land as “a right of commons...where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture” (FAO, 2002, 8).

Land reform has been a highly contentious and much debated issue since most African nations gained independence in the mid-twentieth century. Since decolonization there have been two main waves of land reform. In the 1960s, the United Nations declared the “First Development Decade” following the achievement of independence for many nations; a key aim of the declaration was a focus on land reform (Sikor & Müller, 2009, 1308). Beginning in the 1960s and 1970s, there was a dominant view that customary land holding did not provide security of tenure and without security of tenure productive use of land was not possible (Pedersen, 2012). Land reform efforts thus focused on establishing and regulating formal land title commonly in the form of “state-backed individual property rights, but with little success” (Pedersen, 2012, 270). In addition to these efforts, reforms during these decades also focused on

redistributing ‘unproductive’ plantations and estates, created during colonialism, to local populations (Zoomers, 2010). As countries gained independence and property was transferred to newly independent governments, land was concentrated in the hands of the state. States then allocated it to rural land users through customary law regimes, under which peasants could typically work the land, but not sell it (Zoomers, 2010). In some states such as Zimbabwe and South Africa, this redistribution of land was further complicated by race politics in determining who received land. Overall land reform was intended to reduce poverty, increase agricultural output, and build the power of newly formed states through control over rural areas (Sikor& Müller, 2009).

The reforms described above took off in Sub-Saharan Africa in the 1970s primarily through the government provision of land to customary land users who lacked formal title. Land reform, including formal land titling, designed to raise agricultural productivity, was emphasized for Asian and South America countries in the 1950s and 1960s with the World Bank as a major proponent. However, Sub-Saharan Africa, viewed as land rich, was mainly left out of these initial projects (Platteau, 1992). Around 1975, the World Bank began to view land reform as a means for poverty alleviation and a connection was drawn between access to land and economic development (Platteau, 1992). Many development scholars agree that there is a link between access to land, poverty alleviation, and improving equity among rural peoples in developing countries. However, the precise nature of the relationship, as well as the best way to address the relationship for poverty reduction and equity outcomes is hotly contested among scholars.

The second wave of land reform began in the 1980s and was more comprehensive in its reforms. It no longer focused on transferring land to landless people and smallholders, but has been often viewed as providing broad reforms including “land registration, consolidated of

fragmented holdings, tenancy improvement, and land taxation in addition to redistribution” (Sikor& Müller, 2009, 1308). Generally the reforms focused on registration, titling, creating markets in land, and decentralizing the administration of land to local government (Pedersen, 2012). This wave has, in many countries, played out through a focus on decentralizing land administration through simplifying tenure systems with a combination of “precolonial informal practices, colonial land policies enhancing large-scale farming, and postcolonial, state-led redistribution programmes” (Pedersen, 2012, 270). Thus the second wave of reform was more flexible in integrating a variety of land tenure systems and historical changes to land ownership.

This chapter demonstrates the complexity surrounding land reform processes and the balancing act that must take place to recognize and protect multiple interests in, often the same piece of, land. Land reform must occur with attention to the various types of land holding and regulation that exist among land users, including through informal and formal laws, customary land holding, and communal land rights. Often approaches to land reform mix different models of providing tenure security, for example recognizing customary land holdings as equal to statutorily granted land title to protect customary land holders’ interests in land in a system that prioritizes formal title. Ultimately, no one approach is best, but likely the most effective forms of land reform aim to provide vulnerable people with secure land access through flexible and pragmatic approaches designed to protect their rights in the face of changing patterns of land use and investment.

Chapter 4: Analysis: Tanzanian Land Reform, the Law, and Large-Scale Land Acquisition

The question driving this chapter is how Tanzanian law applies to large-scale land acquisitions. More specifically, if the laws were sufficiently implemented, are the laws adequate to ensure that customary land rights of small-scale land users and communal land rights are protected in the face of land grabs?

As described in the previous chapter, many African states have undergone a number of phases of land reform since decolonization. The most recent phase of reform occurred throughout the 1990s with many states focusing on decentralizing the administration of land tenure (Alden Wily, 2003; Pedersen, 2012). Many states changed laws to better recognize customary rights to land, though most are still struggling to substantively promote customary land rights, while others have intentionally eroded customary land rights as a way to ease large-scale land investments (Alden Wily, 2003).

Alden Wily (2003) argues that, compared to other states, mainland Tanzania has had an advantage in its process of decentralizing land administration because the country has pre-existing village level governments, which came about under President Nyerere's "villagization" program. Consequently, Tanzania is not required to newly create institutions to administer land at the local level. In addition to decentralizing the administration of land, the reform in Tanzania also focusses on promoting the registration and titling of land, including providing customary land users with formal rights of occupancy (a type of title) (Pedersen, 2011). Under the law, land reform in rural areas is supposed to take place with village level institutions as the driving force (Pedersen, 2011).

Land Reform in Tanzania

Tanzania is viewed as having one of the most progressive land tenure reforms in Sub-Saharan Africa because its *Land Act, 1999* and *Village Land Act, 1999* legally recognize customary and communal land rights (Nelson, Sulle, & Lekaita, 2012).

In the late 1800s, present day Tanzania was under German colonial rule. Under German rule all land for which private ownership could not be proven was vested in the German Empire (Velt, 2010; Hayuma & Conning, 2004). Evidence of continual land use had to be provided for private ownership of land (Velt, 2010; Hayuma & Conning, 2004). On the ground this meant that “only settlers engaged in plantation agriculture such as sisal, coffee, rubber and cotton...could prove their title and enjoy security of tenure” (Hayuma & Conning, 2004, 1). As a result, 1.3 million hectares of land were appropriated from local people during this time and given to settlers (Velt, 2010; Hayuma & Conning, 2004). Settlers were provided grants to land, especially in the north and along the coast (Velt, 2010). Local people were left with customary rights to occupy land, but were not given formal title or tenure security (Hayuma & Conning, 2004).

Following World War I, present day Tanzania became a trust territory under the authority of the British who were to govern the country respecting local law around the “holding or transfer of land or natural resources and to respect the rights and safeguard the interests present and future of the native population” (Hayuma & Conning, 2004, 1). Land could not be transferred to settlers without permission from authorities (Hayuma & Conning, 2004).

The British created the *Land Ordinance 1923*, which declared all land public unless title in land was acquired according to formal law prior to 1923 (*Land Ordinance, 1923, s.2*). Land was vested in the hands of the Governor for the public interest (*Land Ordinance, 1923, s. 3*). At this time a right of occupancy land system was created whereby people could obtain granted or deemed rights to land (Coldham, 1995; Hayuma & Conning, 2004). “Granted rights of

occupancy” were recognized under formal statute whereas “deemed rights” were recognized under customary law, which at the time meant that if a “native” Tanzania or “native” community was using land as per “native law and custom” they held customary land rights (Hayuma & Conning, 2004, 1). The “deemed rights” did not in practice provide the same security of tenure as the “granted” or statutory rights (Hayuma & Conning, 2004). Below, will discuss how the right of occupancy system has been strengthened, albeit somewhat adapted, under the *Land Acts*, 1999 with an effort to make granted and deemed rights of occupancy equal. Moreover, despite the stated purpose of the *Land Ordinance*, 1923 and the British administration’s stated role in Tanzania, 3.5 million acres of land in Tanzania were appropriated for settlers while under British administration (Hayuma & Conning, 2004).

The approach to land created under the British administration’s *Land Ordinance*, 1923 was adopted when Tanzania (or Tanganyika as it then was) gained independence in 1961 (Coldham, 1995; Hayuma & Conning, 2004). At the time of independence almost all land was occupied under a right of occupancy; 2% through granted rights of occupancy and the rest through deemed rights of occupancy (Coldham, 1995). Moreover, all land was vested in the President with customary land tenure providing occupants with land rights as long as they used land productively (Hayuma & Conning, 2004).

Post-independence, Tanzania was under the rule of President Nyerere’s socialist government from 1964 until 1984. President Nyerere centralized Tanzania’s land administration (Nelson et al., 2012). In 1967, the government began a “villagization” program to encourage and force people to live in villages and collectively work the land (Coldham, 1995). The goal behind the program was to make it easier to serve rural populations concentrated in villages and to create opportunities for large-scale farming (Coldham, 1995). Under this program, around 5

million rural land users were relocated voluntarily and by force into villages “without reference to existing customary rights to lands as recognized by existing statute” (Nelson et al., 2012, 4). Relocation resulted in the type of ownership land users possessed and over what areas to become increasingly unclear (Nelson et al., 2012). The government also began to seize and nationalize land for agricultural production and state-owned corporations (Nelson et al., 2012). Generally, under Nyerere’s socialist rule, large-scale private ownership of land was forbidden, however some exceptions were made for particular private investors (Nelson et al., 2012). For example an individual farmer was given 153,000 hectares in the north of Tanzania on land used by pastoralists and the ownership of this land is contested to the present day (Nelson et al., 2012).

During the 1970s, rural land was governed by customary land rights, however, as stated, the mass relocation of people and land reforms meant that customary land systems became “ineffective in providing security of tenure to ensure productive use of land” (Pedersen, 2012, 270). As a response, land reform became focused on providing formal rights to land but as “state-based individual property rights” (Pedersen, 2012, 270). This meant that people had individual rights to productively use a piece of land, but that they could not sell or transfer the land. At the same time, as in many other nations, much land reform focused on the redistribution of lands as a form of post-independence restitution (Pedersen, 2012).

In the mid-1980s, as Tanzania’s economy collapsed and President Nyerere lost power, the country’s socialist policies were dropped and the economy was opened up through the liberalization of borders and emphasis on foreign direct investment. In 1985, President Mwinyi was elected and Tanzania began to adopt liberalization policies (Nelson et al., 2012). These policy changes “had profound implications for land tenure and ownership setting off the first...period of land grabbing in the post-independence era” (Nelson et al., 2012, 4). New

policies aimed to encourage large-scale land investments in place of customary subsistence and small-scale farming (Pedersen, 2011; Pedersen, 2012; Nelson et al., 2012) and reduce land conflict through clearer land title (Pedersen, 2011; Pedersen, 2012). Moreover the policies focused on registration and titling, creating markets in land, and decentralizing land administration to local levels (Pedersen, 2012). As well, foreign investments were pursued by the government and land was increasingly privatized, in part because of structural adjustment programs pushing for liberalized borders, privatization, and markets in land (Pallotti, 2008). Moreover, public officials began to invest privately, something that had been mostly forbidden under President Nyerere. The ability for public officials to hold private investments created a large amount of crossover between public office and domestic private investors (Nelson et al., 2012). Therefore, much of the land grabbing in the late 1980s was undertaken by local elites (Nelson et al., 2012).

In the 1990s, following the negative impacts of structural adjustment programs and the accompanying privatization of land, there was an outcry with respect to the treatment of land in the country and as a response the Presidential Commission of Enquiry on Land Matters was created in 1991-1992 (Nelson et al., 2012). The Commission produced a policy document of recommendations for land reform and was a key resource for the creation of the land laws that were drafted in 1999 and took effect in 2001. At the same time, local groups were also calling for change due to ongoing conflict over land (Pedersen, 2011). By the 1990s, conflict was most pronounced in urban areas where the greatest demand for land was occurring and as a result it became common practice in urban areas to require written proof of land ownership (Pedersen, 2011). However, rural areas were also experiencing increasing land pressures and demanded some form of land registration (Pedersen, 2011).

During the debate around reforming land law there was a large amount of campaigning and input from civil society organizations, activists and other groups challenging the governments land reform process (Nelson et al., 2012). This was the first time citizen groups, non-state owned media, and the opposition party was able to be actively involved in a government process and was thanks to the opening up of Tanzania's political environment post Nyerere's presidency (Nelson et al., 2012). Thus (while the liberalization and privatization of land may have negatively impacted the poor), the post-Nyerere government's more open policies also provided Tanzanian civil society the opportunity to and a platform to challenge government policies and be part of reform processes.

The final outcome of the Commission and land reform process was the creation of the *Land Act*, 1999 and the *Village Land Act*, 1999. However, the Acts did not fully implement the Commission's recommendations or the recommendations from other stakeholders. For example, the Commission recommended divesting control over land from the President, but the government did not want to implement this recommendation because they were concerned about ensuring land availability for investment and wanted ultimate authority over land in the hands of the central government (Makwarimba & Ngowi, 2012). However, some recommendations were adopted, especially with respect to the formal recognition and protection of communal and customary land rights in the *Village Land Act* (Nelson et al., 2012). In fact, the *Village Land Act* importantly provides that customary rights of occupancy have equal status with granted rights of occupancy (*VLA*, s. 18(1)). Thus, at least formally, the Acts remove the distinction, created under the *Land Ordinance* 1923, between holding a certificate of customary occupancy and a certificate of granted occupancy. Overall, the New Land Acts are viewed as neither creating new

types of land tenure nor aiming to redistribute land, instead they are designed to strengthen and clarify existing rights divided between different categories of land holding (Pedersen, 2012).

The *VLA* itself is viewed by some as a reaction to local level demands for land services (Pedersen, 2011; Pedersen, 2012). People responded to the post-Nyerere commencement of large-scale land investments by demanding privatized land rights through individual land title for customary rights of occupancy (Pedersen, 2011). There are a variety of explanations for the coming about and content of the 1999 land reform in Tanzania. Some scholars point to it as the government's reaction to increasing land conflicts in the late 1980s that occurred as a result of increasing land pressures, urban migration, and increased investments in land (Pedersen, 2012; Velt, 2010; Makwarimba & Ngowi, 2012). Moreover, it is also viewed as a means to "facilitate economic liberalization", for example through its maintenance of the status quo with respect to vesting all land in the President allowing for the central government to control foreign investment decisions (Makwarimba & Ngowi, 2012, 16). Others argue that the reforms are part of a greater demand for "land administration services caused by a greater demand for land" (Pedersen, 2012, 272). While local people demanded for land services in an effort to have greater protection of land rights some of the criticisms of the new land acts are with respect to how they set out land service delivery at the local level. Critics argue that the reforms are an "intrusion into local traditions of land management" and are overly complex, actually detracting from local systems that may effectively manage land and undermine different forms of customary law with respect to land (Pedersen, 2012, 270).

The Village Land Act, 1999

Tanzania's *Village Land Act*, 1999, was a product of land reform discussions in the 1990s that culminated in the creation of the *Land Act*, 1999 and the *Village Land Act*, 1999. These Acts

came into force in May 2001. Section 4 of the *Land Act*, 1999 provides for three categories of land in Tanzania, which are described below. Moreover, all land is ultimately vested in the authority of the President and is under the control of the Ministry of Lands, Housing and Urban Settlements with the Commissioner for Lands as the responsible office under the Ministry (*Land Act*, 1999, Part III s. 4; Makwarimba & Ngowi, 2012). The three categories of land are:

- **General Land:** The definition section of the *Land Act*, 1999 defines ‘general land’ as “all public land which is not reserved land or village land”. General land includes unoccupied and unused village land (Velt, 2010; Makwarimba & Ngowi, 2012). General land makes up 2% of Tanzania’s land mass, primarily in urban areas (Velt, 2010; Makwarimba & Ngowi, 2012). General land is governed by the *Land Act*, 1999. General land is the only category of land that may be leased to foreigners (Deng et al., 2010).
- **Village Land:** The definition section of the *Land Act*, 1999 defines village land as “land declared to be village land under and in accordance with section 4 of this Act and includes any transfer land transferred to a village”. Moreover, the *Village Land Act*, 1999 defines village land as “land declared to be village land under section 7 of this Act and includes any transfer or land transferred to a village”³. Village land is administered by

³ Section 7 of the Village Land Act, 1999 states “7(1) Village land shall consist of (a) land within the boundaries of a village registered in accordance with the provisions of section 22 of the Local Government (District Authorities) Acts 1982 (b) land designated as village land under the Land Tenure (Village Settlements) Act, 1965; (c) land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act comes into operation whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania whether that demarcation has been formally approved or gazetted or not; (d) land, the boundaries of which have been agreed upon between the village council claiming jurisdiction over that land and (i) where the land surrounding contiguous to that village is village land, the village councils of the contiguous village; (ii) where the land surrounding or contiguous to that village is general land, the Commissioner; or (iii) where the land surrounding or contiguous to that village is reserved land, the official or public organization for the time being responsible for that reserved land; or (iv) where the land which is claimed as a part of the land of, or is surrounding or contiguous to, that village is land which has been declared to be urban land or peri-urban land, the local authority having jurisdiction over that urban land or peri-urban land; or (v) where the land which is claimed as a part of the land of or is surrounding or continuous to, that village is land which is occupied and used by a person or body –under a right of occupancy, that person or body; (e) land, other than reserved land, which the villages have been, during the twelve

elected Village Councils. Village land constitutes 70% of Tanzania's land and supports 80% of Tanzania's population (Velt, 2010; Makwarimba & Ngowi, 2012). As described in the footnote there are several forms of village land. Velt (2010) summarizes the types of village land as:

- Land within the boundaries of registered villages.
- "Land of a given village according to agreement between the village and its neighbours" (Velt, 2010, 5).
- Land which villages have used or occupied for no less than 12 years prior to the enactment of the *VLA* (Part IV, s.7). However, if this is communal land, in practice it must be identified in the village's land use management plan or it will not be considered village land and as such could be invested in as general land without the legal obligation to go through the land transfer process/village consultation pursuant to the *VLA* (Velt, 2010).
- **Reserved Land:** Section 6 of the *Land Act*, 1999 defines reserved land⁴. It includes national parks, marine parks, hazardous land, and land reserved for public use for utilities and roads. Reserved land constitutes 28% of Tanzania's land mass (Velt, 2010; Makwarimba & Ngowi, 2012). The Commissioner for Lands is responsible for the administration of reserved land (*Land Act*; Velt, 2010; Makwarimba & Ngowi, 2012).

years preceding the enactment of this Act regularly occupying and using as village land, in whatever manner such persons or the village assembly or village council were allocated such land including land- (i) lying fallow at any time during the said preceding twelve years; (ii) used for depasturing cattle belonging to villages or to persons using that land with the agreement of the villages or in accordance with customary law; land customarily (iii) land customarily used for passage or land used for depasturing cattle."

⁴ Section 6(1) of the *Land Act*, 1999 states "(a) Reserved land is land set aside under provisions of: (i) Forest Ordinance; (ii) National Parks Ordinance; (iii) Ngorongoro Conservation Area ordinance (iv) Wildlife Conservation Act, 1994; (v) The Marine parks and Reserves Act, 1994; (vi) Town and country planning ordinance; (vii) Highway ordinance; (viii) Public Recreation Grounds ordinance; (ix) Land Acquisition Act, 1967; (b) land parcel within a natural drainage system from which water resource the concerned drainage basin originates: (c) land reserved for; public utilities (d) land, declared by order of the Minister; in accordance with the provisions of this Act to, be hazardous land."

The President has the power to transfer land between these categories (Makwarimba & Ngowi, 2012; Nelson et al., 2012; Deng et al., 2010). Foreign investors are forbidden from owning land outright, however, they can lease land for investments, but the land must be classified as general land. Foreign investors lease general land through a “granted right of occupancy” recognized through derivative titles that are issued by the Tanzania Investment Centre” (Deng et al., 2010, 26). If the President wants to have village land transferred to general land for foreign investment he must follow the process set out in the *VLA* (*VLA*, Part III, s.4; Deng et al., 2010).

Tanzania’s *Village Land Act*, 1999 has broadened the powers and authority of already existing land administration processes in place at the local level in Tanzania. “The founding element of [the system] is an integrated social and spatial construct of discrete ‘village areas’, each community exercising jurisdiction over its own areas, an area that generally includes not only settlements and farms but communal areas” (Alden Wily, 2003, 3). The *VLA* provides for land to be administered by already existing Village Councils. Village Councils are elected every five years with the power to enact bylaws and administer and manage land in their village (Wily, 2003). Overall, Tanzania has about 11,000 villages (Alden Wily, 2003; Velt, 2010).

The general process by which foreign investors can lease land in Tanzania is as follows: If the land foreign investors want is village land, the land must be transferred to general land (*VLA*, Part III, s. 4; Nelson et al., 2012; Deng et al., 2010). In order to have village land transferred to general land investors meet with the Village Council responsible for the land (*VLA*, Part III, s.4). The Village Council and investors together send an investment plan proposal to the District Council Land Committee for approval. Then the Village Assembly, consisting of all villagers over 18 years of age, vote on whether they permit the President to reclassify the land to general land so as to make it available for foreign investment (*VLA*, Part III, s. 4; Deng et al.,

2010). However, for large tracts of land over 250 hectares, the President can approve a transfer despite the opposition of the village (*VLA*, Part III, s. 4). If the investment goes forward, the village is entitled to receive compensation from the government prior to the transfer to general land and the compensation is to be determined through negotiations with the Commissioner of Lands (*VLA*, Part III, s. 4(7); Nelson et al., 2012). However, how to determine the appropriate level of compensation is not clear in the law, as will be examined below. Traditionally, people are provided with compensation equivalent to the improvements they made to the land, including buildings and tree planting, but not for the land itself (Deng et al., 2010). Moreover, sometimes a promise of employment from the investment is viewed as a type of compensation (Deng et al., 2010). After compensation has been provided the land classification is changed from village land to general land and investors no longer need to comply with the *VLA* to proceed with their development of the land. However, investors may still be subject to other legislation.

While the above describes the general process of how land is to be transferred to general land for foreign investment purposes it is uncommon that the process is followed in this manner. Often the Act is not adequately implemented, village plans are not drawn up, and laws are circumscribed (Pedersen, 2011). Moreover, the *VLA* interacts with other legislation, in particular the *Land Act*, 1999, the *Tanzania Investment Act*, and the *Land Amendment Act*, 2004. These Acts will not be examined in this paper as the focus is on the role of the *VLA*, but future research should look at how the Acts operate together.

As stated above, the formal process for land grabbing in Tanzania varies depending on if investors are foreign or domestic. Moreover, if land is already classified as general land it is common for investors to acquire the land through the Tanzania Investment Centre and the process is not governed by the *VLA* (Theting & Brekke, 2010). In this case, the process of

acquiring general land goes through the central government usually with the assistance of the Tanzanian Investment Centre (Theting & Brekke, 2010). The analysis below focusses on the regulation of large-scale (over 250 hectares) foreign investment on village land.

Village Councils are also supposed to create Village Land Use Plans which are necessary for villages to receive land certificates nationally, which is the central government's recognition of the boundaries of villages (*VLA*, Part IV, ss. 7, 13; Deng et al., 2010). Village Land Use Plans are essential to protect villages' communal lands and lands that are village land but not yet further delineated with respect to usage. Without a plan and certificate communal lands and other lands that are yet to be provided to villagers will not be formally classified as village land. Therefore, if this process is not complete and communal land is thus not yet allocated as general land it is easier for the government to classify communal land as general land. Such a classification then leaves people using this communal land with no rights in the land including no rights to be consulted prior to land investments. While the loss of the right to consultation and compensation occurs when communal land is not classified as village land, very few village management plans have been created to date and thus little communal land has been classified as village land (Deng et al., 2010).

In the context of land grabs, the most important role of the *VLA* is arguably providing people with Certificates of Customary Rights of Occupancy (CCRO) as defined under Section 2 of the Act. A CCRO is a land holding certificate for a person or group whereby they meet the Acts' criteria for holding land under customary law or the village council has granted them rights in land (*VLA*, s. 2; Velt, 2010; Makwarimba & Ngowi, 2012). CCROs recognize customary land rights as legally equivalent to other forms of individual land holding.

This section describes and analyzes the *VLA* in the context of foreign land grabs over 250 hectares. Section 3(1) of the *VLA* provides the objectives of both the *VLA* and the *Land Act, 1999*⁵. The fundamental principles of the *VLA* demonstrate the importance the government has placed on land being administered and distributed in a way that recognizes the land rights of all Tanzanians. Of particular interest are principles (e) through (l) which prescribe that attention must be paid to how much land any one entity can possess, how land is used, places value on land, ensures compensation for people who lose access to land, and provides for involving all Tanzanians in decision-making with respect to land. These are laudable principles and with substantive laws and implementation to reinforce them they have the potential to increase the likelihood that land grabs will benefit more Tanzanians. Moreover, with enforcement they may help prevent the undertaking of land grabs that will not benefit local people, increase

⁵“The fundamental principles of National Land Policy which are objectives of the Land Act, 1999 to which persons exercising power under, applying or interpreting this Act are to have regard to are

- (a) to make sure that there is established an independent, expeditious and just system for adjudication of land disputes which will hear and determine land disputes without undue delay;
- (b) to recognize that all Land in Tanzania is public vested in the President as trustee on behalf of all citizens;
- (c) to ensure that existing rights in and recognized longstanding occupation or use of Land are clarified and secured by the law;
- (d) to facilitate an equitable distribution of and access to land by all citizens
- (e) to regulate the amount of land that any person or corporate body may occupy or use;
- (f) to ensure that land is used productively and that any such use complies with the principles of sustainable development
- (g) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;
- (h) to pay full, fair and prompt compensation to any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act, 1967
- (i) to provide for an efficient, effective, economical and transparent system of Land administration;
- (j) to enable all citizens to participate in decision making on matters connected with their occupation or use of land;
- (k) to facilitate the operation of a market in Land;
- (l) regulate the operation of a market in Land so as to ensure that rural and urban small-holders pastoralists are not disadvantaged;
- (m) to set out rules of Land Law accessibly in a manner which can be readily understood by all citizens;
- (n) to establish an independent, expeditious and just system for the adjudication of Land disputes which will hear and determine cases without undue delay;
- (o) to encourage the dissemination of information about land administration and Land Law as provided for by this Act through programmes of public and adult education, using all forms of media” (*VLA*, s. 3(1)).

transparency around land grabs, and reduce the number of Tanzanians losing access to land or being left without adequate compensation in the face of land grabs.

However, while the principles of the *VLA* draw attention to addressing many of the issues that land grabs present, the body of the Act provides little with respect to ensuring that the principles under section 3 are substantively enshrined in the Act.

Consultation

Section 4 of the Act vests power in the President to change the categorization of land from village land to general or reserved land if it is in the public interest. The public interest, according to section 4(2), includes investments in the country. However, in order to transfer land between categories the Minister for Lands, as the President's representative, must, pursuant to section 4(3), announce the plans for the land transfer and provide information to the impacted village's Village Council. Information behind the proposed land transfer, which must be disclosed, includes the precise location of the land to be transferred, the amount of land, why the land is being transferred, and when the transfer will occur. Moreover, section 4 provides for people impacted by such a transfer, i.e. holding customary rights of occupancy or granted rights to the land, to make representations to the Land Commissioner about the proposed land, transfer. Furthermore, where the proposed land transfer is of more than 250 hectares of land s. 4(7) provides that "the Minister shall, after considering any recommendations made by the village assembly through the Village Council, district council and any representations on the matter made by the village and district councils of the area where the land is situated, by resolution signify his approval or refusal to approve the proposed transfer." This means that the Minister, as a representative of the President, must consider the input from the local community with respect

to the investment. Moreover, the Land Commissioner or a representative must meet with the village council to address reasons for the transfer and answer questions pursuant to s. 4(7).

However, specifically for land over 250 hectares, while village councils must be consulted and have the right to make representations, the President has the power to transfer land of more than 250 hectares unanimously pursuant to s. 4(6)(b). Thus, the *VLA* does not prevent land transfers for land grabs. This is not surprising as many nations' property laws allow land to be appropriated if it is in public interest. The process for such appropriation and what constitutes the public interest varies from place to place and, as mentioned, in Tanzania includes investments. However, while the Act does not provide village councils and villagers the authority to stop land transfers for land grabs, it does mandate more transparency in the process. It mandates that people must be informed of land transfer intentions, provided reasons for them pursuant to s. 4(3)(c), and gives people the right to provide feedback on the proposed transfer. Moreover, it sets a minimum period of 90 days' notice prior to any land transfer (S4 (3) (d)), which allows for community mobilization in opposition to such a transfer if they desire. The *VLA* also demands that the government publish the plans in the government Gazette, a publicly accessible record of government action (*VLA*, s. 4(3)).

While the *VLA* thus demands for transparency, accountability, and consultation with respect to land transfer, large-scale land transfer decisions remain in the hands of the President. Alden Wily (2003) believes there is no clear explanation for why a Village Assembly does not have the power to approve or reject investments of more than 250 hectares under section 4(6). Sundet (2005) adds that "it is striking that the Village Assembly appears to have been given less say in the decision on very large transfers, than in transfers below 250 hectares" (7). While the Act does not provide a requirement of villagers consent for land transfers for the purpose of land

grabs (over 250 hectares), it does provide for greater transparency in the process, and the participation of villagers. Without legislative demands for transparency that are enforced “it is almost impossible for the public to access information about investments...and for stakeholders to be able to respond to challenges and opportunities that such investments may present” (Makwarimba & Ngowi, 2012, 3). Thus the *VLA* in an indirect way provides some power at the village level to stop some land grabs by giving villagers more ways to hold the government accountable through increased public knowledge and participation in the land transfer process.

Alternatively, for the transfer of less than 250 hectares of land, the village assembly has the right to refuse or approve the transfer pursuant to S4(6)(a). However, since land grabs are at least 200 hectares they typically fall under S4(6)(b).

Makwarimba and Ngowi (2012) highlight the weakness of the Act with respect to land transfers of more than 250 ha, pointing out that being issued a CCRO does not provide any concrete “security and/or benefits in the face of land acquisition for investment” (2). Under the power vested in the President land can be appropriated for the public interest including for investment and it commonly occurs when “suitable land for a foreign investment has been identified on village land” (Makwarimba & Ngowi, 2012, 2).

Compensation

The *VLA* mandates that land transfers from village land to general land must not go forward until an agreement with respect to compensation has been reached between the Village Council and Land Commissioner pursuant to section 4(8). If an agreement cannot be reached the High Court of Tanzania can issue an interim measure under section 4(8). Thus the Act provides for compensation for village land users. However, it does not provide any factors on which compensation should be based leaving it up to villages to negotiate with the Land Commissioner

or for the courts to determine. Moreover, there is no provision for providing Village Councils with help should matters go to court. This means that while compensation is required pursuant to the *VLA*, there is no recognition of the vulnerability of village land users in fighting for adequate compensation or provisions to ensure they substantively receive adequate compensation. A formula for determining compensation is left out of the Act and instead is left to the realm of the Land Commissioner, the Village Council, and the Tanzanian courts. According to Sundet (2005) this is an improvement from prior land laws, which did not insist on compensation. However, the provisions are still troublingly vague.

In situations where compensation matters are decided by the High Court, it is problematic that there is no legislative criteria for determining compensation and no criteria for the provision of representation on behalf of villagers. Tanzanian courts tend to rule in favour of land investors over the interests of village land users. In fact, Askew et al. argue that overall “Tanzanian courts are being employed as a vehicle for ‘legitimizing dispossession’” (2013, 123). The protective provisions of the *VLA* are being overridden by elites who want large areas of land and are going to court to override provisions in the Act (Askew et al., 2013). The elites, including the government, have “deeper pockets and [the ability] to outlawyer and out maneuver via legal technicalities their poorer and often less educated opponents...to avail themselves of the judicial system and acquire land through illegitimate means” (Askew et al., 2013, 123). This further emphasizes the importance of the *VLA* not only in formalizing rights to compensation, but providing for the way that compensation is measured and/or for legal assistance to villagers for pursuing compensation in court to level the playing field.

In addition, the *VLA* only narrowly contemplates the compensation process as requiring financial compensation. However, in actuality people may also require the provision of new land

for resettlement. The processes of both resettlement and compensation have been highly criticized as lacking transparency (Makwarimba & Ngowi, 2012). Thus another way to bring more attention to the issue of compensation is to make the process more public and transparent and have more active engagement of civil society organizations and the media in the process.

Communal Land

Beyond the transfer of land from village land to general land, another area of concern with respect to the *VLA* and land grabs is the Act's governance of communal lands. The *VLA* permits communal lands to be classified as village land and thus governed by the procedure outlined in the *VLA* if a proposal is made to transfer the land to general land. However, in order for the village to have authority over communal lands they must have the land classified as village land through a Village Land Use Plan (*VLA*, Part IV, s.13). If a Village Land Use Plan is not created and registered nationally the land is classified as general land and can therefore be appropriated without following the procedures set out under section 4 of the *VLA*. Thus, it is essential to understand the process for classifying communal land as village land.

Section 13 of the *VLA* provides for village councils to “recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes”. First, however, the communal land must be classified as village land. Land that is recognized as village land must be registered with the village council pursuant to s13(6). The *VLA* does not provide a clear process for villages to make claim to general land that has been used as communal land except in the case where more than one village is claiming village land rights to the same piece of communal land. The problem with this is that without a Village Management Plan that makes claim to communal land, communal land may be classified as

general land and invested in without any consultation or compensation of villagers who depend on the land.

Section 7 of the Act defines communal land as land that was used by villagers prior to the enactment of the *VLA* and land being used by village people at the time of the enactment. This takes into account the history of land reform in Tanzania and programs such as forced relocation during “villagization” programs. Moreover, the Act provides for how villages determine village boundaries based on the classification of neighbouring land pursuant to s7(1)(d). For example, if village land borders general land then an agreement regarding village boundaries is made between the Commissioner for Lands and the village council. If village land borders another village’s land then an agreement is made between the neighbouring villages’ councils (S7(1)(d)).

With respect to communal land, the Act states under section 7(1)(d), that communal land that can be classified as village land includes land that was used for pasturing cattle. Pastoral land is some of the most vulnerable to foreign investment because it has more easily been represented as barren in the past (Peter, 2007), so the recognition of pastoral land as land that should be classified as village land and thus protected by the process in the *VLA* is an important step in protecting all rural land users’ rights. However, the problem is that while village councils have the right to claim communal lands the operationalization of this through the creation of Village Management Plans, is not clearly provided for in the Act. When rights over communal land are not clearly registered the land is easily represented as, or actually classified as, general land making it susceptible to land grabs without any adherence to the *VLA*.

The *VLA* thus does not provide clear mechanisms or a clear process to ensure communal lands are classified as village land. However, the *VLA* provides detailed directions for the management of village land for people with or wanting certificates of customary occupancy

(CCRO) or granted rights of occupancy for individual title, including the provision of CCROs for land users, and how to determine if someone is a customary land user. Some important aspects of the Act are the recognition of pastoral land use as productive use of land and the eligibility of pastoralists for individual CCROs under section 7(ii) (7) (d). The eligibility of pastoralists for individual CCROs might provide a pragmatic way around the difficulty in having their communal land classified as village land. This approach is further emphasized below.

The weaker, and somewhat nonexistent, provisions for the protection of communal land (as opposed to individual customary land) pursuant to the *VLA* is made clear through the actions of pastoral communities in Kiteto District who tried to protect pastoral grazing lands as communal land through land use plans (Pedersen, 2011). However, the community found that “pressure on land was too high and land was being grabbed” so they responded by providing individual titling instead of maintaining the communal land status (Pedersen, 2011, 2). The overall complex and uncomprehensive process under the *VLA* for creating land use plans to classify communal land as village land has left communal land more susceptible to land grabs because of the ease with which it can be classified as general land skipping all the requirements for land transfers under the *VLA*.

Extinguished Land Rights

Another aspect of land grabs that the *VLA* does not provide for is how and if land can be reacquired by a village following land grabs or if a land grab deal is not implemented. In other words the Act does not specify if land that was transferred from village land to general land for an investment can be transferred back to village land if the investment fails. The fact that the *VLA* is silent on recovering such land suggests that once the land has been transferred the village’s rights to it are extinguished. It is unclear if villagers could reacquire rights if they

reoccupied land that was classified as general land post failed land investments for the 12 years that it takes to have customary interest in land (*VLA*, Part IV, s.7). However, at this time it seems that the land remains classified as general land and under the authority of the Tanzania Investment Centre, who will add it to their roster of land available for investment (Theting & Brekke, 2010; Nelson et al., 2012).

Moreover, a problem with the silence in the *VLA* with respect to reacquiring land resulting in what seems to be the permanent extinguishment of claims to transferred land is that villagers lose rights to the land regardless of what happens with the investment (Nelson et al., 2012). This means that even where an investment fails and villagers do not get the benefits they expected, such as employment, they will not regain land rights and instead the land will revert to the Tanzanian Investment Centre as general land available for investment (Theting & Brekke, 2010; Nelson et al., 2012). This is especially problematic when villagers willfully give up their land in hopes of investments that would bring employment and other benefits to their communities and where people may have accepted low levels of compensation because of promises of employment. Even when investments fail and employment does not materialize villagers do not get their land back.

Tanzanian Investment Act

In addition to the *VLA*, the Tanzanian Investment Act plays a large role in large-scale acquisition of land in the country, especially by foreign investors. Under the Tanzanian Investment Act, 1999, the Tanzanian Investment Centre was created and given the power, through the Land Bank Scheme, to identify land suitable for investment (Makwarimba & Ngowi, 2012). The Centre eases the work of investors looking for agricultural land as well as land for tourism, manufacturing, commercial buildings, and creating rental property (Makwarimba &

Ngowi, 2012). By 2005, 2.5 million hectares of suitable land had been identified by the Tanzanian Investment Centre, but records show that only 50,000 hectares were leased/sold to foreign investors from 2004 to 2009 (Makwarimba & Ngowi, 2012). The Land Bank Scheme has mostly been unsuccessful at linking land investors to available land because not enough land has been made available under the scheme and the land that has been identified tends to be small, scattered parcels (Makwarimba & Ngowi, 2012). Moreover, the Centre has a backlog of investors applications with only 270 of 4200 applications registered (Makwarimba & Ngowi, 2012). This has left many investors looking to lease village lands instead of the general land that has already been preselected and as such increasingly leads to the requirement of the transfer of village land.

Overall Assessment of the VLA

Scholars have conflicting ideas with respect to the effectiveness of the *VLA* and other recent land reforms in Tanzania. Generally, countries with the worst levels of state protection of land also have the highest amount of foreign investment in land (Hall, R, 2011). While I have not compared Tanzania's *VLA* to other states' land protection, the academic literature suggests that in comparison to other states in Sub-Saharan Africa, Tanzania's *VLA* affords people with a greater degree of say and transparency in how land grabs take place. That being said, the law on the books is not being adequately implemented.

As we saw, there are a number of concerns with respect to land grabs in Tanzania including environmental impacts, the appropriation of local land, and poor levels of compensation for land loss. The analysis of the *VLA* shows that Tanzania's laws recognize customary land rights as legally having the same status as formal land rights. The legal regime provides that local land users are to be given information and consulted in the face of prospective

foreign land investments. Moreover, the *VLA* provides that local land users are to be compensated for loss of land. At the same time, while the law on the books provides for greater involvement and transparency at the village level within the foreign land grab process, there are still problems with the law not going far enough to protect local resource users.

Ultimately, the decision to transfer large tracts (250 hectares or more) of village land to general land for investment lies in the hands of the President and, while the Act demands for local consultation, the local population does not have the final say in land being transferred. The Act provides for compensation, but does not provide for how compensation ought to be calculated. Lastly, the Act is particularly vague with respect to protecting the category of communal land as village land.

Despite the shortcomings of the *VLA*, there have been some changes to the way that foreign land grabs are taking place in Tanzania. For example, since 2008 Tanzania has had a moratorium on biofuel land grabs (Hall, R, 2011). It is unclear how much of this is to do with the protective measures in the *VLA* that may have made it difficult to garner public support for such deals because the Act demands increased transparency and voice for people at the village level or if this may be a product of the country's increased activity of civil society, the media, and political opposition holding government accountable. It is likely that more open society has had a role creating change with respect to land investments and this deserves further study. It is also unclear how much of an impact the *VLA* has had on the ground because implementation of the laws, including the provision of CCROs, has been slow and incomplete.

Conclusion

My paper's main focus was on one aspect of Tanzanian law, the *VLA*, and its regulation of foreign land grabs with respect to local land users' rights. The analysis was narrowed for the purpose of illustrating how laws may apply to land grabs and the role law may play in regulating land grabs at the local level.

My paper's focus was framed in the larger context of land reform in Tanzania, and Sub-Saharan Africa more generally, and the larger land grab phenomenon in the region. The *VLA* demonstrates the ways in which both the *rights-based approach* and *market-based approach* to land reform have influenced Tanzanian policy. The *VLA* emphasizes the provision of formalized, individual land title for customary land holders, but also recognizes formal title that was granted under earlier land statutes. The Act exhibits aspects of the *rights-based approach* by placing land administration in the hands of local level government, by allowing land administration to follow local customary practice as much as possible, and through the Act's emphasis on local level government having veto power on transfers of land under 250 hectares. Moreover, the *VLA* recognizes and enshrines collective rights (after following the specified process) to communal land. On the other hand, the *VLA* also contains elements of the *market-based approach* to land reform. For example, for land over 250 hectares the President has the power to transfer the land unanimously if the transfer is in the public interest and the Act includes investment purposes as in the public interest. This shows that the Act has been created with thought towards encouraging and easing large investments in land in line with the *market-based approach's* emphasis on the importance of large-scale investments and markets in land as an efficient way to distribute and work land. Thus, we saw that the Act attempts to balance formal land titling and encouraging large-scale investments with communal and customary land interests.

While the analysis in my paper focused specifically on the *VLA* and how it may regulate foreign land grabs, further analysis should explore how the *VLA* regulates domestic investor land grabs, how thoroughly the *VLA* is being implemented, how the courts have interpreted the *VLA*, and how the *VLA* interacts with other laws with respect to rural land in Tanzania. Lastly, further clarity should be sought with respect to how the *VLA* governs communal lands and how to ensure that communal lands are classified as village land under the Act. This is an area where the Act remains particularly vague and land remains the most vulnerable to being appropriated without the *VLA* process being undertaken.

The *VLA* has the potential to hold the government more accountable with respect to land grabs by mandating that people at the local level are informed in a timely manner of proposed investments on their land, have time to mobilize and make representations, and are to be compensated. However, the Act would likely protect rural land users better if it had specific provisions for how compensation is to be calculated and did not allow the President to unilaterally approve the transfer of large tracts of land. Finally, the Act would be improved by a clearer and easier to operationalize process of classifying communal land as village land, so communal land would be protected by the Act's regulations.

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