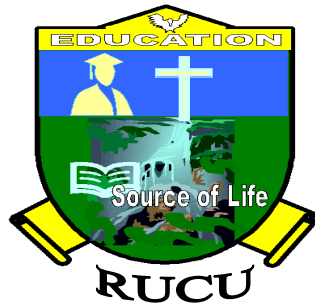


RUAHA CATHOLIC UNIVERSITY



A CRITICAL ANALYSIS OF THE VILLAGE LAND ACT AND FOREIGN DIRECT INVESTMENT (FDI) IN AGRICULTURE SECTOR IN TANZANIA

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF BACHELOR OF LAW (LL.B)**

BY

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OF

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AT THE

FACULTY OF LAW

MAY 2019

Certification

The undersigned certifies that she has read and hereby recommends for acceptance by Ruaha Catholic University (RUCU) a research paper titled: “A critical analysis of the village land Act and Foreign Direct Investment (FDI) in agriculture sector in Tanzania” which is in partial fulfillments of requirements for the degree of Bachelor of Laws at Ruaha Catholic University.

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Dated thisday of.....2019

Declaration

I, Bonnaventure Lema Kissoka, declare that this research paper is my own original work and that has not been submitted and presented to any other University for a degree or any other degree award.

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I also grant my gratitude to my supervisor. Ms Angelina Mpinda for her motherly guidance and direction in my studies and particularly in my research.

Dedication

I dedicate this research to my Institution Apostles of Jesus Missionary Congregation,
The Ruaha Catholic University and to Kissoka's Family for their both financial and
moral support.

Abstract

The research is conducted under the title Village Land Act impedes foreign direct investment (FDI) in agriculture sector in Tanzania. The main problem which forms the basis of this research is the lacuna in the Village Land Act in investment. It appears that the Village Land Act does not promote investment under Foreign Direct Investment (FDI) that will accelerate development in agriculture sector which is the pivot of the Tanzania economy.

This research points out the problems which are in the Village Land Act in accessing land for investment and the bureaucracy that are involved which discourages the foreign investors particularly in the agriculture sector which accelerates industrialization.

This research has been conducted in respect of unveiling the major problems of land access for foreigners and how the Village land Act deters such access. The researcher has employed field research to find out what the village people/indigenous know about land access for the foreigners and also library research on literatures of different authors, case laws and websites in order to link with what is in the field.

The research has proved that there is problem in accessing land for the foreigners in the conclusion and this has slow down the development in agriculture sector in Tanzania.

The research is organized in four chapters, chapter one is on general introduction, chapter two, the legal and institutional frame work on village land Act and Foreign Direct Investment chapter three institution of Land Village and how it impedes FDI and chapter four general conclusion and recommendation.

LIST OF ABBREVIATIONS

BITs	-	Bilateral Investment Treaties
GATT	-	General Agreement on Tariffs and Trade
HAKIARDHI	-	Land Rights Research and Resources Institute
ICSID	-	International Center for Settlement of Investment Disputes
MAI	-	Multilateral Investment Agreement
MIGA	-	Multilateral Investment Guarantee Agency
NIPPA	-	National Investment Promotion and Protection Act
RUBADA	-	Rufiji Basin Development Authority
TIC	-	Tanzania Investment Act
WTO	-	World trade organization

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The Tanzania Investment Act, 1997

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Statutes of East Africa

The East African Community (East Africa Legislative Assembly), 2015

International instruments

The International Covenant on Civil and Political Rights, 1966

General Agreement of Tariffs and Trade, 1986

Policy

The National Investment Policy of 1996.

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National Agriculture and Food Corporation v Mulbadaw village council and others [1985] TLR 88

Mwalimu Omari & Ahmed Baguo v Omari A Bilal. [1999] TLR 432

Kapera Keiya Kamunyu & 44 others v The Minister of Tourism and Natural resources and environment and 3 others Civil Case No 30 of 1995 High Court of Tanzania at Moshi (unreported)

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 HISTORICAL BACKGROUND OF THE PROBLEM

Tanzania like many other African countries was colonized by Europeans, specifically Germany and British. They came with their laws which were basically intended to protect the persons and properties of colonialists. They had emerged during the era of capitalism and so they intended to protect business, trade and commerce through the use of resources found in Tanganyika¹. The colonial administration has great impact on land tenure in Tanzania. The existing land tenure structure and legal regime governing land in mainland Tanzania find their genesis in colonial political economy².

1.1.2 GERMANY COLONIAL RULE

Germany rule lasted from 1885 to 1914. On the land issue, Germany Rule passed a decree in 1895 known as the imperial decree regarding creation, acquisition and conveyance of crown land and regarding the acquisition and conveyance of lands in general in Germany East Africa in which it expressly declared all land except the land already in private ownership or possessed by indigenous communities to be un-owned land vested in the Germany Empire³.

¹ I. Shivji, *Where is Uhuru? Reflection of the Struggle for Democracy in Africa*, Fahamu Books, Cape Town, 2009,106.

² *Ibid*,107.

³ A. Rwegasira, *Land As a Human Right, A History of Land Law and Practice In Tanzania*, Mkuki na Nyota, Dar es salaam 2012,53.

Later there was Land Registration Ordinance which was passed in 1903 establishing registry system under which title to land had to be registered and documents of title issued to the owner. Although Germany rule recognized all land titles that existed, that is to say individual or tribal, the implication was the confiscation of all land which was not occupied into Crown land. Also the requirement that title be proved by documentary evidence was meant to favors certain categories of people such as the white settlers who could get grants from the Germany administration or from local chiefs.⁴ During this time the major investment flowed into plantation and other agricultural related business. The Germany policy in agriculture in East Africa colony was aiming at securing a permanent, stable and guaranteed source of resources for industrial prosperity for example Rubber, Cotton and Gold⁵

1.1.3 BRITISH COLONIAL RULE

The Versailles Peace Treaty of 1919 concluded with its outcome of creation of League of Nations. Britain gained the control of Tanganyika and enacted The Tanganyika Order in Council, 1920 which provided reception of English laws in the territory. The order vested all land control rights in Her Majesty, and that land rights become exercisable by the Governor in trust of Her Majesty in the form of grants or leases of public lands.⁶

In similar way as Germany rule, the British rule aimed at making Tanganyika to serve primarily as a source of raw materials cheap labor and market for British

⁴*Ibid*, 54.

⁵*Ibid*, 53.

⁶ C Maina Peter, *Foreign Private Investment in Tanzania*, Konstanz, Koln 1989, 8.

product. Investment was to be concentrated in the service oriented business this was seen as opening up competition with British manufactures that needed market.⁷ The British administration recognized all existing German land titles and also made a small number of free grants.⁸ The Land Ordinance number 3 of 1923 was passed by British administration. The legislation marked the beginning of a legal dilemma on security of customary titles that were in place during the pre-colonial period which could not be ensured since there was continuation of massive alienation of their lands.

1.1.4 POST –COLONIAL PERIOD

After independence, in 1967, Tanzania followed State centered socialist policies with the initiation of the economic reform in 1986 where by the land was vested on the president. The introduction of *Ujamaa* in Tanganyika was an attempt to Africanize its land laws through a policy that considered the agricultural sector as capable of generating growth from the country's own resources, while at the same time benefiting the majority of the people. This policy consisted of "trans locating" people in groups to what was called "*Ujamaa* villages", where individuals, sometimes of different cultural backgrounds, lineages and clans, were expected to work on communal farms with which they had no cultural tie or bond.⁹

President Julius K. Nyerere in 1966 in rejecting capitalist attitude held that "each individual within our society has a right to the use of land, because otherwise he could not earn his living and one cannot have the right to life without also having

⁷*Ibid*, 8.

⁸Rwegasira, *supra*, note 3, 53.

⁹ J. K. Nyerere, *Freedom and Unity/ Uhuru na Umoja*, Oxford University Press, Dar Es Salaam 1966,166.

the right to some means of maintain life. But the African's right to land was simply the right to use it: he had no other right to it, nor did it occur to him to try and claim one.”¹⁰

Despite the fact that there is communal way of doing things, the President recognized private investment sector “every country wants private investment on its own terms. Our ‘guilty’ in this connection does not therefore mean that there is an inevitable clash between the government and business. On the contrary, it implies recognition by the government that it needs private investment if its plans are to be speedily put into effect. It is the basis for fruitful discussions leading to a good and harmonious relationship in future”¹¹

The Policy revolved around public control of the economy, development through self-reliance, social equality and rural development. An enabling Act of Parliament was passed in 1973.¹² This Act envisaged two stages in its implementation as in section 3 that :- (i) The President could declare any area of Tanganyika to be a specified area for the purpose of the Act (ii) The Minister for Regional Administration could make regulations regulating farming operations in such area or reserving the area or any part of it for the establishment of an *Ujamaa* village or providing for the extinction, cancellation or modification of the rights, titles and interests in or over parcels of land falling wholly or partly within the specified area.¹³

¹⁰ *Ibid*,166.

¹¹ *Ibid*, 210.

¹² The Rural Lands Planning and Utilization Act No 14/1973

¹³ Land Acquisition Act, 1967

In 1975, the *Ujamaa* Villages (Registration, Designation and Administration) Act¹⁴ was enacted. Although the Act did not contain provisions on Land Tenure such provisions were included in a subsidiary legislation¹⁵ as Directives. In the Directives, the functions of allocating land to Villages and *Ujamaa* Villages was assigned to the District Development Council. The village council then allocated farmland to households according to need and ability to develop it¹⁶.

However the most intriguing thing was that the District Development Council was not the land allocating authority under the principal land statute, the Land Tenure Ordinance of 1923. But also the District Development Council and Village Council were not land allocating authority under customary law either.¹⁷

The Village Council of the *Ujamaa* Village was required to acquire rights of occupancy in respect of land within the limits of the village and no other person had any right, title or interest in or over any land within such limits. It thus extinguished customary tenure. The land was acquired as granted right of occupancy and not customary right of occupancy. No one could boast of holding a title or an interest of customary nature in any village after such a grant. As a result even the relocation of peasants during operation vijiji caused land tenure confusion and numerous disputes.¹⁸ Case law also tried to set precedence to show that there is no superior tenure than the other.

¹⁴ Act No 21 of 1975

¹⁵ GN No 168/1975

¹⁶ <http://www.jstor.org> (accessed on 12 November 2018)

¹⁷ *Idem.*

¹⁸ K. Gray & S. Francis Gray, *Land Law*, Butterworth, London 2001, 1.

In the case of *Mwalimu Omari & Ahmed Baguo v Omari A Bilal*.¹⁹ The Court inter alia said; A deemed right of occupancy is equal to the granted right of occupancy under the Land Ordinance, hence non takes precedence over the other. The essence of having land title is to exclude the general public from accessing it and to have legal protection against anyone who wishes to access the titled land. The colonial masters decided to introduce this registration system so as to access land and use it exclusively against the indigenous and to use their administrative power to eliminate indigenous from the land they see potential for their utilization. The registered land enjoy economic benefit compare to non-registered land, this remain a technical truth in Tanzania that differentiate statutory tenure and customary tenure.²⁰

Since land provides the physical base for all human activity, there is no moment of any day in which we lie beyond the pervasive reach of land law. “Not only does it supplement or reinforce our instinctive labeling of the things of the external world as *meum* and *tuum* it also plays a deeply instrumental role in regulating the effective social and economic use of all land resources”²¹.

During this period there was no clear and elaborated government policy on investment in the country. Soon after the government venture into a program of removing obstacles led by colonial regime to bar investors while the economy was in the formative stages it spelt out measures that were aimed at attracting both local and foreign investor to participate fully in the industrial development of the country²²

¹⁹ [1999] TLR 432

²⁰ *Supra*, note, 18,1.

²¹ *Ibid*, 4.

²² C Maina Peter, *Foreign Investment in Tanzania, The Mainland and Zanzibar*, Department of municipal Law Dar Es Salaam, 1994, 4.

In Tanzania the majority of population depends on agriculture and the rest on pastoralist and small scale mining activities. Agriculture sector plays an important role in the development of the Tanzanian economy. However, out of the available 44.0 million hectares of land suitable for crop production only 10.0 million hectares are under cultivation. Also, there is about 60.0 million hectares of land suitable for livestock keeping. With the new focus on the emphasis on “KILIMO KWANZA” (Agriculture First), the government supports effort to transform agriculture from small scale farming to larger scale commercial farming. “Land is a factor of production whose supply is limited in both the short run and the long run. A more effective and intensified use of labor and capital, the other factor of production is required to increase its yield”²³

Since the world is changing rapidly there is mental set up that man has turned up from common interest to individual interest and acquisition of property has become a symbol of economic status in many countries and these cannot be spoken without involvement of land and issues pertaining to it. There is a big notion that most developing countries in recent past years have been busy enacting new laws and amending the existing has in order to provide the investors with red carpet treatment²⁴. The global economy which is existing allow movement of capital and the investors are moving all over the world, hence Tanzania is facing the nature of the current global economy and land is among the areas that investors are targeting.²⁵

The trend of global economy require a well-organized system otherwise dispute will occur and that is what is currently happening in Tanzania. Land conflicts

²³ A. Heertje and B. Robinson, *Basic economics*, Holt Rinehart and Winston, Norfolk, 1995, 22.

²⁴ Chris Maina, S. Mwakaje, *Investment in Tanzania*, Department of Municipal Law, University Dar es Salaam. 2004. 78.

²⁵ *Ibid*, 78.

wouldn't be as intense as they have become today, if it wasn't for the entry of multinational and foreign governments into a business of land acquisition in Sub-Saharan States.²⁶ With this kind of economic integration land access should be well regulated to face the challenge since land is no longer a domestic issue but it involves multinationals companies looking for large scale of land for investment purposes.²⁷

Land laws and land management institutions are therefore open to criticism as equal justice does not seem to prevail. The discrepancies that are available in land laws (Land Act

and Village Land Act) make a big challenge in management of land in Tanzania. The Tanzania Investment Centre here in after referred as (TIC) provides assistance to foreign investors and non-foreign investors to access land which has become a kind of incentives to investors.²⁸ According to TIC, there are diverse potential areas to invest including agro-processing, horticulture, floriculture, aquaculture, and sugarcane for ethanol, palm oil, jatropha, pyrethrum, Artemisia and organic cotton’²⁹ This process of assisting investors to access land often causes land disputes as the law does not provide equal justice.

²⁶*Ibid*, 79.

²⁷ *Ibid*, 80.

²⁸ The Investment Act, 1997.

²⁹ Gray, *supra*, note 14, 3.

1.2 STATEMENT OF THE PROBLEM

The speed of economic development touches the issue of land directly and there are many big investors who are interested to invest in Tanzania due to the good soil and climate. Figure 1, 2 and 3 bellow. However the Village Land law is not clear on land matters with reference to investment and that becomes a hindering factor to the required speed of development. The research aims at exploring how the Village Land Act hinders agriculture for Foreign Direct Investment here in after referred as (FDI) in Tanzania.

The Village Land act is silent on the matters (FDI) on agriculture. Section 17 of Village Land Act here in after referred as (VLA), holds on occupation of village land by non-village organization but does not speak on investment for the purpose of holding the land unlike clarity which is in the Land Act. It should be born in mind that there are local investors who have invested in small scale agriculture which does not maximize the use of land. Also the ordinary people's right are uncertain since all land is under the President and people do not own land but have use right only. It is important to note that access to land is no longer a concern of locals people or indigenous but the concern of investors as making access to land necessary with the concept of Foreign Direct Investment.

In the Land Act the procedure for acquisition of land is "very clear that a non-Tanzanian is not allowed to own land, save for investment purposes under the Tanzania Investment Act"³⁰ section 19 (1) (b) "a right derivative of a granted right of occupancy, in this Act called a derivative right."³¹ And in section 19 (2) "A person or

³⁰ www.lexology.com (accessed on 28 November 2018)

³¹ The Land Act, 1999.

a group of persons, whether formed into a corporate body under the Companies Act Cap or otherwise who is or are noncitizens, including a corporate body the majority of whose shareholders or owners are non-citizens, may only obtain a right of occupancy or derivative right for purposes of investment prescribed under the Tanzania Investment Act”³²

Nevertheless land dispute happens mainly on land granted to foreigners because at times it covers large area and with a lot of doubts which makes the indigenous feel like their land is grabbed. This is shown clearly on the case National Agriculture and Food Corporation here in after referred as (NAFCO) and recently the matter of Eco Energy project in Bagamoyo This concern is growing very fast, and it is not a good practice to be left happening for the health of the economics of the country especially investment, this will result in the loss of properties, life and much worrying is when foreign investors lose confidence of investing in the country.

³² *Idem.*

1.3 LITERATURE REVIEW

The land issue and investment have been covered by many prominent writers on land and investment in Tanzania.

Rwegasira³³ in his book argues that, it is important to note that, it is a fundamental principle of the National land policy that land be used by Tanzania citizens. It follows that non-citizens (foreigners) are not allowed to apply for and be granted right of occupancy, derivative right or interest in the land except for the purpose of investment approved under the Tanzania Investment Act.³⁴

This means that any application for a granted right of occupancy by a non-citizen or foreign company must be accompanied by, among other things, a certificate of approval granted by the Tanzania Investment Centre which is established by, and carries out its duties under the provisions of the Tanzania Investment Act. That is why even an attempt by a holder of a right of occupancy to dispose a right of occupancy to a non-citizen contrary to the provisions of the Land Act amounts to good cause that may lead to revocation of the right of occupancy of the holder by the President.³⁵ In this effect my research covers the difficulties involved in acquisition of land by investors especially in the village land where Tanzania investment centers under The Land Act covers the investors who invest in the Village Land.

³³ A. Rwegasira, *Land As a Human Right, A History of Land Law and Practice In Tanzania*, Mkuki na Nyota, Dar es salaam 2012,53.

³⁴ *Ibid*, 53.

³⁵ *Ibid*,53.

Correa³⁶ in his book argues that developing countries are logically interested in channeling foreign investment in a way that address their needs especially to improve their technologically capacity and further industrialization process. Discussions on investment, even is conducted under the umbrella of the organization dealing with World Trade initially involve broader issues and difficult choices”³⁷

He also acknowledges that the draft of Multilateral Agreement on Investment here in after referred as (MAI) includes the proposal for establishing a specific dispute settlement mechanism that would deal with both state-to-state and investor-to-state disputes. In this case of state-to-state arbitration following the World Trade Organization Multilateral Investment Agreement here in after referred as (WTO) system of dispute settlement the front step would be consultations attempting amicable solutions to the dispute. Corea acknowledges presence of dispute involved with investors, to this effect my research addresses the source of such disputes in Tanzania especially in The Village Act.

Maliyamkono³⁸, the author explained the background of investment, especially foreign investment in Tanzania. He raised the notion that the Tanzanians have towards investors; that they were not happy with investors who are investing in the country. Unfortunately, this notion still exists if one is to observe on the field; it is not yet solved irrespective various measures tried to be taken by the government.

³⁹The author tried to show that the government tackled the problem by making procedures of accessing land easier. Land titles were problematic, cumbersome, often

³⁶ C. M. Correa & N. Kumar, *Protecting Foreign Investment: Implications of a WTO Regime and Policy Options*, Zed Books, London 2003,119.

³⁷ *Ibid*,19.

³⁸ H Mason, Maliyamkono TL. *The Promise*, Dar es salaam University Press Ltd, 2006, 136.

³⁹ *Ibid*,136.

a source of conflicts, while the land bank for investors, enabled in 1997 by National Investment Promotion and Protection Act here in after referred as (NIPPA), never got off the ground.⁴⁰ My research shows the problem existing in The Village Land act concerning investment in Tanzania. As Tanzania tries to create good environment for investment especially in agriculture but there are gaps left behind this touch the core of investment.

Access to land to date by investors is still a problem and this is because the laws that regulate land access by investors made it easy to access but with poor legal protection to former owners/indigenous. So, much as the work of the author is showing steps taken by the government to make access to land easier, which suggest that this was purposely for the investors, a lot is left to be desired on the side of legal protection to indigenous. The legal reforms as well as the laws are not sufficient to make balance between the investors and the indigenous who own land in whatever tenure.⁴¹

Kaniki⁴², the author in his article explained on the efficacy of land disputes settlement mechanism in Tanzania, but it has left discussion on how investment accelerating land disputes in Tanzania. The land disputes that is currently on statutes suggest that disputes by investors is not well covered; it is as if there is the case suitable for local disputes, small land holders in the community. The law does not accord for the clear legal mechanism on how to settle down conflicts between

⁴⁰Chris, *supra*, note 22. 136.

⁴¹Maliyamkono, *Supra*, note 33, 137.

⁴²A .O. J. Kaniki, The Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola. Volumes IVI, Numbers 1-6(2006-2008) *National Organization for Legal Assistance (nola)*.January (2008)43

investors and the locals especially foreigners whereby sometimes there are International Bilateral Agreements to that effect.⁴³

Notwithstanding, the foregoing exposition, there several challengers which constrain the realization of the main objective of the new land law regime, which is to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay.⁴⁴

The law shall be enacted broadly to afford the community an opportunity to settle down disputes timely without chaos or destruction of assets or the loss of life. The law must provide the element of transparency and full public participation regarding the access to land by investors contrary to the current situation whereby no legal procedures for an investor to access land.⁴⁵ So, therefore the entire discussion of the author on the subject matter left areas that prompted the researcher to conduct the study. He explained disputes between small land holders and mostly disputes which do not involve access to land by investors. Investors are posing a big challenge on legal machinery concerning land management, and dispute settlement mechanism.

Shivji⁴⁶ argued on the land rights and land tenure in Tanzania. He gave out explanation of land system in the country and the history of the same. He provided various reforms that took place in the country. The argument generally raised a concern on land, the discussion covered land and land disputes in the country. However, his discussion not seems to hinge on the impact of investment as a major growing concern on land and investment in general. He showed a concern on the

⁴³ *Ibid*, 43.

⁴⁴ *Ibid*, 43.

⁴⁵ *Ibid*, 43.

⁴⁶ I. Shivji, *Where is Uhuru? Reflection of the Struggle for Democracy in Africa*, Fahamu Books, Cape Town, 2009, 106.

National Land Policy as yet to satisfy the land problems, he wrote on the worry that the demand of the policy that will settle down land conflict. There is a need to generate a public debate which is one of the ways to place land on the national agenda and thereby also initiate a process of genuine participatory policy making rather than manipulative consultations and orchestrated deliberations which reply the old stratagems in new forms.⁴⁷ My research shows how the land disputes in Tanzania are currently attributed by investors because of weak legal framework especially in The Village Land Act.

1.4 HYPOTHESIS

It appears that The Village Land Act obstructs Foreign Direct Investment (FDI) in Agriculture Sector in Tanzania.

1.5 OBJECTIVE OF RESEARCH

The major objective of this study is to show the problems emanating from the Village Land Act and how these problems affect the investment in the land. To find out the solutions to these laws in order to open the wide and free range of investment in Tanzania and to find the solution on the amendment of some provisions of the law.

1.5.1 SPECIFIC OBJECTIVES

To examine the provisions of the Village Land Act on determination of investment.
To device recommendations on how the law should be reformed to fit investors.

⁴⁷*Ibid*, 107.

1.6 SIGNIFICANCE OF RESEARCH

The significance of this study is to critically examine the strength of laws that governs the management of land in Tanzania so as to act as a catalyst to call upon the responsible authorities to make any necessary intervention to improve the statutes which regulates land management and investment registration in Tanzania. The research shows the necessity of amending the necessary laws for the better protection of the interest of the local people and investors. Above all the study raises awareness of the law-making organs over the problem of the laws governing the relationship between the investors and the local people in Tanzania which results in slow pace of development. This is in line with industrializing Tanzania.

1.7 RESEARCH METHODOLOGY

1.7.1 PRIMARY DATA COLLECTION

This study employs Primary data collection methods through questionnaires.

1.7.2 SECONDARY DATA COLLECTION

The researcher has critically analyzed the existing laws which relate to land and investment. Also the researcher has critically engaged in reading reviewing, paraphrasing, taking notes of books, journal articles, thesis or dissertations and other important materials pertain to Foreign Direct Investment in Agriculture. There is also employment of search engine through visitation of relevant search engines in the web site. This research is done in different libraries such as Ruaha Catholic University

library, Iringa University library. Moshi Regional Library and Online library. This has been done to ascertain the effectiveness of the laws themselves and the bodies established by the law to supervise the implementation of investment in Tanzania.

1.8 SCOPE AND LIMITATION OF RESEARCH

1.8.1 SCOPE

The research study aims at addressing bureaucracy in the land act and the lacuna of the investment in the village Land Act and the balance between the investor and the local people. The research also looks at the challenges which Tanzania has on the land investment especially on agriculture sector.

1.8.2 LIMITATION

The researcher faced number of limitation including financial constraints, unwillingness of villagers to give information concerning land matters and little cooperation from civil servant from land officers and investment center.

CHAPTER TWO

THE LEGAL AND INSTITUTIONAL FRAMEWORK OF VILLAGE LAND AND FOREIGN DIRECT INVESTMENT

This chapter provides for the legal frame work of investment specifically Direct Foreign Investment in International, Regional and National level. The aim of this chapter is to provide the legal requirement in the community nations as far as investment is concerned.

Every state would like to expand her business in other states as it looks for market and raw materials for running of their industries. Due to such expansion there are bilateral and multilateral treaties that the states have engaged in order to facilitate smooth running of investment programs.

2 LEGAL FRAME WORK

2.1 International Instrument on Direct Foreign Investment (FDI)

There is no single, statistic conception of what constitute foreign investment. Rather the conception has changes over time as the nature of international economic relation has changed. Prior to the middle nineteenth century, Trans frontier capital flows typically assumed the foreign of being by European investor to borrowers in other European states⁴⁸.

The difficulties involved in travel and communication over long distances were a strong impediment to foreign direct investment (FDI). “International

⁴⁸ K. Charles P, *A Financial History of Western Europe*, Oxford University Press, Ney York 1993, 122.

investment law was concerned principally with the protection of tangible property against seizure and the right of creditors to collect debts. Some countries negotiated treaties that protected foreign property, such as merchandise and vessels against expropriation”⁴⁹

There has been expansion of several forms of international rules regarding foreign investment. There are Bilateral Investment Treaties here in after referred as (BITs), sectoral investment treaties and regional investment treaties.

2.1.1 World Trade Organization (WTO)

Tanzania is a member of the World Trade Organization since 1 January 1995. The World Trade Organization liberalizes investment and trade. However it has been hesitant to liberalize international investment like the liberalized trade. Reluctance to liberalize FDI by developing states was clear to the United Nations. In 1962 the General Assembly Resolution 1803 was passed by the United Nations that emphasized “permanent sovereignty of states over natural resources and sanctioned ‘nationalization, expropriation or requisitioning’⁵⁰ on “grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests”.

Protection of natural resources became dominant national public policy. Hereafter, other sources entrench state sovereignty over foreign investors. As mentioned before, there was a reluctance to liberalize international investment, but

⁴⁹ *Ibid.* 123.

⁵⁰ www.legal.un.org (accessed on 15 December 2018)

important issues to note are the fact that individual WTO members liberalize FDI and the fact that the WTO selectively liberalize FDI.⁵¹

There was reluctance towards liberalization of FDI, but still the WTO pronounced limited agreements on investment. A makeable agreement was the Agreement on Trade-Related Investment Measures here in after referred as (TRIMs Agreement) but the scope of this agreement was held limited. Trade in goods has been held apart from FDI and particular trade distorting performance requirements regarding foreign investment are prohibited without harmonizing regulation on foreign investment⁵². As a member Tanzania is obliged to protect the investors from the member state against discrimination and availing favorable climate for foreign investors which include national treatment.⁵³

2.1.2 General Agreement on Tariffs and Trade (GATT)

Tanzania signed and became a member of General Agreement on Tariffs and Trade here in after referred as (GATT) since 9 December 1961⁵⁴. After the Second World War a new period of investment and trade liberalization began. General Agreement on Tariffs and Trade (GATT) was created in 1947, with the reason to lessen protectionist barriers that can be an obstacle to investment and trade. The goal was liberalization.⁵⁵ The agreement in Article XXVIII(1) “The contracting parties recognize that the attainment of the objectives of this agreement will be facilitated by progressive development of their economies, particularly of those contacting parties

⁵¹ www.wto.org/English/thewto (accessed on 15 December 2018)

⁵² *Idem.*

⁵³ *Idem.*

⁵⁴ <https://www.wto.org.english.tanzania> (accessed on 12March, 2019)

⁵⁵ *Idem.*

the economies of which can only support low standards of living and are in early stages of development”⁵⁶

The GATT did not apply on FDI in principle, but in 1955 a resolution on International Investment for Economic Development was adopted carrying out the advice for members to close bilateral investment agreements. The GATT Panel in Canada–Administration of the Foreign Investment Review Act was about the question if Canada engaged in “trade distorting” measures and violated the GATT knowing that it has the right to regulate foreign investment. In this respect the panel did recognize the limited extent of the GATT in regulating FDI⁵⁷.

2.1.3 International Center for Settlement of Investment Disputes (ICSID)

The International Center for Settlement of Investment Disputes here in after referred as (ICSID) was established under the umbrella of the World Bank by convention on the settlement of investment disputes between states and nationals of other states. Tanzania is contracting state to ICSID and not a signatory. However when a contracting state engage in investment in Tanzania and there arise disputes, arbitration and conciliation will be followed in accordance to the ICSID rules.⁵⁸

⁵⁶ General Agreement on Tariffs and Trade, 1986

⁵⁷ L. E. Trueman, Foreign Direct Investment: Hazard or Opportunity? *George Washington International Law Review*, Vol. 41, 2009, 17-19.

⁵⁸ www.state.gov (accessed on 11 December 2018)

2.1.4 Multilateral Investment Guarantee Agency (MIGA)

This is an international financial institution a member of World Bank Group whose Tanzania is a member. Multilateral Investment Guarantee Agency here in after referred as (MIGA) offers political risk insurance and credit enhancement guarantee investment against non commercial risks. “on October 27, 2014 MIGA issued a guarantee of \$29.9 million to reinsure coverage provided by the overseas private investment corporation to Silver Street Private Equity Strategies Soparf”⁵⁹. It is an agricultural investors focused on investing in sub Saharan Africa.

Agribusiness is another key sector that MIGA is keen on improving. MIGA is going to invest US\$ 60m to support the agricultural sector through silver sand project to ensure that citizens of Tanzania are able to turn the agriculture sector into green revolution”⁶⁰. In Tanzania it covers for period of 10 years against the risks of transfer restriction, expropriation and war and civil disturbance.⁶¹ However such big investment will not take off if there are legal discouragements in management of Village Land. This is a sign that the legal institutions in land management have to be considered in order to attract and safeguard the agro business in Tanzania.

2:2 REGIONAL INSTRUMENTS ON FDI

2.2.1 The East Africa Community

The East Africa Community here in after referred as (EAC) partner states have agreed about the need for corporation in order to spearhead investment in the region, in 2002 they drafted a model investment code while developing investment

⁵⁹ www.miga.org (accessed on 11 December 2018)

⁶⁰ <http://constructionreviewonline.com> (accessed on 20 December 2018)

⁶¹ *Idem.*

policy and economic strategies. Among the investment plan is “to achieve free movement of people, capital, labor service and right of establishment and residence”⁶²

In article 80 (2) (c) “There shall be the following standing committee of the house- communication, trade and investment”⁶³

In article 79 and 80 of Treaty of Establishment of East Africa Community give effect to the co-operation to rationalize investment and full use of establishment industries so as to promote efficiency in production as well as harmonies investment incentives. This has given rise to the farms which are been run by other investors from the member states. It is a facts that agriculture products has earned Kenya foreign currency from export of flowers various types of beans, fruits Asian vegetables⁶⁴ this is due to foreign direct investment. Kenya is one of economic leaders in sub Saharan Africa. Like many African countries it depends on Foreign Direct Investment for capital and employment. ⁶⁵This is because it has maintained favorable climate for investment climate including land policy.

2.3 DOMESTIC LAWS ON FDI

2.3.1 The Constitution of the United Republic of Tanzania of 1977

The constitution of Tanzania thought her Bill of Rights enhance the right to own property and to have due compensation when such property is redeemed for nationalization. Article 24 (1) and (2) states that

⁶² www.eac.int (accessed on 12 December 2018)

⁶³ The East African Community (East Africa Legislative Assembly), 2015

⁶⁴ www.kenyabrussels.com (accessed on 13 December 2018)

⁶⁵ *Idem.*

- (1) Every person is entitled to own property, and has right to the protection of his property held in accordance with the law.
- (2) Subject to the provisions of sub article (1), it shall be unlawful for any person to be deprived of his property for the purposes of nationalization or any other purpose without the authority of law which makes provision for fair and adequate compensation”⁶⁶

In sub article 2 it is clear that there shall be laws to provide for compensation. In reference to acquisition of land for investment purposes especially agriculture, there are procedures which have been laid down is indicated in the land laws.

2.3.2 The Land Act,1999

The amendment of section 19 (2) of the principle act is substituted with the provision that

“A person or group of persons whether formed into a corporate body under the companies ordinance or otherwise who is or are non-citizens, including a corporate body the majority of whose shareholders or owners are non-citizens may only obtain,

- (a) A right of occupancy for purposes of investment approved under the Tanzania Investment Act,1997 for
- (b) A derivative right for purposes of investment approved under the Tanzania Investment Act,1997 or

⁶⁶ The Constitution of The United Republic of Tanzania, 1977.

(c) An interested in land under a partial transfer of interest by a citizen for purposes of investment approved under the Tanzania investment Act,1997 in joint venture to facilitate compliance with development conditions⁶⁷

In reference to agricultural investment the Land Law provides the avenue for investors however there are discrepancies such as land been allocated to investors through land act under Tanzania Investment Center and not through The Village Land Act whose Investment Center is not applicable. This creates uncertainties to both investors and local people in the villages where investment is done.

2.3.3 The village Land Act, 1999

The Village land act is silent on the issues of Foreign Direct Investment. The FDI is well indicated in The Land Act but not in The village Land Act which is the has bulky areas for most important investments in agriculture which is the spinal column of economy in Tanzania. Section 5 “The Centre, which shall be a one-stop centre for investors shall be the primary agency of Government to co-ordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment policy and related matters.”⁶⁸ This gives effect that the Village Land Act is controlled or inferior to The Land Act.

⁶⁷ The Land (Amendment) Act,2004

⁶⁸ The Investment Act, 1997.

2.3.4 The Investment Act, 1997

The law gives the procedure on how land can be acquired in Tanzania by non-citizen for the purposes of investment. The Act gives incentive to the investor in relation to investment in the country. This incentives include guarantee against expropriation as provided under section 22 that “no business enterprise shall be nationalized or expropriated by the Government,”⁶⁹.

Also the Act provides for the acquisition of loan using the title granted as security, section 25 (1) “a foreign investor may, in relation to the business enterprise which he operates, obtain credit from domestic bank and financial institutions up to the limit established by the Bank of Tanzania in consultation with the Centre having regard to the amount of foreign capital invested in the business enterprise.”⁷⁰

2.4 INSTITUTIONAL FRAME WORK

2.4.1 Tanzania Investment Center

The Investment Act provides for the establishment of the investment a center which is one stop gate for the investors both foreign and local. Section 4.-(1) There is hereby established a body to be known as the Tanzania Investment Centre⁷¹. In section 6, the center is responsible to create a favorable climatic condition for investors both local and foreign include identification of investment sites, estates or land together with associate facilities of any site for the purpose of investment.⁷²

⁶⁹ *Idem.*

⁷⁰ *Idem.*

⁷¹ *Idem.*

⁷² *Idem.*

Since the center is one stop for investors, it creates land disputes in agricultural investment in Tanzania due to the fact that the foreign investors must pass through the center in order to access land for investment. It does not show the security of the villagers since they are covered by The Village Land Act and not The Land Act, that is another way of changing the title of the land from customary right of occupancy under The Village Land to the granted right of occupancy under The Land Act.

2.4.2 Land Tribunal

In section 60(1) The Village Land Act gives effect to establishment of village land council in each village to settle disputes that might arise⁷³. Since the investors in agriculture are interested to the village land, it is proper that the primary organ to deal with the investors is the village land council together the village assembly. It is subsequently that any dispute arising will be handled from village land council, the ward tribunal, the district land and housing tribunal, High Court Land Division and the Court of Appeal.

However the village land council, ward tribunal and district and housing tribunal cannot deal with the land whose title is not customary right of occupancy and so made ineffective in the land matters which involve foreign investors since such investors are known and controlled under Tanzania Investment Center as per section 5⁷⁴

⁷³ The Village Land Act, 1999.

⁷⁴ The Investment Act.

CHAPTER THREE

INSTITUTION OF VILLAGE LAND

This Chapter provides for the introduction of village land policy and its legal frame work. It focuses on the Impact of FDI on the villages land and its effect on Agriculture. The problem of transfer of land from village land to general land and how it affects the indigenous people on their right to own property and that eventually brings conflict between Investors and Indigenous. The wrangles with investors discourage the investment process.

3.1 Village Land Allocation.

The village land allocation has its roots from colonial masters with the aim of grouping together native for production purposes “The Land regimes established by the German (1885 – 1916) and British (1918 – 1961) colonial authorities assumed that the indigenous occupants had no ownership rights overland”⁷⁵ The aim was to export the resources placing the land regime in the hands of the state. The policies that were made on land matter aimed at production cheap agricultural raw materials. The Land ordinances passed by the British 1923 No. 3 which still has essence on land law we have today had the following:

- i. Declaring and defining customary tenure without securing and state only entrenching, customary tittles and rights.

⁷⁵ I.G Shivji, *Not Yet Democracy , Reforming land Tenure in Tanzania*, IIED/ HAKI ARDHI – H, Dar es Salaam, 1998, 2.

- ii. Authorizing the Governor to make land grants in the form of rights of occupancy limited in time which in practice meant alienation of indigenous lands to Settlers and foreign Corporations⁷⁶

Each state has power over the administration of its people and resources especially land. The Legal regime developed by the British rule in Tanganyika was based in essence on giving the state a free hands, as and when necessary, to control and alienate Indigenous lands encumbered by any legal obligations⁷⁷. On the other hand, the colonial state had to legitimize its laws and action as being in the interests of the native population, as require by the Trusteeship Agreement.

The laws which were legitimized by British became the same laws which are used today in administration of land in Tanzania. The most affected land is village land which has been a target to foreign investors especially in agribusiness.

3.1.2 Villagization

One of the Impact of Ujamaa Policy in Tanzania was forcing people to live in new villages as directed by the state “There was total disregard of the existing customary land tenure system as well as the fact that virtually no thought given to the access to future land tenure in the newly established villages”⁷⁸ the government did not create a new tenure regime, and local authorities were not legally vested with the power to govern land. These brought major problems of legal frame work, village land allocation and village planning.

⁷⁶ *Ibid*,83.

⁷⁷ www.focusonland.com (accessed on 15 November 2018)

⁷⁸ *Tanzania United Republic of 1994, Report of the Presidential Commission of Inquiry into Land matters volume I and II, Dar es Salaam Ministry of lands Housing and urban development in Corporation with the Scandinavian Institute of African Studies Stockholm*

Access of village land just like general Land has procedures that are laid down by Act as provided in section 22(2) “A person or group of persons not ordinarily resident in a village may apply for a customary right of occupancy”⁷⁹ and section 22 (3) where the applicant is a person or group of persons referred to in subsection (2) by not less than five villagers who are not related to any of those applicants”⁸⁰. This is to mean that any person who is a citizen of this country may apply for the acquisition of land. This does not show any person who is not a citizen of this country. Above all the land owned by villagers under customary right is not titled that is most of villagers have no customary titles for ownership of land which is different from Land Act.

Village Land is land other than general land and reserved land, constitutes large fraction of land in the country. Village land is largely under the customary land tenure as the way of access to it is through customs of a given tribe where the land is situated. “The legal regime over land developed by the British administration was in essence based on giving the state a free hand to control and alienate indigenous land Unencumbered by legal obligations”⁸¹ However, the difference that can be seen is the fact that village land was there before all there other categories of land therefore most of village land occupants have no these certificates of customary right of occupancy as compared to general land whereby one must have the certificate of right of occupancy and with fulfillment of the attached conditions. This minimizes the security of land to the villagers.⁸²

⁷⁹ The Village Land Act, 1999.

⁸⁰ *Idem.*

⁸¹ Shivji, *supra*, note 46, 109.

⁸² *Idem.*

The problems in allocation of village Land were blurred in lack transparency, openness and democratic participation. The Land commission was told that as a matter of administrative policy and not legal. No village land was allocated without consultation and approval of the village council concerned. After the allocation of land irregularly life for the outside occupier who had been allocated land against the wishes of the village was made difficult to the extent that in spite of his certificate of title, he too suffered from perpetual insecurity.⁸³

“Village Planning is usually presented as land- use planning. There is however no covering village planning in this Sense law.”⁸⁴ During the Villagilization process, village planning under town planners was seen as process of planning for human settlement, dwellings and public utilities rather than planning from productive purposes. This was largely a failure. Later there was issuing of Title to the villager to prevent land grabbing and encroachment from the outsiders.

“The setting of village boundaries determines the amount of land under village Jurisdiction as opposed to State bodies and officials. It is obvious that central government officials prefer more land under their control in order to facilitate alienations and allocations to outsiders for contemporary liberalization idiom investor without the protects, complains and constant harassment of villagers⁸⁵ .

The Consultants to the World Bank noted this when they described the tension over the issue of village demarcation as follows. Ministry officials (i.e. in the ministry of Lands Housing and Urban Development) are somewhat ambivalent and

⁸³ *Ibid*, 109

⁸⁴ Abdon, *supra*, note 8, 24.

⁸⁵ *Ibid*, 24.

divided in their attitude toward the age tilting programs which they are not was mandated by the party officially. They say what it will enable villages to prevent encroachment and land grabbing by outsiders, resolve potentially troublesome boundary disputes between villages and in the long run facilitate individual titling and provide the basis of mortgage credit⁸⁶.

Unofficially, they worry that how much land is being titled under village jurisdiction and that there will be not enough land left to allocate for development by non – local investors. Partly because of the bias toward top – down planning.⁸⁷

3.1.3 Village Land and Foreign Direct Investment (FDI)

The term Investment may mean different things in different disciplines and content. It may mean “expenditure to acquire property or assets to produce revenue”⁸⁸. It may also refer to as commitment of funds made in the expectation of some positive rate return”⁸⁹ in section 3 of the Tanzania Investment Act defines investment as “Creation or acquisition of new business assets includes the expansion, reconstructing and rehabilitation of an existing business enterprises”⁹⁰

Investor is an “Individual incorporated or Unincorporated private or public Enterprise a government, a group of related individuals or a group of related individuals or a group of related incorporated and / or unincorporated which have a

⁸⁶ Gray, *supra*, note 18,3.

⁸⁷ *Ibid.* 3.

⁸⁸ B. A Garner, *Black’s Law Dictionary* (8th Edition) Thomson, West United States of America, 2002. P.844

⁸⁹ C.M. Correa F.N. Kumar, *Protecting Foreign Investment: Implications of a WTO Regime and policy options*, Zed Books, London 2003. III

⁹⁰ The Tanzania Investment Act, 1997.

direct Investment enterprises operating in a country other than the country of residence of the direct Investors.”⁹¹. In section 3 of the Investment Act holds that:-

A foreign investor in the case of a natural person means a person who is not a citizen of Tanzania, and in the case of a company, a company incorporated under the laws of any country other than Tanzania in which more than fifty percent of the shares are held by a person who is not it citizen of Tanzania, and in the case of partnerships, means a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania.⁹²

Tanzania economy depends much on agricultural production. The significant of crops livestock and fisheries subsectors to the agriculture Gross Domestic Product here in after referred as (AgGDP), the empirical study revealed that agriculture sector is the key contributor to the national economy by accounting 25.88% of the national economy, contributed by crops subsector (18.93%); livestock subsector (4.70%) and fisheries subsector (2.25%).⁹³ It also provide employment opportunities to about 75 per cent of Tanzanians⁹⁴

Growth in Agricultural production depends on growth in agricultural investment being domestic or foreign direct investment. Foreign Direct Investment in Agricultural (FDIA) contributes to the economy of the country through capital formation as it fills savings. It also creates employment gain from the new

⁹¹ [www.Bis.org / publ/cgfs/22/bde3. Pdf](http://www.Bis.org/publ/cgfs/22/bde3.Pdf).

⁹² Investment Act.

⁹³ J. Chongela, Contribution of Agriculture sector to Tanzania economy, 3 *American Journey of Research Communication*, (2015) 57.

⁹⁴ *Idem*, 59.

Investment, expansion of the existing Investment and/ or the use of a better technology of production.⁹⁵

Tanzanian agriculture is dominated by smallholders with low levels of productivity, but also limited education, skills and experience, and insufficient access to credit and input. Their low performance, small-scale and weak institutional arrangements therefore, do not make them a viable option for joint ventures with foreign investors⁹⁶

In a situation where there is a gap in institution such The Village Land Act in foreign agricultural sector, it is difficult in such confusion to attract investors where the legal issues are not sort out. It is a fact that majority of Tanzanians live in rural area and their main activity is cultivation, livestock keeping and it is on the same area that the investors also eyeing it due to potential fertile land, good climate condition and large area for investing and conducting agricultural business. Surprisingly, the agricultural sector that is key to many African countries employment, food security and poverty reduction has long been neglected. The lack of private and public investment has led to lower productivity growth rates and stagnant production in many developing country.⁹⁷

⁹⁵ *Ibid*, 59.

⁹⁶ *FAO (2012) Trends and Impacts of Foreign Investment in Developing Country Agriculture: Evidence from Case Studies. Food and Agriculture Organization of the United Nations, Rome, Italy.*

⁹⁷ *Ibid*.

3.1.4 The Investment Act

Despite the provision of the law in the Investment Act, as means to encourage both local and foreign investors there are still clouds as far as security of the land is concern. For example the function of Tanzania Investment Centre (TIC) in Section 6(a) is to “initiates and support measures that will enhance the investment Climate in the country for both local and foreign investors”⁹⁸ this include access to land for purpose of investment. In the Land Act, A foreigner can access land and makes it a security to a loan as provided in section 25(a) “a foreign investor may, in relation to the business enterprise which he operates, obtain credit from domestic bank and financial institutions up to the limit established by the Bank of Tanzania in consultation with the Centre having regard to the amount of foreign capital invested in the business enterprise”⁹⁹.

This Encourages and builds capacity to investors but at the same time the demand for land is increasing and this needs goodliness for the access of the same. However, the laws do not provide the time or the stage in which the investors can use land as the security that is after payment of the compensation. As result, communities carry a great deal of risks in that they are agreeing to the transfer of land from village land to general land and from village to central government authority on the basis of an Investors presumptive ability use land title to secure bank loans¹⁰⁰. It should be noted that this land is in the hands of villagers under the Village Act. This is vividly shown especially on the default of payment of the loan under which the land was

⁹⁸ The Investment Act.

⁹⁹ *Idem*.

¹⁰⁰ E. Sule and N. Fred, *Biofuels, Land Access and Rural Livelihoods in Tanzania*, IIED, London 2009,38.

mortgaged and used as security; such land will be taken by the financial institution and not returned to the villagers since the land was under The Land Act and not the Village Land Act.

Also there is legal issue can be seen in accessing land through TIC as the land required by TIC is not legally specified as to the acquisition of that land. Due to the speedily need of the government, the land is allocated to the investors without duly consideration of the villagers and these allocations have become a veritable source of complaints and land disputes in that, either the customary land rights have been disregarded, or the present and the future land requirements of communities have not been considered, or both.¹⁰¹

There is no enough general land bank that can support this demand of large scale of land and therefore the village land is the option to investment. In Bagamoyo Eco Energy where there is land conflict between the investor government and the citizen is a clear example that the Village Land law has a gap. In Mafia Island Marine Park (MIMP) the way they use to acquire land is not participatory and this normally causes weak relationship between the Park and the surrounding communities.¹⁰²

The area of land which each commercial biofuel investor in Tanzania has requested has varied from 30,000 ha to two million hectares of land at a time. However, cites 37 companies having sought land in Tanzania for biofuel

¹⁰¹ Abdon, *supra*, note 58.

¹⁰² Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. Reforming Land in Tanzania: For Whose Benefit. 15

production¹⁰³ a clear indication that Tanzania has good soil and climatic conditions for crop production.

A research conducted as shown in the table bellow shows the number of investors in agriculture sector in Tanzania. The table 1 shows the crop to be cultivated, the size of land acquired and originally requested and the project status.

The table 2 gives a clear map of how the investment in agriculture is in Tanzania. It shows the investment in biofuel crops which is only a portion to the whole agriculture sector. Where biofuel investors are attempting to secure large areas of land for crop production, they seek a right of occupancy. Where this eventuates, it effectively extinguishes customary rights in land. Where biofuel companies, such as Diligent and Prokon, are not seeking to secure large areas of land, but are using production models based entirely on contract farming or independent smallholder suppliers, there is no direct negative impact on local land access and tenure.¹⁰⁴

Another observation that can be argued is the fact that there is no any form of liability that has been attached to the investor. This may lead the investors to play around with malpractice such as corruption, fraud and any other form of the kind and the law is silent and this is dangerous as there are investors both foreign and local investor who go direct to villages and negotiate to get land¹⁰⁵. In any dispute between the villagers and the investors, the investor will rely on the central government whose power may be used in the expense the villagers.

¹⁰³ Sule,*Supra* note 100,15.

¹⁰⁴ *Idem* , 47.

¹⁰⁵ *Supra*, note 95, 58.

3:2 Transfers of Village Land to General Land Policy

The nation Land Policy covers various Land related aspects. The 1995 Nation Land Policy to a large extent changed land management in the country it has helped for the enactment of two principle legislation which governs land in Tanzania, Land Act and Village Land Act. Due to the economic liberalization there is necessity of considering national Land Policy as land management become more sensitive due to its rob in investment. The speculative of land is still high , especially for investment purposes the consideration of those are occupying land under deemed right of occupancy . The issue of deemed right occupancy is nowhere to be seen as secured by the land laws due to the controversy surrounding section 18 of the Village Land Act. 1999¹⁰⁶.

The village land Act put the deemed right of occupancy and granted right of occupancy at the same level as per section 18(1) (g) “residence or place of capable of being assigned to a citizen or a group of citizens, having a business in the village where the land is situate, or a body corporate the majority of whose shareholders or members are citizens having a place of business in that village”¹⁰⁷. This means that an investor can be granted land through the deemed right of occupancy and at the same time been controlled by the TIC whose institution is in The Land Act and not in the Village Land Act.

The validation of land use into granted right of occupancy is to a large extent infringing customary right of occupancy and this has become a way of taking village land and supply to foreign investors through the validation of land use. To

¹⁰⁶ O. P.O Onesmo (Legal Officer LHRC) 1990’s Tanzania Land laws reform and its impact on the Pastoral land tenure. A paper to be presented during pastoral week at Arusha 14-16 February 2010, 9.

¹⁰⁷ The Village Land Act.

date land law facilitate the government to alienate village by using provisions which allows the transfer of land without giving any command to the government to observe due process to make sure the right to own land is not abused.

In the case *Kapera Keiya Kamunyu & 44 others v The Minister of Tourism and Natural resources and environment and 3 others*¹⁰⁸ the high court held that plaintiffs (Maasai) held customary land right at Umba Game reserve, a portion of the Mkomazi Game reserve. The court ruled that the eviction of maasai from Umba Game reserve was unlawful because it did not comply with procedures specified by the land Acquisition act 1967. The High Court ruled also in favor of plaintiffs right to property protected by the Constitution of United Republic of Tanzania article 24 and awarded each of them compensation of Tsh 3000,000. This shows that the powers given to top officials can be misused leading to land conflicts.

The radical title given to the president is purposely made by government to free hand in controlling land in the country and this has been a tool to make it possible the transfer of land from village land to General Land.¹⁰⁹ With this power vested to the president, it follows that the president is among the important institutions in land administration and it is kind of apex in decision making on land matters. The law makes it public property and that is the way that the president can use his power to designate land compulsorily for public use.¹¹⁰

The government has been using land as a factor to call for foreign investors, it is maintaining that Tanzania has abundant land which is suitable for investment

¹⁰⁸ Civil Case No 30 of 1995 High Court of Tanzania at Moshi (unreported).

¹⁰⁹ *Supra*, note 93, 77.

¹¹⁰ *Ibid*, 77.

and this land is not but village land. The growing demand of land for agricultural business, land for tourism industry to a large extent saw a the large scale of land being allocated to investors. Much of the land indentifies as suitable for investment in different parts of the country is however village land and is used or occupied by local communities in various ways. This entails that investment in the country involves village land and this is why due process in accessing village land is mandatory for better present and future invest in Tanzania.”¹¹¹ .

3:5 Legal Effect of Transfer of Village Land to General Land

It is the fact that Village Land Act is silent on access to land by foreign investors or non – citizen much as it has been established that village land suffers much of foreign investors who wishes to invest on land but the act which provides the management kept silent. This is unacceptable. Although investors may first go to look for land in the villages, they cannot formally start the land acquisition process without the TIC. Moreover, if they want to lease land which is Village Land, it must first be formally transferred from “Village” to “General” status by the president, after the affected communities have given their permission and agreed on the amount of compensation¹¹²

The investor must have the request for land transfer approved in turn by the Village Council, the District Council Land Committee and, finally, the Village Assembly, although, as indicated above, community approval is not a formal legal

¹¹¹ C.M. Correa F.N. Kumar, *Protecting Foreign Investment: Implications of a WTO Regime and policy options*, Zed Books, London 2003. III.

¹¹² L. Cotula and R. Leonard, 2010, “Alternatives to land acquisitions: Agricultural investment and collaborative business models.” Highlights from an international lesson-sharing workshop. (Maputo, 17th-18th March 2010). IIED.

requirement for areas of land over 250 ha. In principle, the land acquisition process in Tanzania empowers local communities to manage their own land through the Village Land Act and make at least some decisions relating to land sought by foreign investors in their villages, but in practice this is not always the case.¹¹³

The Village land therefore is allocated to foreigners or non – citizen for investment purposes without any due process (refer to the table above, in the case of Tanzania BioDiesel Plant Limited) which is to be provided under VLA and all these are managed by the Ministry responsible for lands and the Commission of Land. The Village land Act provides the Legal frame work for management and administration of village land which by definition held under customary rights of occupancy held in perpetuity”¹¹⁴

The dominance of Land Act also can be observed in the interpretation section as it provides that the unoccupied or unused village land is general land¹¹⁵. Land in Tanzania being a public property entails that right of the occupier is only to the extent of the purposes he acquired it and not as a private property as how the colonizers wanted it to be. In the era of economic liberalization land as a public property faces challengers as it allows the misuse of others rights for the reasons of public interest. The President who is the trustee of Tanzania land can use this reason to transfer village land to general land without any due process¹¹⁶.

¹¹³ *Ibid.*

¹¹⁴ E. Sule and N. Fred, *Biofuels, Land Access and Rural Livelihoods in Tanzania*, IIED, London 2009,38.

¹¹⁵ A. Mwami, and N Kamata , *Land Grabbing in Post Investment Period and Popular Reactions in the Rufiji River Basin*. HAKIARDHI, Dar Es Salaam 2011,32.

¹¹⁶ *Idem.*

The Village Land Act empowers the President to transfer in Public Interest any area of village land to any other category of land whereby under the Act the term “Public Interest also includes “Investments of national interest”¹¹⁷ This arrangement is not suitable as it undermines the constitutional rights to own property but nevertheless the Public use is not a strict meaning that one can clearly understand and the committing must agree on content of the definition. As the way laws of Land stand it is easy for Land Commissioner to advice the president on acquisition of Land which actually is for private benefit and not for the Public benefit which one can think of. The modern economy makes land more suitable to be a private property but only under provisions on land laws that give power the government after proper legal guidelines to take land for the public interest and public interest has to be clearly defined to avoid the misuse of law. This is subject to section 4 (1) of the Village land Act.

There are three stages in the land acquisitions process.

- i. The first stage is preliminary investigation of suitable land for the intended purpose. Under this stage the responsible organ, among others conducts a survey together with clearing and setting out boundaries of the proposed land...¹¹⁸
- ii. The second stage is giving notice of intention to take the land after the President is satisfied with it. This notice should be

¹¹⁷ Accumulation by land Disposition and Labour Devaluation in Tanzania. The case of Bio Fuel and forest Investment in Kilwa and Kitoto (2011) Land Rights Research and Resources Institutions, 9.

¹¹⁸ I. Makoko, *Fact-Finding Mission Report on the Prevailing Land Dispute at Namwawala Village in Kilombero District, Morogoro Region*. HAKIARDHI & LHRC. 2009,22.

within 6 weeks. This is given by the minister on his behalf...¹¹⁹

- iii. Lastly, taking possession of the land.... Thus, the validity of the alleged acquisition is also questionable because by virtue of Section 19(1) of the Act, the President is not compelled to complete the acquisition – he or she may withdraw¹²⁰

This has not changed and under the present Land Acts public interests includes private investments; officials may use this loophole/advantage to alienate locals from their land under the umbrella of investments as public interests.¹²¹ In the land acquisition act the public interest/ purpose is (a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing¹²²

Since Tanzania has accepted economic changes to mean economic liberalization land law also has to change so that land can be a private property and the radical title that the President has been conferred by law is extinguished. The radical title conferred to the president is a source of land speculation as the officials through law can misuses the land and allocate to investors while the indigenous are suffering as a result of community unrest which most of the time end up causing land dispute between the indigenous and investors.¹²³

¹¹⁹ *Idem*, 23.

¹²⁰ *Idem*, 24.

¹²¹ K. Charles, *supra*, note 48, 123.

¹²² The Land Acquisition Act, RE 2002

¹²³ *Ibid*.

This is supported also in the Land Acquisition Act section 4 (g) “for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development”¹²⁴. The word ‘opinion’ falls under discretion or belief of a person it is “a thought or belief about something or someone”¹²⁵. If the president feels a certain land to be taken from the people, such will be done accordingly to his belief without most of the time not following legal procedures in acquisition of the land.

The issue of land should not be on the wishes or beliefs but based on foundation of law in order to prevent arbitrariness of power and safeguard justice to all. The power of compulsorily land acquisition given to the president reduce the power of individuals to challenge the decision as most of the time the government proceed with its decision even if the victims of the transfer of land are not satisfied. Though the requirement of consent from the village is provided by the law, but this cannot work with this arrangement. The consent here is not absolute as, one, the consent of the village council does not amount to that of the whole village, and second, it is inconceivable for the council to refuse a directive from the president (the radical land lord) or his land delegates.¹²⁶

Local government authority has no legal power to process right of occupancy section 19(2) the section denies the local authorities which are constitutionally established to deal with allocation of land to investors. This denial could be the reason why land grabbing is increasing as the local authority technical personnel are not responsible hence they are not accountable for any default. Local

¹²⁴ *Supra*, note 102,15.

¹²⁵ Cambridge English dictionary.

¹²⁶ Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. Reforming Land in Tanzania: For Whose Benefit. 15.

government authorities has land officers who could be used to provide these services as they are within and employed to serve the local community. Local government administratively works with the community therefore allowing them to be part of the process could widely reduce unnecessary claim as the community cannot complain because local government works with political leaders who are the people's representatives i.e. councilors.¹²⁷

The constitution of the united Republic of Tanzania grants right to own property, when the land is acquired illegally for investment purposes the authority breaches the duty to its citizen contrary to Article 21(1) “ every person is entitled to own property, and has a right to the protection of his property held in accordance with the law”¹²⁸

It is clear that there is emerging conflicts between the state, investors and the local community as far as land allocation and acquisition is concerned hampers agricultural progress in the country which counts 80% of economic dependence in the country, in a another way these legal problems slow down the speed of current government on industrialization which depends much on agricultural input.

This is shown in the case of *National Agriculture and Food Corporation v Mulbadaw village council and others*¹²⁹. In this case the villagers sued the NAFCO for trespass on their land at High Court of Tanzania, Arusha. NAFCO had financial

¹²⁷ In the case of Tanzania Biodiesel plant limited where the land was allocated to the investor through Bagamoyo District council and not through TIC, may be a clear sign of arbitrariness of power especially where the law provides that TIC should be one stop center for foreign investors. However this could be a proper way of allocating land to the investors as it makes it possible through local government and not through the central government. The rationale to this it that the local (villagers will have supreme decision over the land allocated to them through the Village Lang Act.

¹²⁸ The Constitution of The United Republic of Tanzania of 1977.

¹²⁹ [1985]TLR 88.

support from Canada under Canadian International Development Agency here in after referred as (CIDA) to grow wheat Basotu area, Hanang District which was part of Arusha region, currently under Manyara Region. The national agency used all means possible include use of force to acquire the land this deprived the villagers right to own property as stated in the constitution.

The High Court of Tanzania (D’Souza, Ag. J), agreed with the arguments of plaintiffs and granted damages for trespass and destruction of properties as prayed for. The judge further made a declaration to the effect that the land belonged to the plaintiffs because they have been occupying the land under customary title and NAFCO were trespassers. This case shows even if the government could take the said land by force, the villagers could be dissatisfied with decision and such putting the investors under risk. This discourages the investors especially in agriculture.¹³⁰

In the case of *Soitsambu Village Council V TBL &TCT*¹³¹ grazing land where 12,00 acres granted to TBL in 1980’s for commercial farming activities ceased and that land was never reverted for pastoral activities instead the land was sold to Thomson Safaris for tourism activities¹³². The allocation of large chunks of farm land tends to exclude the affected communities from access land and other resources for cultivation and nomadic livestock production, such become a source of conflict.

In the situation of AGRO ECO ENERGY (T) LTD The Swedish Company, a Multi Millionaire project in Bagamoyo, accompany registered in 2007 under Tanzania Company Law. subsidiary of Swedish based on developing a modern sugar

¹³⁰ *Ibid.*

¹³¹ [2010] Reported in “the Indigenous World”, May 2010

¹³² The Report to the Presidential Commission of Inquiry, 1992, Chapter 10

cane plantation and factory producing sugar, ethanol and power for the Tanzania market¹³³ it was closed down on the ground that the Project may do more harm than good unless safeguard are put in place to ensure equitable development. This was due to the fact that there was land grabbing on the local when selfish individuals invaded the land and claimed it as their own employing the overburdened legal system to hold the project up.¹³⁴

This is because there was no laws that guided them leading to invasion of people who were not resident of the villages aiming at getting compensation from the government, however this is due to the fact the project when initiated did not involve the villages at grass root level which could solve the problem of identifying the real villagers and no villagers for compensation purposes. Due to this the project was closed down.

The chapter provided the weaknesses that are within the land laws. It gives out the structural setup of land administration and it shows institutional land management in the country. There is clear demonstration of weakness in legal and institutional framework as the provisions of laws are contradictory and it remains silence to matters that are supposed to be addressed to guarantee equity for both land stake holders. The administration is centralized and executive administration took much power to land, the institutional framework undermines village land administration which is supposed to be under full administration of village council and village assembly.

¹³³ <http://www.ecoenergy.co.tz> (accessed on 22 December 2018)

¹³⁴ *Ibid.*

Legal pluralism emerged to be another weakness to land management in the country as there are bodies that takes charge over village land administration. They assume all powers of the village council and village assembly, the management became under the directors and it goes down to land management. Because of legal pluralism even issues of compensation lacks a way forward as to which authority is responsible for fulfillment of the compensation. The radical title allows the misuse of power. It is a fact that one of the factors which will pull more investors in the country is security, since no investors who will invest in the country whose legal framework is quivering.

CHAPTER FOUR

4:1 CONCLUSION AND RECOMMENDATION

The research respondent both without reservation accepted that land institutional in Tanzania is too bureaucratic. The respondent said lack of one body which deals with land matters add bureaucracy of which often witnessing the violation of land laws. This was a reaction while responding to the question whether the land institutional framework in Tanzania is good enough to protect land rights in Tanzania at this era of economic liberalization. But due to complexities and challenges with this structure, land acquisition for large scale investment can fall to the authority of the President, who can transfer village land to general land for investment purposes¹³⁵ The institutional framework of land in the country is not independent as it has been noted earlier in this study, the structural hierarchy and the appointment of land commissioner is hindering efficiency of land matters. The President remained with is powers as a trustee of land on behalf of the citizens of the country.

The interviewed members of the village councils said the president is vested with too much power on land issues which eventually involves bureaucracy in the whole process. The same concern was raised by the remained respondent, the commented for one entity which is independent to deal with land administration.

A formal legal system was developed to deal with land held initially by non-African settlers, whilst ‘customary law’ dealt with land held by Africans. This has meant that different pieces of land are subject to different and sometimes multiple

¹³⁵ www.tnrf.org (accessed on 14 November 2018)

sets of rules, a situation which was exacerbated by villagilization” and led to general confusion about land rights.¹³⁶ Underlying this dual structure have been four important policy themes or continuities, of which the first three remain firmly in place to this day: that land belongs to the state and not individuals (with radical title⁵ still vested in the president), that rights to land depend on the use made of the land, that land rights are controlled administratively as opposed to judicially, and that land is not a saleable commodity¹³⁷

The President of United Republic of Tanzania plays a major role on land matters in the country. The role of the President on land matters are overwhelmingly provided by the law; the President is the one who is responsible to appoint the Minister responsible for lands, he shall also appoint the land commissioner who is accountable to the minister. The President also is the one to appoint the chairman of land advisory committee. The president also has been given power to acquire land compulsorily for public use. He is also the one to transfer land from one category to another. Currently, we have witnessed several cases of land acquisition to enable activities such as mining operations, road constructions, tourism, industrials installations and many similar activities to be conducted.

The power vested to the president does not allow accountability as the powers are vested to the single institution. The Land Act retains the radical title vesting ultimate control and ownership over land to the sovereign with power being centralized and concentrated on commissioner for lands. With legal pluralism that

¹³⁶ Daley, E., 2004, “Land Tenure and Social Change in Tanzania: A Case Study of Kinyanambo Village, Mufindi District,” unpublished PhD Dissertation: University of London.

¹³⁷ Coldham, S., 1995, “Land Tenure Reform in Tanzania: Legal Problems and Perspectives,” *Journal of Modern African Studies*, Vol. 33, No. 2 (1995).227-242.

surrounds land administration, the need of land for investment purposes which allows the allocation of large scale land to be allocated to investors this radical title is not suitable within land management. It is clear that the structural setup of land in Tanzania does not allow the local communities to enjoy their land and it does not allow them to see land as a capital for investment, the land laws and national land policy weakening the commercialization of land and allows the compulsory land acquisition and land allocation to big investors leaving the indigenous with inadequate compensation. In this way is difficult for the local indigenous to realize land as a capital which can transform them modern agricultural economy. And also such become a source of conflict between investors and indigenous.

4.2 Recommendation

The quality of governance at the National and Local level is an important determinant of the volumes and outcome of investment, unfortunately least developed countries which are most in need of increased investment are often characterized by inconsistency laws and policies and are low institutional capacity. It is recommended that local government should deal with foreign direct investment and the report such investor to the central government for other procedures. Decisions on investment whether by government companies or local communities must also be based on sound empirical evidence¹³⁸

To enhance the dignity of any person living in Tanzania, in article 1 holds that “A number of core ethical principles should be considered. Stakeholders directly

¹³⁸ J. Krisson, Challenges and Opportunities of foreign investment in developing country, agriculture for sustainable development, FAO, Rome 2004, 4.

concerned by a proposed a large scale investment projects should have a fair chance to voice their concerns. Drawing a human rights principles such as right to self determination¹³⁹ as grounded in the constitution article 29 (1) “every person in the united Republic has the right to enjoy fundamental human right and to enjoy the benefits accruing from the fulfillment by every person of this duty to society”¹⁴⁰. It is also be argued that directly affected communities and individuals have right to contribute to the approval or rejection process and design and implement of the project before considering any larger-scale ventures in a specific geographical area, legitimate tenure rights of affected communities and individuals should also have been identified and means to protect these rights should have been established. This is to enhance bottom up participation development in which the peasants and pastoral communities are fully integrated, however there is no way to this if the land security is not secured¹⁴¹

The National land policy could have seen it and found a way to incorporate the local government in the process and the assertion that land is the public property could be more meaningful as there is public involvement from grassroots. Section 14 (1) “A local government authority, shall not, unless specifically authorized by this Act or any regulation made under the authority of this Act, make an offer or grant any right of occupancy to any person or organization and any such purported offer or grant shall be void.”¹⁴² This prevention is one causing bureaucracy and lack of transparency in the land allocation process. It would be better for the legislature to

¹³⁹ The International Covenant on Civil and Political Rights, 1966.

¹⁴⁰ The Constitution of the United Republic of Tanzania of 1977,

¹⁴¹ Shivji, Not yet Democracy, 103.

¹⁴² The Land Act

find a way that allows full local participation of local government in the process of land allocation even if the final say could be under the commissioners for lands, this could be a good way of maintaining transparency even avoiding double allocation of land.¹⁴³

Foreign Investors can access land through TIC or by identifying land and purchasing it and thereafter the investor has to receive the Certificate of Incentive from TIC. There are greater chances that the land obtained by the foreigners by negotiating with the village council and thereafter approval from the village assembly to be marred with improper procedure as well as entering into false agreement as the villages are not technically accorded with the ability to deal with investors. This in itself could be a reason that the Local government authority be given more power to deal with land and this will for sure increase accountability to land officers.

Village council is given power by law to take care of village land as all plans involves village land shall be under the council however the village assembly is supreme decision maker of land matters as the village council is also accountable to the village assembly. This was a good position of law that village land shall be managed by villagers themselves, but, there is a remaining challenge and that is; village council is not a professional team that can understand well land technicalities so that it properly advice the village assembly. With the current high demand of land investors including foreign investors can identify land themselves and negotiate with the village council before they obtain derivative right of occupancy. It is therefore

¹⁴³ *Ibid*, section 14 (6)

easy for the village council to enter into agreement which they do not know well the implication to the locals that's to say villagers and with their role they provide the village assembly advice to accept the deal whereby the village assembly agree by vote. In contrast to obtaining land from the TIC land bank', where the investor does not negotiate with local communities, investors have to start negotiations from the village level.

The Land Act should be amended so as to remove the provisions that make is superior to Village Land Act. Specifically the provision under section 181 of the Land Act, should give room to the Village Land Act to deal directly with issues pertaining investment especially in agriculture sector. The legal pluralism shall not be entertained and therefore abolishment of those provisions; the land administration shall not be from various authorities (statutory bodies) as this will allow inconsistency in land management creating loop holes for non accountability.

In doing the above the following can be done

1. Review and monitor regularly the profiles of companies and all their subsidiaries
2. Survey village lands accurately and prepare participatory Village Land Use Plans
3. Advocate for amendments of land and local government laws to empower villages
4. Provide legal aid to communities in land conflict with investors and/or parastatals

5. Inform villagers about the dynamics of large scale land investments and investors

Table 1

ARABLE LAND AND LAND UNDER CULTIVATION IN RELATION TO TOTAL LAND AREA IN TANZANIA	
Land use (millions of hectares)	
Total usable land	94.5
Arable land	44.0
Land under cultivation	10.2
Area suitable for irrigation	29.4

Source: Tanzania Investment Centre

Table 2

Investor	Crop	Location	Land area acquired (ha)	Land area originally requested (ha)	Project Status
FELISA	Oil Palm	Kigoma	4,258	5,000	Land dispute in court for extra 350 ha obtained from 2 villages No EIA done
BioShape	Jatropha	Kilwa	34,000	82,000	400 ha pilot farm planted. Integrity of first EIA questioned, following which a second EIA was commissioned
Sun Biofuel	Jatropha	Kisarawe	8,211	50,000	8,211 ha of land formerly belonging to 12 villages transferred to general land; derivative title being finalized
SEKAB BT	Sugarcane	Bagamoyo	22,500	24,500	Seed cane planted and irrigated reservoir constructed.
SEKAB BT	Sugarcane	Rufiji	0	400,000	In land accusation process
Diligent Tanzania Ltd	Jatropha	Arusha Babati Handeni Singida Monduli	n/a	n/a	Contracted over 4,000 farmers.
	Croton <i>megalocarpu</i> <i>s</i>		n/a	n/a	Collecting seeds from natural and planted forests

Donesta Ltd & Savana Biofuels Ltd	Jatropha	Dodoma	2,000	n/a	200 ha planted
Trinity Consultants/ Bioenergy TZ Ltd	Jatropha	Bagamoyo	16,000	30,000	Surveying land to be granted
Shanta Estate Ltd	Jatropha	Bagamoyo	14,500	n/a	Agreement with villagers signed
Tanzania Biodiesel Plant Ltd	Oil Palm	Bagamoyo	16,000	25,000	Land not surveyed; land granted by District but not by TIC
Clean Power Ltd	Oil Palm	Bagamoyo	3,500	n/a	Project abandoned after realized high cost of doing land use plans
CMC Agriculture Bio energy Tanzania	White sorghum	Bagamoyo	25,000	n/a	Land request approved but asked to do land use plans
ZAGA	Jatropha	Kisarawe	n/a	n/a	Applied for land
African Green Oils	Oil Palm	Rufiji	860	n/a	Planted 360 ha and financing land use plans in 7 villages
InfEnergy Co Ltd	Oil Palm	Kilombero	5,818	n/a	Land lease pending. Cultivating rice while growing oil palm
Bio Massive	Jatropha & Pangamia	Lindi Region	50,000	n/a	
JCJ Co Ltd	Jatropha	Mwanza Mara Shinyanga Tabora	n/a	n/a	Aimed to sensitize local communities but project abandoned due to alleged lack of government support
African Biofuel and Emission Reduction Co. TZ Ltd	Croton <i>megalocarpu</i> <i>s</i>	Biharamulo	20,000	n/a	No operational progress due to lack of funds
Prokon BV	Jatropha	Mpanda	10,000	n/a	Contract farming with 2000 smallholders; does not own any plantation land
Mitsubishi Corporation	Jatropha	Arusha, Dar es Salaam, Coast	n/a	n/a	Looking for land in these regions
Kapunga Rice Project	Jatropha	Mbarali District	50,000	n/a	Planted to replace rice with jatropha; president recently ordered that rice cultivation patterns not be changed
DI Oils Tanzania Ltd	Jatropha	Kilimanjaro	n/a	n/a	Abandon plans for Tanzania
Kikuletwa	Jatropha		400	n/a	Growing jatropha

Farm	&Aloe vera				
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Sources: TIC; Ministry of Agriculture, Food Security and Cooperatives; Rufiji Basin Development Authority

(RUBADA); Primary Data from Fieldwork; Kaarhus et al (2010); Action Aid (2009); Sulle and Nelson (2009a),

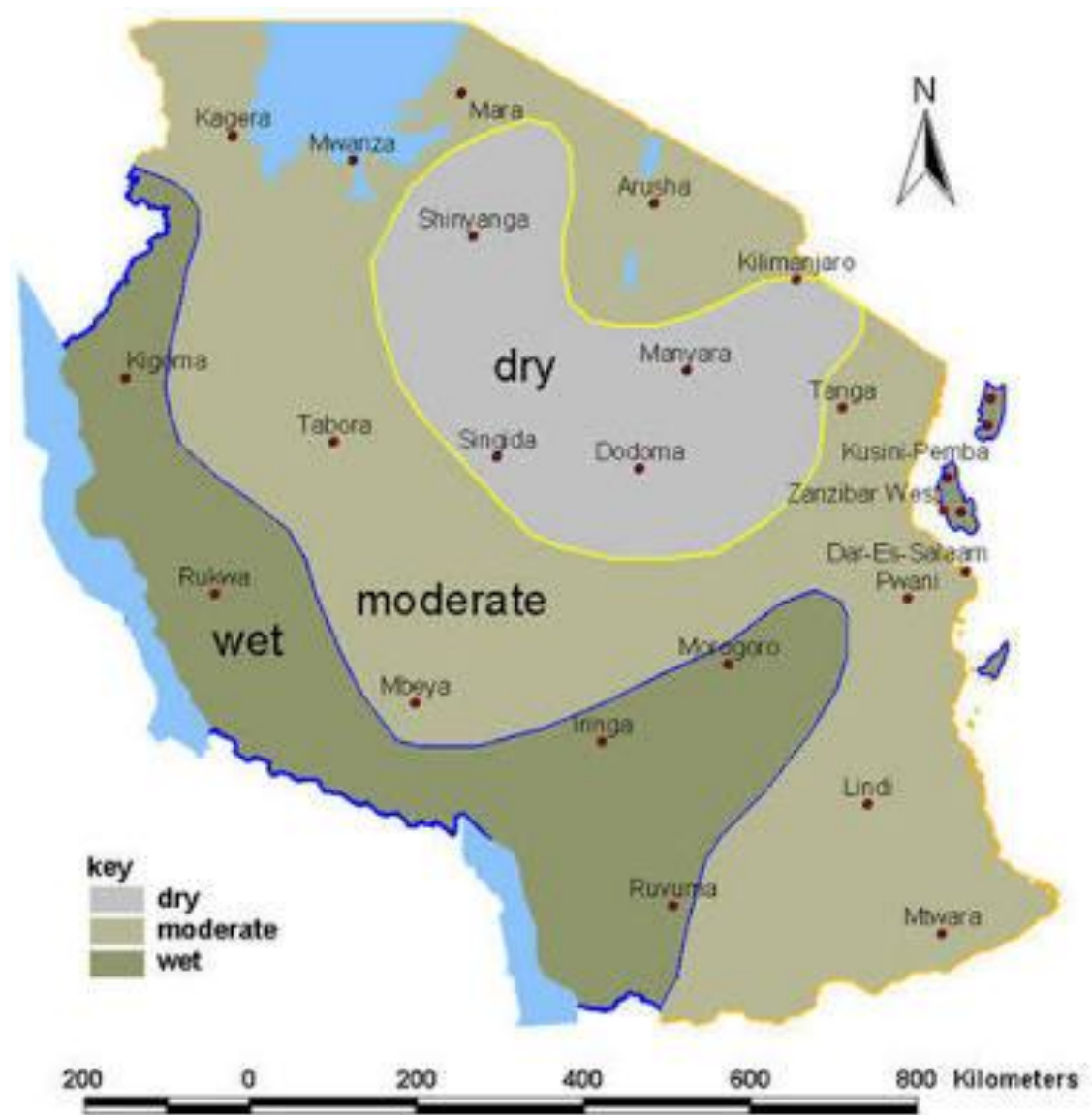
Oakland Institute (2011).

Appendix 1: Rain distribution in Tanzania

Tanzania Regions with Two Agricultural Seasons (short and long rains)



Appendix 2: Yield Estimation in Tanzania



Source: <http://fas.usda.gov/pecad.html>

Appendix 3: Main eleven agriculture crop distribution in Tanzania.



Source: FAO 2016

Sorgho – sorghum
Millet – millet
Riz- Rice
Maïs – Maize
The- Tea

Café- Coffee
Coton- Cotton
Noix de cajou- Cashew nut
Tabac- Tobacco
Sisal- Sisal

Appendix 4: QUESTIONNAIRE FOR LAND STAKEHOLDERS IN INVESTMENT.

1. Land grabbing in Tanzania is the growing phenomenon to most local communities. Do you agree on this?

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..... If yes why? And if not why?

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Do you think the Village Land Act is properly stretching its protection to land rights?

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2. Tanzania has two main pieces of legislations which primarily have a duty to provide legal framework on access to land in the country, but land accessed for investment purposes several times create dispute between investors and indigenous/local communities. Why?

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3. Foreign investors can acquire land through Tanzania Investment Centre. Do you think the Village land Act properly address the process so as to protect land rights for local land occupant?

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4. Do you think the land institutional framework in Tanzania is good enough to protect land rights in Tanzania at this era of economic liberalization?

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5. Do you think the powers of the President on land matters contribute to challenges that are facing land and land allocated to investors in the country?

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6. Do you think the composition of village land council as provided by the Village Land Act is capable to administer village land?

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7. What are the necessary actions, interventions, strategies to engage to prevent land dispute that occur as the land is accessed for investment purposes?

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Appendix 5: MASWALI KWA WANANCHI WAZAWA/WANAKIJIJI.

1. Dhana ya unyang'anyi/utaifishaji wa ardhi kutoka kwa wazawa bila kujali haki za wazawa na serikali kuwapa wageni kwa madhumuni ya uwekezaji inakuwa sana Tanzania.Unakubaliana na dhana hii?

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Kama jibu ni ndio nini inasababisha

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Unafikiri sheria ya ardhi ya kijiji inalinda haki ya ardhi?

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2. Tanzania inayo sheria mbili (2) za ardhi zinazosimamia na kulinda haki za wamiliki; sheria ya ardhi namba 4 na shaeria ya ardhi ya kijiji namba 5 zote za mwaka 1999, lakini bado ardhi wanayopewa wageni husababisha ugomvi baina ya wazawa na wawekezaji wa kigeni. Unafikiri ni kwa nini?

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3. Wageni hawaruhusiwi kisheria kumiliki ardhi Tanzania isipokuwa kupitia Kituo cha uwekezaji nchini (TIC) watapata haki ya kutumia ardhi kwa ajili ya uwekezaji. . Je unafikiri sheria ya ardhi na sheria ya uwekezaji zinatoa mwongozo mzuri ili kuepusha migogoro baina ya wawekezaji na wazawa/wananchi?

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4. Unafikiri katiba ya Jamhuri ya Muungano wa Tanzania na sheria za ardhi zinatoa ulinzi wa kutosha kwa wamiliki wa ardhi wazawa aktika kipindi hiki cha utandawazi?

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5. Je unafikiri mamlaka aliyonayo Raisi kisheria katika maamuzi ya ardhi yanachangia changamoto zilizopo kati ya wazawa na wawekezaji?

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6. Je unafikiri Halmashauri ya kijiji inayo uwezo wa kusimamia ipasavyo masuala ya ardhi ya kijiji kwa mujibu wa sheria?

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7. Unafikiri ni nini kifanyike ili kuzuia matatizo ya ardhi Tanzania hasa kwa ardhi waliyopewa wawekezaji?

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BIBLIOGRAPHY

Books

Charles K. P, *A Financial History of Western Europe*, Oxford University Press, New York 1993.

Chongela J., Contribution of Agriculture sector to Tanzania economy, 3 *American Journey of Research Communication*, (2015) 57-58.

Coldham, S., 1995, "Land Tenure Reform in Tanzania: Legal Problems and Perspectives," *Journal of Modern African Studies*, Vol. 33, No. 2 (1995).227-242.

Correa C. M. & N. Kumar, *Protecting Foreign Investment: Implications of a WTO Regime and Policy Options*, Zed Books, London 2003.

Cotula L. and R. Leonard, 2010, "Alternatives to land acquisitions: Agricultural investment and collaborative business models." Highlights from an international lesson-sharing workshop. (Maputo, 17th-18th March 2010). IIED.

Daley, E., 2004, "Land Tenure and Social Change in Tanzania: A Case Study of Kinyanambo Village, Mufindi District," unpublished PhD Dissertation: University of London.

FAO (2012) Trends and Impacts of Foreign Investment in Developing Country Agriculture: Evidence from Case Studies. Food and Agriculture Organization of the United Nations, Rome, Italy.

Garner, B. *A Black's Law Dictionary* (8th Edition) Thomson, West United States of America, 2002.

Gray K. & S. Francis Gray, *Land Law*, Butterworth, London 2001.

Heertje A. and B. Robinson, *Basic economics*, Holt Rinehart and Winston, Norfolk, 1995.

Kaniki, A .O. J. The Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola. Volumes IVI, Numbers 1-6(2006-2008) *National Organization for Legal Assistance (nola)*. January (2008)43-55.

Krisson, J. Challenges and Opportunities of foreign investment in developing country, agriculture for sustainable development, FAO, Rome 2004.

Maina C Peter, *Foreign Investment in Tanzania, The Mainland and Zanzibar*, Department of municipal Law Dar Es Salaam, 1994.

Maina C Peter, *Foreign Private Investment in Tanzania*, Konstanz, Koln 1989, 8.

Maina, Chris SaudiaMwakaje, *Investment in Tanzania*, Department of Municipal Law, University Dar es Salaam. 2004.

Makoko I., *Fact-Finding Mission Report on the Prevailing Land Dispute at Namwawala Village in Kilombero District, Morogoro Region*. HAKIARDHI & LHRC. 2009.

Mason H, Maliyamkono TL. *The Promise* Dar es salaam University Press Ltd, 2006.

Mwami A., and N Kamata , *Land Grabbing in Post Investment Period and Popular Reactions in the Rufiji River Basin*. HAKIARDHI, Dar Es Salaam 2011.

Nyerere J. K., *Freedom and Unity/ UhurunaUmoja*, Oxford University Press, Dar Es Salaam 1966.

Olenasha, William. LLB, LL.M. Programme Officer PINGOS Forum, Member of HAKIARDHI. *Reforming Land in Tanzania: For Whose Benefit*.

Onesmo O. P. (Legal Officer LHRC) 1990's Tanzania Land laws reform and its impact on the Pastoral land tenure. A paper to be presented during pastoral week at Arusha 14-16 February 2010.

Rwegasira A., *Land As a Human Right, A History of Land Law and Practice In Tanzania*, Mkuki na Nyota, Dar es salaam 2012.

Shivji I., *Where is Uhuru? Reflection of the Struggle for Democracy in Africa*, Fahamu Books, Cape Town, 2009.

Shivji I.G, *Not Yet Democracy , Reforming land Tenure in Tanzania*, IIED/ HAKIARDHI – H, Dar es Salaam, 1998.

Shivji, G Issa *Where is Uhuru? Reflections on the struggle for Democracy in Africa*. Fahamu Books, Nairobi 2009.

Sule E. and N. Fred, *Biofuels, Land Access and Rural Livelihoods in Tanzania*, IIED, London 2009.

Sule E. and N. Fred, *Biofuels, Land Access and Rural Livelihoods in Tanzania*, IIED, London 2009.

Journals/ reports

Traman L. E, Foreign Direct Investment: Hazard or Opportunity? *George Washington International Law Review*, Vol. 41, 2009, 17-19.

Accumulation by land Disposition and Labour Devaluation in Tanzania. The case of Bio Fuel and forest Investment in Kilwa and Kitoto (2011) Land Rights Research and Resources Institutions, 9.

FAO (2012) Trends and Impacts of Foreign Investment in Developing Country Agriculture: Evidence from Case Studies. Food and Agriculture Organization of the United Nations, Rome, Italy.

Ghormande, Vijay (2011) Transition of Law and Justice in Tanzania. Review of Contemporary Changes in Tanzania Law and Justice System.

Krisson J., Challenges and Opportunities of foreign investment in developing country, agriculture for sustainable development, FAO, Rome 2004.

Makoko, *Fact-Finding Mission Report on the Prevailing Land Dispute at Namwawala Village in Kilombero District, Morogoro Region*. HAKIARDHI & LHRC. 2009,22-25

Mwami A., and Kamata N , *Land Grabbing in Post Investment Period and Popular Reactions in the Rufiji River Basin*. HAKIARDHI, Dar Es Salaam 2011, .32-36.

Olengurumwa P.O Onesmo (Legal Officer LHRC) 1990's Tanzania Land laws reform and its impact on the Pastoral land tenure. A paper to be presented during pastoral week at Arusha 14-16 February 2010.

Tanzania Investment report. Report on Foreign Private Investment in Tanzania, 2009.

Tanzania United Republic of 1994, Report of the Presidential Commission of Inquiry into Land matters volume I and II, Dar es Salaam Ministry of lands Housing and urban development in Corporation with the Scandinavian Institute of African Studies Stockholm.

The Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola. Volumes IVI, Numbers 1-6(2006-2008) *National Organization for Legal Assistance (nola)*. January (2008)56-67.

The Justice Review. Special consolidated Edition to mark the 5th Anniversary of nola. Volumes IVI, Numbers 1-6(2006-2008) (January 2008) National Organization for Legal Assistance(nola).

Traman L. E, Foreign Direct Investment: Hazard or Opportunity? *George Washington International Law Review*, Vol. 41, 2009, 17-19.

Websites

[www.Bis.org / publ/cgfs 22 bde3. Pdf.](http://www.Bis.org/publ/cgfs/22/bde3.Pdf)

[www.eac,int](http://www.eac.int)

www.focusonland.com

www.kenyabrussels.com

www.legal.un.org

www.lexology.com

www.miga.org

www.tnrf.org

www.wto.org/English/thewto

<http://www.jstor.org>

<http://constructionreviewonline.com>

<http://www.ecoenergy.co.tz>

