

# Assessment of the Impact of Voluntary Guidelines on the Responsible Governance of Tenure (VGS) on Environmental And Social Safeguards in SAGCOT Region

**Final Draft Main Report**

November 2013



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BAREFOOT EDUCATION FOR AFRIKA TRUST (BEAT)

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## AFRICA BIODIVERSITY COLLABORATIVE GROUP



AWF Case Studies on Food Security and Conservation:

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This report was made possible by the generous support of the American people through the United States Agency for International Development (USAID) under the terms of Cooperative Agreement No. RLA-A-00-07-00043-00. The contents are the responsibility of the Africa Biodiversity Collaborative Group (ABCG). Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of USAID or the United States Government. This publication was produced by **the African Wildlife Foundation** on behalf of ABCG.

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# ACRONYMS

ABCG	Africa Biodiversity Collaborative Group
ACT	Agricultural Council Of Tanzania
AGRA	Alliance For Green Revolution In Africa
ANSAF	Agriculture Non State Actors Forum
AU	Africa Union
AWF	African Wildlife Foundation
BATS	Biodiversity Analysis And Technical Support
BEAT	Barefoot Education For Africa Trust
CCRO	Certificate Of Right Of Occupancy
CDM	Clean Development Mechanisms
CEO	Chief Executive Officer
COWABAMA	Collective Warehouse Based Marketing
DED	District Executive Director
FAO	Food And Agriculture Organisation Of United Nations
GDP	Gross Domestic Product
GoT	Government Of Tanzania
IDA	International Development Agency
LSLA	Large Scale Land Acquisitions
NAFCO	National Agriculture And Food Corporation
NEMC	National Environmental Management Council
NGOs	Non-Governmental Organisations
PMO	Prime Minister's Office
REDD	Reduced Emissions From Avoided Deforestation And Degradation
RUBADA	Rufiji Basin Development Authority
SACCOS	Savings And Credit Co-Operatives
SAGCOT	Southern Agriculture Growth Corridor Of Tanzania
TANAPA	Tanzania National Parks
TIC	Tanzania Investment Centre
USAID	United States Agency For International Development
VGs	Voluntary Guidelines
VLA	Village Land Act
WMA	Wildlife Management Area

# Acknowledgments

BEAT would like to thank the team at AWF for providing valuable documentation and reading material. The AWF team also assisted invaluable in organizing the field visits to Dar es Salaam and SAGCOT region. BEAT found most interviewees quite keen to discuss the land governance and biodiversity issues they are dealing with and/or witnessing on the ground. Government officials in Dar es Salaam and in Mbeya were very forthcoming with information, and demonstrated a great deal of consciousness to the unfolding developments in SAGCOT, both positive and negative. BEAT hopes that in turn this report will contribute to AWF's efforts and commitment to SAGCOT, especially in the hope for a future of inclusive growth and development which is sustainable and richer in biodiversity.

## *Disclaimer*

All views and any unintended errors in this report are entirely those of the authors and do not necessarily reflect views of AWF, its partners or any persons cited in the study.



## Summary & Key Message

The *Kilimo Kwanza* (Agriculture First) initiative represents the Government of Tanzania's (GoT) major attempt to promote large scale land investments not only in the SAGCOT region, southern Tanzania, but throughout the country. The evidence on the ground points to challenges with sustainable management of natural resources, worsening water challenges, and biodiversity issues. Land governance issues are epitomised by investor-community (pastoralists and smallholder farmers) conflicts, investor-government conflicts, displacement of villagers to pave way for investments among others. All these challenges are anticipated by the FAO Voluntary Guidelines (VGs) as well as the AU Framework and Guidelines (F&Gs). Neither the VGs nor the F&Gs are known or in use in the SAGCOT region.

On the positive side, there are examples of inclusive business models that could form a basis for future planning and development. Opportunities exist for capacity building on land governance and ecosystems services management at community as well as at national and regional levels, more in line with F&Gs and VGs. Land governance needs strengthening in several respects including enforcement of land rights at village level, improvement in land use and spatial planning, promotion of ecosystem services, enforcement of environmental regulations and on dispute resolution. Moreover, such efforts improve the chances of promoting inclusive business models, consistent with social development and protection of biodiversity.

The literature reviewed and interviews carried out all reveal that land remains a contentious issue in Tanzania. The process of demarcating the 25 large-scale farms identified by government for the 'Big Results Now' initiative already faces challenges. It appears that the realities on the ground do not reflect the enthusiasm of the government. The legislation, regulations and institutions are not ready for this kind of ambitious programme. Most of the institutions involved lack the capacity to carry out the prescribed roles in both the SAGCOT plans and the Big Results Now initiative. The evidence is pointing to how all the key institutions are working very hard, and staff are determined to meet these lofty targets, but coordination, funding and capacity are a challenge.

### *Voluntary guidelines and au f&gs:*

Neither the FAO VGs nor the AU F&Gs are common knowledge in the SAGCOT environment. Officials of government, NGOs, SAGCOT executives and investors are all equally unaware of these important and relevant documents. It would appear that this is an issue of both lack of awareness and lack of preparedness in applying such guidelines given the desire for rapid development.

### *Legal framework for land acquisition:*

It is evident that the relevant pieces of legislation, namely the Village Land Act of 1999, the Land Act of 1999, and the Environmental Management Act have areas of overlap and conflict in interpretation and implementation. Since only general land is available to investors, the processes of re-classifying village to general land are fraught with challenges and irregularities and are a potential area for conflict between the government and the communities. Whilst the legislation provide for decentralisation and

recognition of women's land rights, safeguarding and promoting women's rights, and local governance capacities are inadequate for a implementing land reform programmes.

#### ***Coordination and capacity in land governance:***

The main players in land administration are the ministries of land, agriculture and environment, Rufiji Basin Development Authority (RUBADA), and Tanzania Investment Centre (TIC). On coordination of institutions involved in land management, it was noted that government departments work in silos. The national REDD taskforce coordinated by the Prime Minister's Office is an example of a functional inter-ministerial and well coordinated taskforce with representatives from all ministries, which should be replicated on other cross cutting issues.

**Suggestion:** *Given the challenges and delays in demarcating new general land (commercial units) for new investors, evidence in Mbeya suggest that officials on the ground see greater opportunity in re-allocating existing general land given evidence that some of this land is 'unused' or 'under-utilized.' A suggestion therefore is that USAID and other donors support AWF to provide the needed support to the regional offices with resources to inspect existing land systematically and work with TIC, RUBADA and Ministry of Lands in regularizing the existing general land.*

#### ***The land issue and impact on biodiversity and natural resources management:***

Southern Tanzania and the SAGCOT area contain three mega conservation complexes *inter alia* the Greater Selous, Greater Ruaha and Greater Katavi landscapes. Within the same localities or boarding these conservation areas many people depend on extensive agricultural production for their livelihoods. As the population increases, so will agriculture spread, often into areas that once connected core wildlife habitats. The challenge is how to boost agricultural production without compromising ecological integrity. Beside population growth, other challenges include unmanaged fires, poaching, wildlife disease, human-wildlife conflict, uncontrolled grazing and agriculture, including the ecological impacts of pesticides especially on freshwater organisms and also eutrophication due to organic pollutants and fertilizer runoff.

The threat to biodiversity is real, based on current empirical field research results and literature which document habitat fragmentation, degradation and wildlife decline. It would appear that although the government does value biodiversity and nature conservation, the short term priorities are definitely in the economic growth efforts based on agriculture development. The 'Big-Results-Now' approach has increased the scope of risks in terms of both possibilities of mistakes due to haste, as well as opportunity of rent seeking behaviour. The planning and demarcation of commercial farms for investors places less emphasis on nature conservation, biodiversity and ecosystem services requirements. The government entities responsible for nature, protected areas and wildlife are practically absent in regional offices and on the ground.

#### ***Wildlife management areas (wmas):***

The study noted that while WMAs have the greatest scope for bridging the gap between the general community's over-reliance on extensive agricultural production and the need for biodiversity and the maintenance ecosystem services, however, institutional capacity issues are a major drawback. It

appears that the environment Ministry and TANAPA have even greater capacity constraints in supporting WMAs. Our experience at Ruaha suggests that the business model has collapsed, and instead of cooperation between the Park, WMA and investors, there is instead a less than healthy competition. In turn, the WMA is competing with the rest of the community for resources, and resultant conflicts pause further threats to nature conservation and biodiversity.

*Large scale land acquisitions and inclusive business models:*

The emerging trend reflects a wide spectrum of business models in the SAGCOT region with two extremes. On one extreme are the large scale commercial farms (e.g. Kapunga Rice Company) and on the other extreme are the 'hub-and-spoke' and the more inclusive models that take along the community with them as they evolve over time (e.g. Rungwe Avocado Company and Kisolanza farm). We concluded that the issue of business models adopted is not only critical for the long term sustainability of any investment, but also important for lifting large numbers of people out of poverty. From our analysis, the "hub and spoke" model generally has less community conflicts and offers more social and economic opportunities for the local communities. However there is potential for a balance between the "hub and spoke" model and commercial farms especially if the commercial farms are established in the less contested lands, the existing general land which has not been part of village land.

## Box 1: Summary of Recommendations

### **RECOMMENDATION 1:**

The AWF, ABCG members and USAID need to craft and implement a collective campaign to raise awareness of VGs and F&Gs among government officials, investors, NGOs, community leaders and SAGCOT executives. Such a campaign would be more effective if a series of activities were planned jointly by representatives of government, SAGCOT staff, investors, NGOs and community leaders. Some of the activities may include:

- Simplifying the VGs and the AU's F&Gs and bringing them to the people who are implementing various investment initiatives;
- Using VGs to prepare investment guidelines specific to SAGCOT;
- Using F&Gs to interrogate land policy and legislation, identify needed reforms; and,
- Using experience and lessons learned to date in strengthening the guidelines and their implementation with special respect to inclusive business models, social protection, and biodiversity.

### **RECOMMENDATION 2:**

Given the limitations with which foreign NGOs and donors can engage and/or influence legislative and regulatory processes, AWF, ABCG members and USAID could invest more into local NGOs working on land governance. Support is needed in:

- Consolidating legislative reform proposals that address overlap, contradictions and loopholes;
- Preparing and proposing simplification of regulations applied especially to Village Land;
- Strengthening capacity of community participation in the mutation of land allocation, especially from village to general land; and
- Capacitation of local village level institutions.

### **RECOMMENDATION 3:**

AWF and its partners must promote efforts to enhance transparency of land allocation processes. This is desirable for both communities involved and investors. Both groups look for predictability and security and in general this requires processes to be more transparent.

### **RECOMMENDATION 4:**

AWF and its partners on biodiversity issues identify or craft a partnership between the environment ministry, AWF and SAGCOT Office in a capacity needs assessment and capacity development effort in enforcement of environmental impact assessment requirements and recommendations with respect to agricultural investments in SAGCOT. There is a need to prioritise such oversight and enforcement so as to minimise loss.

### **RECOMMENDATION 5:**

AWF should explore and/or craft local partnerships in SAGCOT aimed at capacity development of selected WMAs. Emphasis should be on proofing the concept of WMAs as a viable community-based natural resources management basis.

### **RECOMMENDATION 6:**

The AWF should partner with WMAs in wildlife related businesses and strengthen them in the process.

### **RECOMMENDATION 7:**

AWF and its partners should identify and promote inclusive business models pushing the emerging successful models of investment which take the community along with them such as the hub and spoke model. This entails promoting a more patient organic and evolutionary approach to investments which take the community along with them as opposed to a quick-returns approach to investments which exclude the majority of the community.

### *Risk assessment of the potential impact of planned large scale land acquisitions in the sagcot region:*

Over the initial 20 years the SAGCOT programme aims to bring 350,000 ha of farmland into commercial production and to lift more than 2 million people out of poverty. To this end, in 2013, the GoT launched an ambitious 'Vision 2025: Big Results Now' programme and as a result, a total of 25 new commercial farms are under demarcation for allocation to investors in the SAGCOT region. Investments in SAGCOT still face many risks, including bio-physical, social and governance, and the main challenge is in the difficulty of assessing the risks for potential investors. Because land can be acquired at very low costs, this may be the most significant incentive to large scale land investors in mitigating the various forms of associated risks. Large farms with short-term profit targets are suffering more challenges than the hub-and-spoke examples. The key risks of large scale land investments in the SAGCOT regions relate to (i) land (ii) water (iii) biodiversity and (iv) social acceptability.

**Land:** Perceptions/claims of availability of 'unused' land waiting for investors and large areas of land suitable for irrigation should be treated with caution as evidence on the ground indicates that such land is either claimed by current generation pastoralists and communities, or will be claimed by future generations of the same.

**Biodiversity:** Biodiversity, especially wildlife habitats, is threatened due to degradation, fragmentation and conversion, (especially wetlands, woodlands and forests). In addition critical wildlife corridors are being blocked, resulting in increased human-wildlife conflict. In the absence of strict environmental regulations and proper land use planning, large-scale production tends to employ methods (large scale use of chemical fertilizers and pesticides, monoculture) which are a threat to the environment.

**Water:** Escalation of upstream-downstream water related conflicts have been noted within the Rufiji basin. Critical trade-offs among consumptive water uses, energy generation, and environmental sustainability need to be considered for sustainable development of the SAGCOT region.

**Loss of livelihoods:** Smallholder farmers and pastoralists risk losing their major source of livelihood through displacements and encroachment into grazing land as agricultural investments intensify and population increases demand for land. A significant risk to land rights is weak governance in land administration at all levels, particularly at local level.

**Governance:** Many government departments are involved in land deals with limited coordination. For an investor to get the right of occupancy it can take up to five years. This is creating rent-seeking opportunities at all levels in a country where money is considered to 'open many doors' quickly. Ultimately, poor and low capacity in land governance is the primary source of risk.

# Introduction

## BACKGROUND AND PURPOSE

Over the past decade Africa has experienced a significant increase in large scale investments on land. This accelerating phenomenon often referred to as “land grabbing” or “large scale land acquisitions (LSLA)” is a highly contentious issue for many governments in the global south (Larsen, 2012). It characteristically involves private entities gaining control over large pieces of land usually where land rights are not formalized; or where the land is viewed as ‘state land’ and the acquisitions are usually land-leasing agreements with durations between 25 and 99 years. The key challenge for Africa is how to harness this economic development while simultaneously improving community livelihoods and conservation.

While international Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (herein after referred to the Voluntary Guidelines or VGs)<sup>1</sup> have been adopted, more work is required at the local, national and global level, to ensure adherence and implementation.

AWF, founded in 1961, is working in nineteen countries across the African continent, with a mission to *‘work together with the people of Africa to ensure its wildlife and wild lands endure forever’*. LSLA in Africa has a significant impact on all aspects of AWF’s mission in terms of communities, wildlife and biodiversity. In this study, AWF is specifically interested in assessing the ecological and social ramifications of large land acquisition in Tanzania’s Southern Agricultural Growth Corridor of Tanzania (SAGCOT Region). This interest is supported by the Africa Biodiversity Collaborative Group (ABCG) learning agenda, a program supported by USAID Africa Bureau, Biodiversity Analysis and Technical Support (BATS). AWF firmly believes that the SAGCOT corridor which is of significant conservation interest and region can host large conservation areas and productive agricultural growth areas, so long as land uses are properly planned, developments are carefully designed, and implementation is well managed.

The literature points to challenges with the legal processes around LSLA across Africa, and this study seeks to understand further the legal process through which land is allocated for agricultural investments to ensure these investments are planned appropriately, have minimum impact on biodiversity and enhance livelihoods.

AWF is interested in assessing the impact of LSLA in Southern Tanzania, in the context of growing pressure on rural land that provides multiple benefits, including ecosystem services<sup>2</sup> that support local livelihoods and biodiversity. The study therefore seeks for ways to improve the process through which

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<sup>1</sup> The VGs were developed under the overall leadership of the FAO

<sup>2</sup> Humankind benefits from a multitude of resources and processes that are supplied by ecosystems. Collectively, these benefits are known as **ecosystem services** and include products like clean drinking water and processes such as the decomposition of wastes. While scientists and environmentalists have discussed ecosystem services for decades, these services were popularized and their definitions formalized by the United Nations 2005 Millennium Ecosystem Assessment (MA), a four-year study involving more than 1,300 scientists worldwide.[1] This grouped ecosystem services into four broad categories: *provisioning*, such as the production of food and water; *regulating*, such as the control of climate and disease; *supporting*, such as nutrient cycles and crop pollination; and *cultural*, such as spiritual and recreational benefits. ([http://en.wikipedia.org/wiki/Ecosystem\\_services](http://en.wikipedia.org/wiki/Ecosystem_services))

land is allocated for agricultural investments to ensure these investments are located strategically to increase production, reduce impact on biodiversity and improve livelihoods.

With the overall objective of understanding the impact of large-scale land acquisitions to improve the quality of future investments in the Southern Agricultural Growth Corridor of Tanzania (SAGCOT), the African Wildlife Foundation has engaged Barefoot Education for Africa Trust (BEAT) to assess the large-scale land investments in this region. The study comprises of three main components to assist AWF, the ABCG members and USAID understand the implications of LSLA on the particular landscape and to provide recommendations for improving voluntary guidelines, policies and this dynamic.

These components are:-

1. Conduct an assessment of voluntary guidelines and make recommendations for strengthening guidelines to ensure environmental and social safeguards, transparency and community benefit. With a focus on the SAGCOT region— how can the voluntary guidelines make SAGCOT land allocations more robust in terms of social safeguards, transparency and community benefit including recommendations on how to make the voluntary guidelines more relevant to large scale planning processes such as SAGCOT.
2. Assess the legal framework for land acquisition, allocation and leases; how are companies acquiring land and what is the legal framework versus the actual allocation:-
  - a. Assess how the Ministry of Lands; Ministry of Agriculture; and Ministry of Wildlife coordinate (or not) and how their processes conflict or complement; in addition how do policies and approvals by RUBADA, TIC and the Sugar Board impact this process.
  - b. Assess how the various government policies at various levels – national, village, district, work?
3. Conduct a risk assessment of the potential impact of planned large scale land acquisitions in the SAGCOT region. This will be done through:-
  - a. An analysis of the agricultural development strategies, national development plans, proposed agricultural developments and related policy provisions for land conveyance and business policies;
  - b. Assessment of land that has been allocated and/or is likely to be allocated by the government for food or fuel production; and
  - c. Implications of the transactions on biological diversity.

Overall, AWF intended to understand the legal framework around these LSLA (legal review); how to make these transactions more beneficial for biodiversity and communities (voluntary guidelines); and what is actually taking place in the SAGCOT corridor regarding large land acquisition.

This report is structured as follows:

*Chapter 1:* Introduction with a short background and outlines objectives and methods applied;

*Chapter 2:* Results and findings from literature on the situation of large-scale land investments and conservation activities in SAGCOT;

*Chapter 3:* Results and findings of field visits;

*Chapter 4:* A review of the policy, legal and institutional frameworks for land management in Tanzania and in the SAGCOT

*Chapter 5:* Emerging business models in the SAGCOT region

*Chapter 6:* A review of voluntary guidelines and their application in the SAGCOT;

*Chapter 7:* An analysis of the impacts and risks of the large scale land investments on the ecosystem; and,

*Chapter 8:* Main conclusions and recommendations.

*Annexes:* There are two annexes to the report, the first one found at the end of the main document which has the full list of interviewees and the semi structured interview guide. The second annex is presented as a separate document and presents the full interview reports, a review of trends in large scale land acquisitions, main concepts of incisiveness as well as a review of African frameworks for land governance.

## **METHODS APPLIED IN THE ASSESSMENT**

The approach adopted in the assessment involved both review of secondary information and collection of primary data through key informant interviews of different stakeholders involved in the SAGCOT. The study team also visited some of the field sites where large-scale land investments are occurring. Through the visits the research team was able to observe some developments and scenarios from which important conclusions were drawn.

A wide range of documents was reviewed on developments in SAGCOT and in Tanzania. After a thorough review of available literature on the land issues and developments in the SAGCOT, a semi structured interview guide was developed to guide the discussions around the issues with key informants. Key informants were purposefully chosen to cover a variety of respondents and capture views and perspectives from a wider variance of respondents. These included respondents from the government, the private sector, farmer representatives, NGOs, development partners, community organizations and private investors. (full list of interviewees are presented in the annex).



## RESULTS AND FINDINGS FROM LITERATURE ON THE SITUATION OF LARGE SCALE LAND INVESTMENTS AND CONSERVATION ACTIVITIES IN SAGCOT

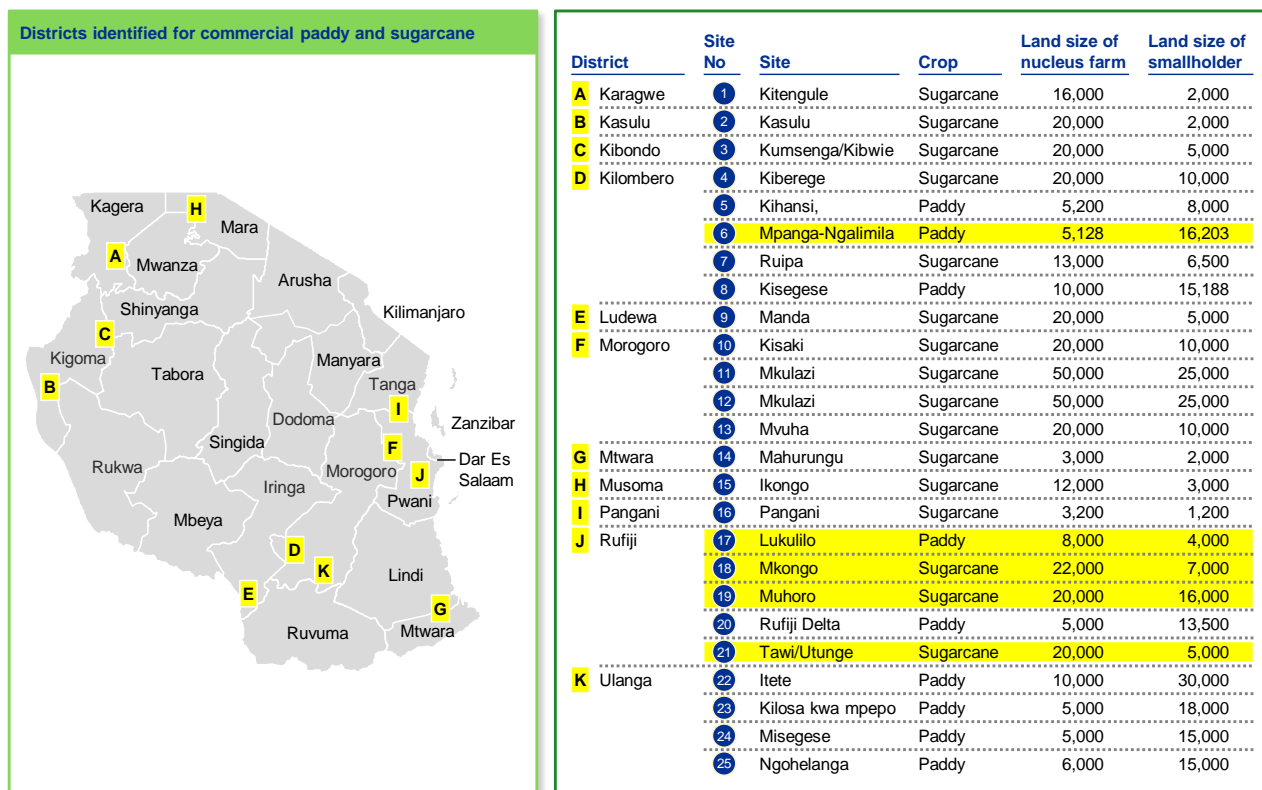
Our assessment is that the GoT through a number of institutions is involved in an attempt to promote large scale land investments not only in the SAGCOT region but throughout the country. In 2008, the Tanzanian government launched the *Kilimo Kwanza* (Agriculture First) initiative in order to increase private sector investments in agriculture. This initiative gave birth to the SAGCOT. The corridor covers an area of about 287,000km<sup>2</sup> with a population of about 11 million. It accounts for approximately one third of mainland Tanzania. It extends north and south of the rail and road 'backbone' that runs from Dar es Salaam to the northern areas of Zambia and Malawi. According to the SAGCOT secretariat, the SAGCOT is an "inclusive, multi-stakeholder partnership to rapidly develop the region's agricultural potential," with the aim of linking farmers to modern supply chains, reducing rural poverty and food shortages and making agriculture a profitable activity in a country that relies so heavily on the sector. In fact more than 80% of the labour force in Tanzania is in the farming sector. The aim of SAGCOT is to expand and develop the Southern Corridor as a cohesive, modern commercial agricultural area over the next twenty years, whose activities should benefit small scale farmers.<sup>3</sup> The SAGCOT was formed following the 2010 World Economic Forum which took place in Dar es Salaam.

Over the next 20-year implementation period, the SAGCOT programme aims to bring 350,000 ha of farmland into commercial production for regional and international markets, to increase annual farming revenues by US\$1.2 billion, and to lift more than 2 million people (roughly 450,000 farm households) out of poverty (Government of Tanzania, 2012). In Tanzania the potential land deals planned represent 1.9% of the total land area and over 5% of the agricultural lands. Debailleul (2009) and Friis (2010) reported 15 land deals in Tanzania which ranged in size from 1.717 million ha to 11 million ha. Some of these deals are in the SAGCOT region.

Currently the GoT is in the process of launching a fairly ambitious programme covering the whole country dubbed 'Vision 2025: Big Results Now.' The programme included extensive planning under a process through which high level panel of government experts went through an 'agricultural lab.' The agriculture lab focused on 3 objectives achieved through commercial farming, smallholder aggregation and social inclusion. This is envisaged to increase agriculture GDP growth, increase smallholder incomes and increase food security. The plans highlights that the GoT wants big results now by 2015, and this will be achieved through unveiling of 389 000 hectares of new commercial land excluding out growers, enhancement of 330 000 hectares of smallholder farm land involving 500 000 smallholder farmers in commercial and smallholder schemes. The production targets are 150 000 tons of sugarcane, 290 000 tons of rice and 100 000 tons of maize. The three 'big' ideas to transform agriculture in Tanzania include 25 commercial deals for paddy and sugarcane (Figure 1), 78 professionally managed collective rice irrigation and marketing schemes, and 275 Collective Warehouse Based Marketing schemes dubbed "COWABAMA."

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<sup>3</sup> SAGCOT home page: <http://www.sagcot.com/>



1 Bagomoyo site not included in list as deal is close to being complete

**Figure 1: The 25 large scale investment areas for paddy and sugarcane**  
 Source: GoT, Ministry of Lands and Rural Resettlement (unpublished documents)

## Results and Findings from Field Visits

### SUMMARY OF FINDINGS

Interviews carried out with a number of stakeholders in and outside government all reveal that land remains a contentious issue in Tanzania. It is clear that government is determined to push large-scale land investments through a programme to achieve ‘Big Results Now’ by 2015 as will be shown in later sections. The realities on the ground appear not to have the same kind of preparedness as that of the government. The legislation, regulations and institutions are not ready for this kind of a programme. Most of the institutions involved seemed to lack the capacity to carry out the prescribed roles in both the SAGCOT plans and the ‘Big Results Now’ initiative.

The country’s land is categorized into three namely: a) general land; b) village land; and c) reserved land. For land to be available for investment, it has to be under the general land category. However, some of the land identified by ‘Big Results Now’ still needs to be converted from village land to general

land. This process takes a long time and therefore inconsistent with the plans. As an example, the Ministry of Land acknowledges that there are about 70 applications for land by investors which are 'stuck' in the President's office as the President has to thoroughly investigate each application to ensure that proper procedures were followed. The president's office's involvement to make the acquisition process more transparent is evidence that the process of land acquisition is prone to irregularities.

The issue of community involvement in large-scale land acquisition still remains weak although the government seems to have clear procedures of the process to be followed as will be shown later in this report. In an interview with the Assistant Land Commissioner in Mbeya region, she revealed that although around 400 farms under general land already exist, they have to inspect these farms for compliance with the terms of leases. However, the regional office does not have the capacity to perform these inspections. The assessment also reveals that in some districts such as Mbeya (the district), the human population density and current land use intensity is high and there is limited scope for large-scale land investments. Clearly the intensity of production by smallholder farmers throughout the year with plots being established on hilltops and homesteads is evidence that there could be limited amounts of vacant land.

The case of Kapunga rice situated just 20km from Chimala in Mbeya Region epitomizes the type of conflicts which arise between large-scale investments and the surrounding community. The Estate is a world-class investment in terms of infrastructure, equipment, and 3,000 hectares of high yielding rice. The estate boasts of two light aircraft one for the CEO and one for farm operations. However, the company is embroiled in a protracted conflict with the surrounding community. The community alleges that part of the company's land is theirs and that errors were made in transferring land to the company. Apparently the company has a legal title to 7,000 hectare although that has not stopped the community mounting an on-going claim that about 2,000 hectares of the estate belongs to them. The community alleges that the title was wrongfully issued and that the company should own only about 5,000 hectares. As a result, the community has forcefully occupied this land. Local politicians have sided with the community making it difficult to resolve the issue. The government has failed to resolve this pointing to the possibility that they are leaving the company and the community to solve the issue on their own. It could well be that the government is playing both sides and is sending the message that investors have to work with the communities. The Kapunga conflict dates back to 2006 when the farm (then Kapunga NAFCO Farm) was sold at the price of about Sh. 2, 3 billion to Export Trading Company Ltd. which paid 13.89% at the moment of signing the preliminary agreement and the rest at the signing of the final agreement. Over 680 students of Kapunga Primary School suffered after the investor evicted their teachers from their houses in 2006. These teachers had to then walk a long distance of 26 km to reach the school and as a result most classes were not attended to bringing about conflict with the community.

The interviews at Rungwe Avocado Company show the need for patience in investments. Rather, organic growth, which engages the community, is more sustainable and less risky for investors, as the growth path takes along the community's aspirations. Observations at Kisolansa farm, which has been operating in the community for over 100 years, also confirm that investments in which the investors become part of the community and take the community along with them are more sustainable. The 'hub and spoke' model which portrays the commercial part of the farm as a centre for excellence with the communities as out growers and service providers not only benefiting through inputs, but also through improved technical knowhow is more preferred even by local government officials.

Organized groups on the ground also favor the hub-and-spoke model as opposed to estate or plantation model. An example is MVIWATA, a national organization which derives its membership from smallholder farmers involved in both crop and livestock production and supports farmers to tackle challenges they face in agricultural production and share both technical and market information.

Another form of organised resistance is through political party structures. Political parties at local level do not appear to support the large scale land deals as evidenced in the case of Kapunga rice. The local politicians would rather side with the community and protect them as opposed to the investors.

Wildlife Management Area (WMA) committees also present a form organisation at the grassroots level. The WMAs were established to enhance conservation and poverty alleviation through sustainable utilization of natural resources. The Wildlife Management Area Authorities are also exerting the same kind of pressure on investors as the investors are expected to fund the WMA if they have been allocated land in the respective WMA. A closer look at the Tandala lodge situation at Ruaha reveals that the investor (Tandala lodge) who accessed 60 hectares directly through the government, before the WMA was established is in conflict with the WMA management as the investor has now stopped supporting the WMA financially. The legislation is not very clear on what happens to investors located in WMAs, but who got land before creation of WMA in terms of payments, but it could well be that this particular investor was supporting them not as a matter of contractual obligation but social responsibility since the investor's contract for lease fees is with the government. Government is also not able to address these issues and is clearly leaving it to the community and the investor to resolve. The WMA is struggling to find investors.

The opportunities for AWF lie in a number of areas including:

1. simplifying the VGs and the AU's framework and guidelines and promoting them to the people who are implementing various investment initiatives;
2. pushing the emerging successful models of investment which take the community along with them such as the hub and spoke model;
3. promoting an organic and evolutionary approach to investments which take the community along with them as opposed to a quick-wins approach to investments which exclude the majority of the community;
4. in the area of conservation biodiversity promoting relationships and improved business models between the main actors, especially National park authorities, investors, WMA; and,
5. exploring investment opportunities in partnering with WMAs in business wildlife related businesses and strengthening them in the process.

## **SYNTHESIS OF SPECIFIC ISSUES FROM THE INTERVIEWS**

### ***Land governance issues:***

Synthesis of interviews with a number of stakeholders including government, donors and investors reflects that the 'land issue' in Tanzania as highly complex and regarded as a sovereign and sometimes a human rights issue because of the displacements and loss of livelihoods involved. The institutions mandated to manage land resources do not have the capacity to deal with the issues, particularly,

demarcations and surveying which are processes that take long periods of time and require large amounts of resources and capacity. The involvement of the communities is threatened by lack of resources and also lack of capacity by the local level institutions such as the village councils.

On compensation none is available for idle land, but if families have to be moved to pave way for an investment, then they are compensated. Moreover, investors have to pay to the local authorities a certain annual fee decided by the villagers and the government through the district office. This money is shared among the local village level structure for the villagers and the government through the district office.

From the analysis it is evident that perceptions of 'unused' land waiting for investors and large areas of land suitable for irrigation ignore the realities of subsistence use of land, the needs of pastoralists, the values of wetlands, and the importance of maintaining dry season river flows. Biodiversity is also a key issue, notwithstanding the many protected areas there is extreme pressure on some habitats due to degradation, fragmentation and conversion, (especially wetlands but also woodlands and forests) and on some wildlife due to hunting. In addition critical wildlife corridors are being blocked, resulting in increased human-wildlife conflict. For these reasons it may be fair to highlight that the overall SAGCOT grand plan and the government thrust, can hardly mainstream issues of environmental management particularly biodiversity and wildlife management. This calls for balancing agricultural production and expansion with wise water use together with maintaining and enhancing the important protected areas in the region.

#### *Environmental, wildlife and biodiversity issues:*

Southern Tanzania and the SAGCOT area contain three mega conservation complexes: the Greater Selous, Greater Ruaha and Greater Katavi landscapes. The SAGCOT investment thrust being pushed by government involves agricultural intensification. This juxtaposed to the population increases means that there is more pressure on land, and as agriculture spreads, it often encroaches into areas that once connected core habitats in the landscape. The challenge is how to boost agricultural production without compromising ecological integrity. Beside population growth, other challenges in the region include unmanaged fires, poaching, wildlife disease, human-wildlife conflict, uncontrolled grazing and agriculture, including the ecological impacts of pesticides especially on freshwater organisms and also eutrophication due to organic pollutants and fertilizer runoff. An example of human encroachment in wildlife areas is that of Ruaha National Park. Interviews revealed that local communities have settled illegally on parts of Ruaha National Park; thus, conservation problems including poaching are on the increase. The Tanzania National Parks Authority (TANAPA) got a court order to evict the people but has failed to remove them. It was also alleged that these people were offered compensation by the government to leave but they declined. There is now a conflict as humans, livestock and wildlife compete for space and water. There is a risk that commercialisation through land investments will exacerbate these ecological impacts.

#### *Farmer representation:*

One issue noted is that there is no organized representation of small farmers in SAGCOT thereby creating a risk for smallholder farmers who have limited power to engage government (and its institutions), investors and the SAGCOT institution itself. Stakeholders see a risk of increasing

production at a huge cost in loss of livelihoods among the smallholder farmers. Organisations on the ground such as MVIWATA lack capacity to effectively engage stakeholders; they have no financial resources and all current work is based on voluntary engagement by the leaders.

Water issue:

There is evidence of a clash for water between the investors and the small scale farmers, and ultimately wildlife in some of the investments. An example is the clash between Kapunga estate, the surrounding communities and downstream with the wildlife in the Ruaha, since the Ruaha is now drying up in some areas. It is alleged that people from the community 'steal' water from the canal constructed by the estate before it gets back into the Ruaha River. Hydrological assessments have demonstrated that water use in Great Ruaha within the Rufiji basin has reached unsustainably high levels impacting the flow regime and all downstream water uses, leading to these upstream-downstream water related conflicts<sup>4</sup>. Critical trade-offs among consumptive water uses, energy generation, and environmental sustainability need to be considered for sustainable development of the SAGCOT region. START (2011) reported that water shortage is one of the causes for increased human-wildlife conflict as the wildlife was leaving the protected areas in search of water during the dry seasons. Climate change is also noted to be contributing to the water shortage in the region. The ERM notes that there are three major risks within the SAGCOT region *vis-à-vis* (i) increased population pressure associated with agricultural land use and economic development, (ii) forest degradation, due to use of agrochemicals; and (iii) biodiversity impacts, through the cutting of migration corridors, habitat degradation and conversion, and increased hunting pressure.

## **A Review of the Policy, Legal and Institutional Frameworks for Land Management in Tanzania and in the SAGCOT**

Land resources in Tanzania are governed through a number of legislation which includes:

- The National land policy 1995;
- Village Land Act 1999;
- Land Act 1999;
- Local Government Act 1982;
- Wildlife Conservation Act 2009;
- Tanzania Investment Act 1997;
- Courts (Land Disputes Settlements) Act, 2002;
- The Law of Marriage Act, 1971; and
- The Land Acquisition Act, 1967.

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<sup>4</sup> SAGCOT (2012), Strategic Regional Environmental and Social Assessment, Interim report

## LAND ACT OF 1999

In terms of land governance under the Land Act (1999) land ownership in Tanzania is legally vested in the President as a trustee, however, rights over land can belong to citizens. However, according to the 1967 Land Acquisition Act, the President can transfer land across the three land categories *vis a vis* reserved, general and village land, in the interest of the public. The public interest provided in the statute includes developmental and economic considerations or any other concerns that the President considers to be in the public interest<sup>5</sup>. This is not unique to Tanzania, customary land in Ghana can be reclassified to state land through involuntary expropriation under the state's right to eminent domain when considered to be in the public interest (German 2011).

Although a custodial duty over land is vested in the President, land administration is undertaken by specific officers legally mandated. The Land Act provides the legal framework for Reserved Land and General Land, whilst the 3rd land category the Village land is administered under the Village Land Act. Reserved Land is land set aside for 'special purposes,' including forest reserves, game parks, game reserves, land reserved for public utilities and highways, hazardous land and land designated under the Town and Country Planning Ordinance, provided for by the Local Government Act of 1982. Another legislation which governs reserved land is the Forests Ordinance, which administers forestry reserves. This obviously creates implementation and coordination challenges, because such reserved land is under the management and administration of sectorial government agencies.

On the other hand, the Land Act defines general land as '*all public land which is not reserved land or village land and includes unoccupied or unused village land.*' According to Sundet (2005) this piece of legislation is used to promote large scale land acquisition by 'freeing the so called '*surplus*' land from villages for external investors.' Larsen (2009) noted that general land also includes somewhat confusingly Village Land that is "unoccupied or unused." This "loophole" has led to conflicts because land that is seemingly unoccupied according to satellite images may be in use by nomads, pastoralists or provides income-generating activities such as collection of firewood and fruits.

## VILLAGE LAND ACT

As a legal instrument, the Village Land Act (1999) vests all village land in the village assembly. The 1999 Village Act became effective with the enactment of the Village Land Regulations passed in May 2001. The Regulations provide for no less than 50 different forms to be used by the villagers in the administration of their land (Sandet, 2005). This is demanding on the ordinary smallholder farmers and pastoralists. Village Land includes all land within the village areas of Tanzania's 11,000 villages (Pedersen, 2010). Village land is vested in the Village Assembly, and the Village Council administers the land through the authority of the Village Assembly. Village Councils members are elected by

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<sup>5</sup> The challenge in this provision is that land can be transferred by the president at his own discretion, even if the Land Act was in a way meant to decentralise land governance. This is clearly stated in the 1976 Land Acquisition Act, 4 (1) Where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister to proceed in accordance with the provisions of this section; and section (2) For the purposes of subsection (1), public interest shall include investments of national interest. This justifies the criticism of the laws that they allow the elite to manipulate otherwise legal provision with good intent, that decentralisation as provided for in the Village Land Act.

Village Assemblies as per the provisions of the Village Land Act of 1999. Further, the Land Act provides for the establishment of Land Allocation Committees at the levels of local authorities “to advise the Commissioner<sup>6</sup> on the exercise of his/her power to determine applications for rights of occupancy.” However, the Commissioner is not bound to act on the recommendations of the Land Allocation Committees. Village land can be compulsorily acquired by the state through the right to eminent domain articulated in the 1967 Land Acquisition Act. The 1999 Land Act provides for former land users to continue to use water resources.

There is a 250 hectare limit to the size of land which can be transferred by the village council, and in the context large scale land acquisition can be deemed small. Where the land to be transferred is less than 250 hectares, the Village Council shall submit its recommendation on the transfer to the Village Assembly, for its approval or refusal (Sandet, 2005). The Minister of Lands will consider recommendation from both the Village Council and Village Assembly for land larger than 250 ha.

Village Assemblies consist of all adults in the village land area, and were formed under the Local Government Act of 1982. There are approximately 5, 000 villages in the SAGCOT region which can only assert authority over land through the issuance of a certificate of village land by the Commissioner for Land. The challenge is that there is a limited capacity to conduct the necessary land surveys. The certificate is issued in the name of the President, conferring upon the Village Council the functions of management of the village land and affirming the occupation and use of the village land by the villagers in accordance with the customary law applicable to land in the area where the village is located. The certificate empowers the Village Council to confirm and register individual land rights, conduct land use planning and to allocate land to investors.

However, foreign investors cannot obtain land directly from a Village Council. The due process that allows for allocation of land to a foreign investor is if first to convert village land to general land. The procedure provided for by the Tanzania Investment Act of 1997 is that the TIC ‘shall help identify and provide investment sites, estates, or land for the purpose of investments.’ On the other hand both the President and Minister of Lands has to approve the transfer of village land to general land, and the Commissioner of Lands on the nature and extent of compensation (Village Land Act 1999).

The Village Land Act of 1999, as noted earlier provides for the creation of Village Land Council “to mediate between and assist parties to arrive at a mutually acceptable resolution on any matters concerning village land” (section 60). However, the jurisdiction of the Village Land Council in conflict resolution, has been limited to cases related to land sharing arrangements with other villages (section 11), or land sharing arrangements between pastoralists and agriculturalists (section 58). The other weakness of the Council is that it only has a mediatory role. The Council becomes a toothless entity, since the Act states that ‘No person or non-village organization shall be compelled or required to use the services of the Village Land Council for mediation in any dispute concerning village land.’

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<sup>6</sup> The authority to demarcate and register villages lies with the Commissioner (Village Land Act, 1999).



## CUSTOMARY RIGHTS AND LARGE-SCALE LAND ACQUISITIONS

The Presidential Land Commission and the National Land Policy recognize that formal registration of the customary rights was much needed, because the greatest weakness of customary rights is that they are not formally documented. Customary tenure in Tanzania is recognised and governed by customary law as articulated in the Village Land Act of (1999). Section 18.1 of the Village Land Act of 1999 states that “customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy (or granted rights).” The registration of customary land rights, especially the way in which proposed land transfers should be handled raises some pertinent issues related to protection of customary land rights.

The Village Council should inform any villager who have already been granted a certificate of customary rights or a derivative right of the transfer. This in essence means that if one does not have such as certificate they may not be notified, even if they have claims over the targeted land. Sundet (2005) made the observation that there is no requirement for the Village Council to inform villagers that hold land under customary rights, but have not yet been issued certificates.

In Tanzania both private investors and the state are legally required to compensate customary land owners for land acquisitions (German 2011). However the authors noted that in spite of this legal requirement to compensate, compensation for loss of access and for property remains highly variable and contentious. That is the nature of compensation e.g. jobs, infrastructure development and extent of the compensation e.g. are the agreed compensation levels attained, and (German et al, 2011) point to problems of elite capture of benefits. Local communities have little ability to keep transnational companies accountable to their promises (GRAIN, in Piene and Bjergene 2012). This is in spite of the Village Land Act being explicit regarding compensation issues. It states ‘that no village land shall be transferred “until the type, amount, method and timing of the payment of compensation have been agreed upon between ... the village council and the Commissioner...” (Village Land Act 1999 section 4.8. in spite of the Land Act of 1999 stating that land should be valued according to the market value, it does not specify how that will be done. Kaarhus et al. 2010) noted that it is difficult to determine what the market value could be. Several Authors have noted that the need for compensation is a major issue. Theting and Brekke (2010) reported about conflicts about compensation, Havnevik et al. (2012) noted that compensation for the loss of lands and assets on that land was a thorny issue, conflicts due to delayed/owing compensation, between the investor and surrounding villagers (Chachage 2010; Chachage and Baha 2010; Locher 2011).

Due to the lack of clarity on how value of land is ascertained villagers and even the government at times are in conflict with investors over compensation. Bengesi et al. (2009) reported that in the Lindi District only four people accepted compensation from BioMassive Tanzania Ltd. while the other six have declined the offer for the reason that the amount was uneconomical. When Illovo Sugar Ltd requested compensation from the government for the lost land, the government refused the company request of 6000ha, however, the company won a case against the government in court and the problem is still unsolved (Mwami and Kamata 2011).

Customary practices that restrict a woman’s property rights are still widespread in Tanzania. However, the Land Act of 1999 gives Tanzanian women the right to obtain access to land, including the right to own, use and sell it, and mandates joint titling of land. Further the Village Land Act requires women to be represented on land allocation committees and land administration councils according to the

OECD's Social Institutions and Gender Index. The Village Land Act is explicit in removing gender related discrimination on access and control over land, especially the customary practices that discriminated against women.

*[Any] rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly or any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land (Village Land Act 1999, section 20 (2)).*

The National Land Policy (1995) stipulates that inheritance of clan (tribal) land would continue to be governed by custom and tradition provided it is not contrary to the Constitution. Men are generally considered to be the natural heads of household and rightful heirs to clan land, but inheritance customs vary for different groups. The FAO, Gender and Land Rights database notes that members of both customary and statutory institutions that adjudicate land disputes mainly tend to be men; women are under-represented. In the face of LSLA, there is therefore increased concern on the rights of women over land. In spite of the legal framework, the capacities to effectively oversee and enforce the law are not there (Sandet, 2005). This assertion is made because the established system of mediation, conflict resolution and enforcement are ill suited to tackle highly controversial issues.

## **LEGAL PROVISIONS AND THE SAGCOT**

The existing legal and institutional frameworks for land governance in Tanzania pose a significant challenge for the success of SAGCOT initiative since most of the land needed for investment is currently Village Land. Issues of governance are critical to the SAGCOT development. Of particular importance include transparency of decisions on land, resource use and other topics of vital interest to rural communities and land users such as access to water, rangelands and wildlife resources. Deininger et al. 2012 notes among other issues related to land governance in Tanzania, to include little tenure certainty for marginalised groups and limited transferability of land.

## **OFFICIAL PROCESS FOR ACCESSING LAND FOR INVESTMENT**

Land acquisition for investment entails number of procedures depending on the land category in question that is whether it is General land and/or Village land and or Reserved land. The Ministry of Land Housing and Human Settlement Development is entrusted with the duty of formulating policies and guidelines to administer all procedures related to land accessibility for various purposes including investment for public interest. Adherence to procedures of accessing land for investments is very crucial for investors for the purposes of avoiding consequences that may result to delay of the implementation of intended project as per investor's work plan. According to the Land Act NA of 1999, land is categorized as:

1. General Land (S.4 (4) a) means all public land, which is not reserved land or village land and includes unoccupied or unused village land. This category comprises approximately 2% of the total land area of mainland Tanzania excluding area covered by water bodies and is under

the authority of the Commissioner for Lands who is authorized to issue Certificate of Right of occupancy. The certificate of Occupancy is issued particularly to ensure Security of Tenure to land owners.

2. Village land comprises approximately 70% of the total land area of mainland Tanzania and includes land within the boundaries of a village registered in accordance with the provision of section 22 of the local Government (District Authorities) Act, 1982. This category is under the authority of the village council on behalf of the villagers. Section 7 of Village Land Act No. 5 of 1999 stipulates that the Village Council is entitled to issue Certificates of Customary Right of Occupancy to Tanzania citizens only (S.18 of Land Act ,No. 5 ,1999) after acceptance and approval of the majority of concerned villagers through village assembly.
3. Reserved land (S.4 (4) C) comprises approximately 28% of the total land area of Tanzania mainland and includes:
  - a. The land reserved and designed or set aside under the provisions of: 1) Forest Ordinance; 2) National Park Ordinance; 3) Ngorongoro Conversation Area Ordinance; 4) Wildlife Conversation Act, 1974; 5) Town and Country Planning Ordinance; 6) Highway Ordinance; 7) Public Recreation Grounds Ordinance; and 8) Land Acquisition Act ,1967;
  - b. Land parcel within a natural drainage farming system from which the water resource of the concerned drainage basin originates;
  - c. Land reserved for public utilities; and
  - d. Land declared by order of the Minister, in accordance with the provision of this Act to be hazardous land.

Under the aforementioned analysis, village land is the main potential source of land for investment, and hence the need to go through the elaborate and laborious process of applying to transfer Village Land to General land. A procedure required by law before Village Land can be owned and used commercially.

Why Change Land from one category to another?

The reason for changing land category is in particular to transfer the authority of land administration from the jurisdiction of the Village Council, to the jurisdiction of the Commissioner for Lands or Authority administering reserved land as outlined in section 415: subsection c-i above). The transfers happen under the following circumstances:

4. Where it seems to be reasonable to extend the boundary of reserved land and vice versa;
5. Where the Village Council is not qualified to issue land, the client applies for a Certificate of Right of Occupancy issued by Commissioner for Lands. Hence, for that case the Commissioner for Lands must seek consent to exercise his authority over the land that was not ordinary under his authority; and
6. Where the village land should be granted for foreign investor.

Procedure and the requirements for Transferring Village Land to General land for investment purposes

The applicant should adhere to the following procedures:

1. Applicant submits applications to Village Council.

**Requirements:**

- Introduction letter from host authority (TIC);
  - Certificates of Incentives (if the applicant is a company); and,
  - Project proposal (intended project as well as expected benefits).
1. Village Council meeting will discuss the application and forward their recommendation to Village Assembly for approval.

**Requirements:**

The Village Assembly must form a quorum i.e. number of villagers (above 50%) who are entitled to attend. If the quorum of Village Assembly is not attained in the first assembly, the Village Council will organize up to three times Village Assembly whereby accumulative total attendance of three meeting quorums will be considered.

The decision of the Village Assembly (minutes of Village Council meeting and Village Assembly) must be submitted to the district executive Director for advice.

If the applicant is a company the application must be attached with the copies of the following documents:

- Certified copy of Village Council meeting minutes;
  - Certified copy of Village Assembly minutes;
  - Data on land already allocated to other investors precisely explaining location size and uses;
  - Proof of Citizenship of the applicant (Directors in case of companies);
  - Memorandum and Articles of Association (Company);
  - Certificate of Registration /Incorporation /Compliance;
  - Certificate of Incentive;
  - Tax payer Identification Number; and
  - Project write up
1. If the piece of land applied for is above 250 hectares, applications should go through and are discussed by District Land Allocation Committee.

**Requirements:**

Before submitting the application to the Commissioner for Lands, the District Council concerned must ensure the concerned Village has prepared Village Land use plans.

1. The District Executive Director submits the applications with the relevant attachments to the Commissioner for Lands and the Commissioner for Land will assess the validity of the application in terms of the adherence to prevailing laws, if the said application fulfills the criteria as stipulated in the law, the Commissioner through the Minister seeks consent from the President to exercise his authority to approve transfer of village land to general land.

2. If the approval is granted, the Commissioner will prepare Land Form No.8 (as per S.4 and 5 of Village Land Act, 1999), which must be gazetted. From the date of gazette, the form must be displayed in public areas in the concerned villages as to notify the entire village that the Minister of Lands intends to transfer the administrative authority for the specified piece of land from being under the village council to the authority of the Commissioner for Lands. This notification will be valid after 90 days from the date it was gazetted. After 90 days there will be a Village Assembly to discuss the fate of the intention in line with other affairs including the issues of compensation. The Commissioner for Lands or District Executive Director /District Land Officer are obliged to attend the Village Assembly to clarify all matters that may arise including the issue of compensation.
3. If the Village Assembly decides positively on the motion, the Minister for Lands will gazette in the Government Gazette for 30 days the change of the status of the land in question from being Village Land to General Land through Land Form No. 9.
4. If the applicant is a foreigner /foreign company the Certificate of Right of Occupancy will be issued to TIC and TIC will lease the land to the applicant through the Derivative Right.

The necessary attachments required in the entire process are:

- Certified copy of Village Council meeting minutes
- Certified copy of Village Assembly minutes
- District Land Allocation Committee minutes
- Copy of Village land use plan
- Data on land already allocated to other investors precisely explaining location size and uses
- Proof of Citizenship of the applicant (Directors in case applicant is a company)
- Memorandum and Articles of Association (Company)
- Certificate of Registration /Incorporation/Compliance
- Certificate Incentive
- Project write -up

Foreign land investors have derivative rights granted through TIC for noncitizens; these are deemed granted rights of occupancy or derivative rights for citizens (Land Act 1999). The upper limit is 99 years, with biofuels subject to 25-year and 20 000 ha limits, for sugar its 10000 ha and for rice its 5000ha (Land Act 1999, Biofuels Guidelines 2010). As from January 2013, the Government of Tanzania started restricting the size of land that single large-scale foreign and local investors can “lease” for agricultural use. There is no clarity as to how these figures were arrived at. However, some considerations were made such as the ability to utilise the land within the given lease period and for rice it was noted that besides contribution to food production, there is potential for energy production too. The land reverts back to Tanzanian Investment Centre at the end of the investment project. Village Assemblies are supposed to discuss the impact on the village of such acquisition.

However, Village Assemblies, it would appear, do not necessarily ensure meaningful participation in the village. The capacity of villagers to negotiate with investor is also cause for concern. ERM, (2012) noted that investors were negotiating directly with Village Councils and/or local communities for access to Village Land, by passing the Commissioner of Lands, who has the legal mandate to demarcate land. Whilst the Land Act provides for the need for land surveys, these are done slowly or not being done all together because of a shortage of capacity and surveying equipment at the local level to

prepare quality Land Use Plans (ERM, 2012). Moreover, at the village level capacity to negotiate for favourable deals is often limited; hence the community might be short changed in the deals. For instance, consultations between the village and investors have often been criticised because the corporation serves food and sometimes give sitting allowance (Larsen, 2009) meant to entice villagers to sign a deal that is more favourable to the company. However, on the other hand the advantage of bypassing transfer of village land to general land through the Commissioner of Land is that where the investor does not follow through with his plans or honour his promises, ownership of the land remains with the village (ERM, 2012). Once village land has been transferred to general land, the villagers lose control of the land indefinitely, even if the investment fails.

The Land Act of 1999 is basically perceived by CSOs as an appropriate tool for protecting the rights of local people, although implementation of the law, lack of coordination among government institutions and some people acting as “being above the law” might contribute towards local people losing out on their rights to land. District land officers who are trusted by the local people play an active role in persuading village people to lease out their land.

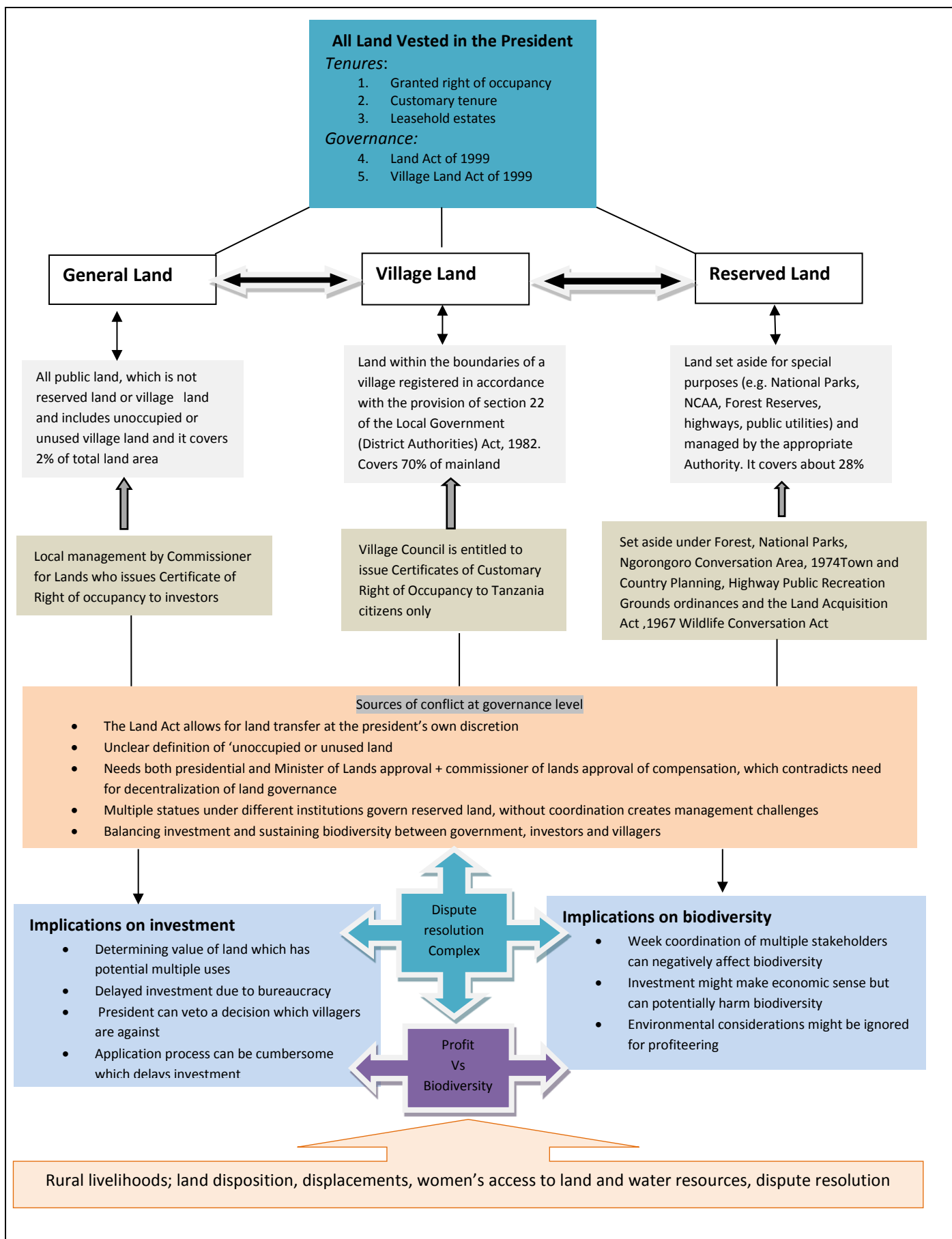
When it comes to land allocation there is lack of coordination, many ministries and several administrative levels are involved in land questions. Further, there is a general lack of an overall land management plan, whilst laws and policies might be in place the challenge is in the implementation and monitoring. According to the SAGCOT centre, Tanzania lacks a Land Use Planning (LUP) System that incorporates all land use sectors. This is a basic tool in planning the wise use of land resources, without it there is risk for land degradation and a threat to biodiversity.

Challenges in the implementation and monitoring of investment projects have contributed to slow progress in project implementation. Sulle & Nelson, (2009) reported that 4 million ha of land were requested for biofuel investment, but only 640,000 ha have been formally allocated and about 100,000 have been given legal rights of occupancy. This slow take-up has been largely associated to a government instigated moratorium placing all biofuel projects on hold until guidelines for biofuel investment in Tanzania were developed. These were developed by December 2009 and printed in July 2010 for launching at the *Saba saba* fair in July 2010 (Kaarhus et al. 2010). Further pressure from civil society organisations, increased media focus on local people losing out on land deals, the financial crisis reducing fund accessibility for investment and biofuel becoming less attractive.

Therefore the challenge with legal instruments in Tanzania concerned with land is that there are contradictions between the Land Act of 1999 and the Village Land Act of 1999 and also conflicts with other legislative instruments with respect to defining land uses and administrative responsibilities. This legal review concluded that many contradictions and lack of capacity hinder the upholding or application of land laws and regulations. The implementation of the laws appears to be uneven and slow. For instance the establishment of local institutions to administer land and settle disputes in rural areas has proceeded at a snail’s pace. Further, while there may be good legal measures, there is a complete lack of capacity at government level to monitor and ensure compliance e.g. regarding compensation issues and protection of biodiversity.

## **DISPUTE RESOLUTION**

The issue of large scale land acquisition in Tanzania and in other countries has resulted in an escalation of land-related conflicts. Land laws in Tanzania provide for dispute resolution, and in particular the Land Disputes Settlement Act was passed and came into force in 2003 (Makwarimba and Ngowi 2012). The system however has some serious weaknesses in that it is complex hence it takes time to have disputes resolved.





## **Figure 2: Land governance and implications for development in Tanzania**

Further, as noted by Makwarimba and Ngowi (2012) establishing the institutions such as prescribed councils, tribunals and courts falls under multiple ministries. In the spirit of decentralization, the Village Act provides for dispute resolution at the local level. However, Village Land Council can only function as a mediating body between consenting parties and does not have legal powers to determine a case (Makwarimba and Ngowi (2012)).

## **THE EMERGING BUSINESS MODELS IN SAGCOT REGION;**

### **OVERALL GOVERNMENT DEVELOPMENT THRUST IN TANZANIA**

According to the government, Tanzania has adopted the Malaysian model of development and implementation will start in the Financial Year 2013/14, being part of the government's effort to transform the country into a middle-class economy. The six priority areas to be implemented in the next fiscal year include: energy and natural gas, transport, agriculture, water, education and mobilisation of resources. Malaysia is seen as "a newly industrialised country that has one of the best economic records in Asia and is on its way to soon become a developed country." However, at the time of its independence in 1957 the country had the same level of development as that of Tanzania, one of the poorest countries in the world.

Malaysia is expected to achieve a "developed" status by the year 2020. The country was a predominantly mining and agricultural-based economy like Tanzania is now. But in the 1970s it began a transition towards a more multi-sectoral economy and from the 1980s; the industrial sector has led Malaysia's growth. Tanzania is determined to follow that path despite various challenges that have been enlisted by experts as poor attitude and bad work ethic of civil servants, inadequate pay, which partly fuels corruption, bureaucracy, and weak institutions. The government intends to put more efforts in supporting farmers by surveying land for agriculture, offering trainings and other essential services to ensure improvements in the agriculture sector.

### **AGRICULTURAL POTENTIAL OF THE SAGCOT REGION**

Tanzania's total land is 95.5 million ha where 44.0 million ha is agricultural and 10.1 million ha is cultivated (Statistical Year Book 2005 in TNBC, 2009). SAGCOT region stretches either side of the infrastructure backbone of the region from Dar es Salaam through Morogoro to Mbeya – and north and south to include the highly productive areas around Sumbawanga and Njombe. The region has abundant land and water resources suitable for agriculture, and is located on the coast and borders six countries that could serve as agricultural markets. The diverse climate of the region which includes wet coastal plains, dry hot savannah and tropical wet lower mountain valleys and temperate highlands is an added advantage that allows for a diversified crop and livestock production. Throughout much of this area there is sufficient rainfall for profitable dry-land farming<sup>7</sup>. However, there is potential for 909

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<sup>7</sup> Southern Agricultural Growth Corridor of Tanzania concept note [http://www.agdevco.com/images/sagcot\\_concept\\_note.pdf](http://www.agdevco.com/images/sagcot_concept_note.pdf)

000 ha of irrigation land as shown in Table 1. The major food crops with potential are wheat, barley, maize, paddy rice, horticulture, coffee, tea, potatoes, banana, beans, vegetables, and sunflower. For livestock, beef, poultry and dairy operations have great potential.

This great potential is critical if harnessed into addressing national food security. However, as reported in the SAGCOT concept note, there are currently very few commercial farming enterprises operating at scale in the Southern Corridor area<sup>8</sup>. Tanzania’s tremendous agricultural potential has yet to be realized owing to both political and technical constraints. These include poor infrastructure (roads and electricity especially in areas with high agriculture potential), lack of access to finance and limited access to markets especially by smallholder farmers, drought and water constraints land tenure insecurity against a backdrop of LSLA, taxes and exports barriers (unfavorable agricultural policy), weak delivery of extension service, institutional failure and corruption as summarized by (Kaarhus 2010).

About 12.9 million Tanzanians live in poverty and 85 % of those live in rural areas and rely on agriculture for their livelihood. Further it is projected that due to low levels of agricultural productivity, Tanzania will not be able to feed its projected population of 70 million by 2025. The challenge therefore for Tanzania is to go beyond national food security and use the potential embedded in agriculture to contribute towards poverty reduction, growth and development without compromising food security or the rights of smallholders and pastoralists. Government and its development partners are working towards addressing these constraints so as to optimize of the inherent agricultural potential within SAGCOT region. This is because Tanzania is totally dependent on agriculture as agriculture value added constitutes 45% of GDP and 75% of the population is rural (World Bank, 2009).

**Table 1. Irrigation potential in the SAGCOT region**

<b>Region</b>	<b>Medium potential (ha)</b>	<b>High potential (a)</b>
Coast	172,000	83,000
Iringa	1,050,000	164,000
Mbeya	500,000	285,000
Morogoro	602,000	377,000
<b>Total</b>	<b>2,324,000</b>	<b>909,000</b>

**Source: Ministry of Agriculture, Food Security and Cooperatives (2009) Investment Potential and Opportunities in Agriculture.<sup>9</sup>**

Improving agricultural productivity through irrigation is therefore a key strategy of the Tanzanian National Vision 2025 and the National Strategy for Growth and Reduction of Poverty (MKUKUTA) towards food security and poverty alleviation.

<sup>8</sup> Southern Agricultural Growth Corridor of Tanzania concept note [http://www.agdevco.com/images/sagcot\\_concept\\_note.pdf](http://www.agdevco.com/images/sagcot_concept_note.pdf)

<sup>9</sup> [http://www.agdevco.com/images/sagcot\\_concept\\_note.pdf](http://www.agdevco.com/images/sagcot_concept_note.pdf)

## THE SAGCOT INITIATIVE

SAGCOT involves an innovative partnership between the Government of Tanzania, large international agribusiness companies and the local private sector, to grow commercial agriculture in Tanzania's high potential southern corridor. Our assessment is that the land deals in the SAGCOT region have a variety of purposes, including food, biofuels production and land for climate change measures. For instance multinational companies from Arab countries want land to produce food for their own food security needs. On the other hand Clean Development Mechanisms (CDM) and Reduced Emissions from Avoided Deforestation and Degradation REDD<sup>10</sup> require land for climate change measures. Understanding the needs for land by these investors is critical in identification of local state and non-state stakeholders/institutions that also have a direct interest in the areas.

The SAGCOT Programme is broadly identified as a public-private partnership. The government is therefore a major player in the LSLA deals. The interest of the government is to attract investment to the region. For the implementation of the programme, The Government of Tanzania requested support from the International Development Agency (IDA) to assist in implementation of the SAGCOT concept. The World Bank is therefore an interested party in the SAGCOT land deals, which are at the centre of the development agenda of Tanzania.

The SAGCOT programme has three components *vis a viz*, SAGCOT Catalytic Fund which is worth approximately US\$ 45 million; the strengthening Agribusiness Support Institutions initiative worth approximately US\$ 13 million and Project Implementation Support worth about US\$2 million (ERM, 2012). Within the government several institutions have a role in the implementation of the SAGCOT programme. These include:

- **Tanzania Investment Centre:** responsible for facilitating investments through offering incentives including land to investors who will have shown interest;
- **Division of Environment:** involved at a more strategic level and is responsible for coordination and oversight of Strategic Environmental Assessments and environmental policies. The National Environmental Management Council is responsible for and reviewing large investments and projects of national significance.
- **SAGCOT Centre:** is responsible for promoting the SAGCOT partnership, identifying business opportunities, assisting access to finance, and promoting public- private partnerships among other duties.
- **The Catalytic fund manager:** has the role to identify, finance, and develop viable investments across the value chain in the SAGCOT region.
- **Rufiji Basin Development Authority:** responsible for promoting, regulating, coordinating and facilitating sustainable and balanced long term ecological and socio economic development in the Rufiji Basin. Our assessment is that the RUBADA lacks sufficient capacity to provide information about potential land for investment in a transparent and efficient manner.

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<sup>10</sup> Reduced Emissions from Avoided Deforestation and Degradation

- **Ministry of Lands, Housing and Human Settlements Development:** is responsible for land administration, land use, survey and mapping, land information management systems and adjudication.
- **The coordinating and oversight agencies:** include the Prime Minister's Office, the Vice President's Office and NEMC

There is a high dependency on natural resources, especially land for agriculture, firewood for cooking, water for agriculture and domestic use and well as livestock drinking by local within the region. The region's exceptional ecological values have been recognized by the establishment of many protected areas in different categories which include national parks, forest reserves, game reserves, WMAs, RAMSAR sites, World Heritage Sites which cover a large proportion of the corridor area.

### **Stakeholders in the SAGCOT region**

Numerous stakeholders including many NGOs have drawn attention to potential "land grabbing" issues associated with the SAGCOT programme. NGOs have a critical role of ensuring sustainability of the programme, and protecting the rights of smallholder farmers and pastoralists within the region. Therefore NGOs have an oversight role over the implementation of the SAGCOT programme, in relation to land occupancy (land deals) and traditional land use rights. NGOs assume a role to ensure accountability of the state with respect to national laws and adherence to e.g. World Bank policies (a major partner) and international good practice.

Independent institutions such as the Environmental Resources Management (ERM) have worked with the GoT in the planning phases of the SAGCOT programme making them too, an interested party with some experience on the issues within the region especially on social and environment issues in the region. Further, the SAGCOT program planning was initiated by the GoT with support from a range of public and private sector agencies including Norway, United States Agency for International Development (USAID), and Alliance for a Green Revolution in Africa (AGRA), Yara, Unilever, DuPont and Syngenta. Other interested parties to the SAGCOT programme include Agricultural Council of Tanzania (ACT), Confederation of Tanzanian Industries (CTI), the Tanzania Sugarcane Growers Association, the Irish Embassy–Tanzania, Standard Bank (Stanbic), National Microfinance Bank, Norfund, Norwegian Embassy–Tanzania, FAO and the World Economic Forum.

In the biofuels sector a number of multinational companies are active in Tanzania. Some are partnerships between Tanzanians and a foreign transnational company. Examples include KITOMONDO Ltd owned by Italians and Tanzanians; Farming for Energy, for better livelihood in Southern Africa (FELISA), Tanzanians and Belgians; African Biofuel and Emission Reduction (Tanzania) Ltd, Americans/Tanzanians and the SEKAB BioEnergy Tanzania with Swedish and Tanzanian shareholders. Other companies operating in Tanzania for biodiesel production come from South Africa, Korea, Germany, and UK. Only 2 companies are wholly owned by Tanzanians that is Environmental and Economic Development (EDEN) and JKT (Ministry of Energy and Minerals, 2010) as cited by Kaarhus (2012).

Land is also being required by international investors for food production especially Arab and Indian investors. Kaarhus (2012) noted that a United Arab Emirates (UAE) company was seeking a 98-year

lease on vast tracts of farmland in Tanzania to grow rice in order to secure food supplies for the Gulf countries.

### **The rights of women in the SAGCOT region**

There is an urgent need to consider women's rights in the implementation of the SAGCOT programme since their access to land is organized differently by the various ethnic groups. Women are often bypassed in terms of inheritance of land (ERM, 2012). Further, there is no mandatory framework that requires investors to remit certain percentages of profits to local communities for beneficiation of communities. Vulnerable populations in SAGCOT include women headed households, the elderly, the disabled and the landless.

In Tanzania it is generally assumed that 18.7% of arable land is 'unused' or 'underused' (ERM, 2012). The issue is that such land has other important livelihood roles for smallholder farmer and pastoralist. The so-called unused or underutilized land often provides critical firewood and grazing resources, or might be earmarked for cultivation at a later date. Civil society organisations also note with concern that the value of land in Tanzania is very low compared to neighboring countries, especially for rural land, hence the increase in the interest by multinational companies to acquire huge tracts of land in the SAGCOT region. TNBC (2009) claims that land is undervalued in Tanzania, yet according to The Land Act of 1999 land should be valued according to the market value, but it is difficult to determine what the market value could be. AfDB, (2012) noted that land prices in Africa are generally low compared to other regions, which has led to an increase in large scale deals in the continent.

### **Conflicts over land in the SAGCOT region.**

According to the Legal and Human Rights Centre around 75% of all their legal cases are related to land. Land tenure issues in the SAGCOT region are varied characterised by conflict between pastoralists, smallholders and investors. These conflicts tend to increase as pressure on land increases due to population growth, migration and the expansion of protected areas.

## **REVIEW OF FAO'S VOLUNTARY GUIDELINES AND THEIR APPLICATION IN THE SAGCOT**

### **SUMMARY OF VOLUNTARY GUIDELINES**

The assessment in the SAGCOT region also sought to analyse how the actors involved are applying the VGs consciously and sub consciously. In response to growing and widespread interest, FAO and its partners embarked on the development of guidelines on responsible tenure governance. This initiative built on and supports the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines on the Right to Food), which were adopted by the FAO Council at its Hundred and Twenty seventh Session in November

2004, and the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD)<sup>11</sup>. At its Thirty-sixth Session in October 2010, the Committee on World Food Security (CFS) encouraged the continuation of the inclusive process for developing these Guidelines with a view to submitting them for the consideration of the CFS, and decided to establish an open-ended working group of the CFS to review the first draft of the Guidelines.

The purpose of these Voluntary Guidelines is to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security<sup>12</sup>. These Guidelines are intended to contribute to the global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests.

These Voluntary Guidelines seek to improve governance natural resources for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments. More specifically these Guidelines seek to:

- Improve tenure governance by providing guidance and information on internationally accepted practices for systems that deal with the rights to use, manage and control land, fisheries and forests;
- Contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources;
- Enhance the transparency and improve the functioning of tenure systems; and
- Strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned.

These voluntary Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments and also in accordance with national legal systems and their institutions. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Nothing in these Guidelines should be read as limiting or undermining any legal obligations to which a State may be subject under international law. These Guidelines can be used by States; implementing agencies; judicial authorities; local governments;

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<sup>11</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security: March 2012

<sup>12</sup> FAO Voluntary Guidelines: March 2012

organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned to assess tenure governance and identify improvements and apply them. They are global in scope and may be used by all countries and regions at all stages of economic development and for the governance of all forms of tenure, including public, private, communal, collective, indigenous and customary.

The Voluntary Guidelines closely follow the format of other FAO voluntary instruments that set out principles and internationally accepted standards for responsible practices: Voluntary Guidelines on the Right to Food; Code of Conduct for Responsible Fisheries; International Code of Conduct on the Distribution and Use of Pesticides; Responsible Management of Planted Forests: Voluntary Guidelines; and Fire Management Voluntary Guidelines: Principles and Strategic Actions. These instruments are relatively short documents that provide frameworks that can be used when developing strategies, policies, laws, programmes and activities. They are accompanied by a wide range of additional documents, such as supplementary guidelines that provide technical details on specific aspects when necessary, training and advocacy materials, and further guidance to assist with implementation.

### **KNOWLEDGE ON THE VGS: EVIDENCES FROM THE FIELD**

Evidence from the field visits reflects a total lack of knowledge on the FAO's voluntary guidelines by stakeholders who are supposed to be applying them, even very senior officials in government, embassies and international NGOs interviewed. This situation is even made worse by the fact it is these national level institutions which are supposed to take the message of the VGs to the lower levels of government where implementation is supposed to occur. It would appear these frameworks are pitched at too high a level and too political for government technical officers to be able to implement without some serious political direction from higher authorities in the land. They sound like a 'protocols' or 'international declarations' which are hardly implemented until there is a certain level of political commitment. Therefore, a deliberate programme to interpret and simplify the VGs and rolling out of an awareness programme (social marketing programme) is needed. The framework and guidelines need to be marketed and brought to the RECs, research institutions, donors and development partners and to the national governments.

The study also sought to determine the level of awareness to the AU's declarations on land. Stakeholders are also completely unaware of these, and especially the *Framework and Guidelines (F&G) on Land Policy in Africa*. The Land Policy Initiative was established in 2006 as a joint initiative of the African Union Commission, the Economic Commission for Africa and the African Development Bank. In its first phase (2006-2009) the LPI was successful in developing an *F&G on Land Policy in Africa*, with a view to facilitating national land policy development and implementation processes. The Framework & Guideline, which was developed through a rigorous roadmap of activities, including regional assessments and consultations on land policy, was adopted by the African Ministers responsible for land in Addis Ababa, Ethiopia, in April 2009. They were further endorsed by the highest level of African governance. The AU Heads of States and Governments, through a *Declaration on Land Issues and challenges in Africa*, during the 13th Assembly of the African Union in Sirte, Libya, in July 2009. The launch of the implementation of the Declaration marked the beginning of the second phase of the LPI, at the Conference of Ministers of Agriculture in Lilongwe Malawi in October, 2010.

## APPLICATION OF PRINCIPLES OF THE FAO'S VGS IN THE SAGCOT INVESTMENTS

Even though there is limited knowledge on the VGs, the analysis went further to investigate whether the investments were applying the principles enshrined in the VGs (sub consciously). These principles of implementation, as noted in the VGs, are essential to contribute to responsible governance of tenure of land, fisheries and forests. Table 2 summarises the assessment of application of the VGs principles in the SAGCOT.

**Table 2: Analysis of the application of the principles of the Voluntary Guidelines in the SAGCOT**

Principle	Legal Framework	Implementation	Findings
<b>Human dignity</b>	Available	Weak	The legal framework (Land Acts and Constitution of the republic of Tanzania) recognize the inherent dignity and the equal and inalienable human rights of all individuals. Enforcement of legal framework as well as monitoring is weak due to limited resources and capacity and in some cases limited involvement of local communities. There is loss of key livelihood assets which preserve dignity for instance the case of Kilombero rice estate in which displacement of the Masai pastoralists and loss of livelihoods of these traditional herders symbolises a loss of inherent dignity
<b>Non-discrimination</b>	Available	Weak	The legal framework (Land Acts and Constitution of the republic of Tanzania) has potential to ensure that no one is subject to discrimination under law and policies as well as in practice. However, implementation is threatened by lack of capacities by local communities who are often less informed than government and investors. The laws do not discriminate, but in practice, the discrimination may be in the form of non involvement of smallholder farmers and pastoralists as well as women
<b>Equity and justice</b>	In place	Overshadowed by different interests	Land legislation is in place which has potential to ensure that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land. Implementation of justice may potentially be overshadowed by elite power with the elites, who are able to use their power and connections to gain more equity ahead of villagers and pastoralists. Evidence of displacements of villagers and pastoralists (such as in Kilombero and Kapunga) can be a good indicator of lack of justice for women and men, youth and vulnerable and traditionally marginalized people, within the national context.
<b>Gender equality</b>	In place	There are challenges	The legislation particularly the Village Land Act is explicit in removing gender related discrimination on access and control over land, especially the customary practices that discriminated against women. Implementation of the equal rights of women is threatened by the customary law. There are potential challenges to the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. This is mainly because of the cultural norms and customary laws which place men ahead of women in making key decisions a on assets and key livelihoods for the household. It is not very clear whether women participate adequately for instance at village level meetings where decisions on allocation of key resources are made
<b>Holistic and sustainable approach</b>	Fragmented	Weak	Legislation appears to be fragmented to deal with the interconnectedness of natural resources, and adopting an integrated and sustainable approach to their administration (land laws, wildlife laws, forestry, etc). Implementation of an integrated approach threatened by institutions that reside in different ministries and are poorly coordinated for instance, the provisions of different land acts and wildlife management acts. The 3 relevant pieces of legislation, namely the Village Land Act of 1999, the Land Act of 1999, and the Environmental Management Act and have areas of overlap and conflict in interpretation and implementation. These regulate village land, general land



Principle	Legal Framework	Implementation	Findings
			(commercial) as well as reserved land and WMA respectively. An analysis of the legislation shows fragmentation of both the legislation and regulation that are used to implement on the ground.
<b>Consultation and participation</b>	Available	Difficult	The legal framework sets out the processes for engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions. Framework is difficult to implement because of resource limitations. In some cases the processes are too long and winding which causes investors and people seeking land to take shortcuts which are not always transparent. Where conflict has been identified, for instance at Kapunga rice, there was failure to involve the community in land acquisition process. Problems appear also to come when consultations are done not prior to decisions being taken, and responding to the community's contributions but rather for window dressing.
<b>Rule of law</b>	Available	Difficult	The legislative framework is not quite clear on adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Whilst laws are known (land acts) mainly at higher levels of society (by the more literate) Regulations and procedures especially for land acquisition are not widely publicised. Land laws are not interpreted in vernacular languages, neither are they simplified for the lowest level of community to interpret. The lack of publication of regulations and procedures results in lack of knowledge among various actors including the investors who end up taking less transparent shortcuts and the villagers losing out because of lack of information.
<b>Transparency and accountability</b>	Weak	Weak	The legislative framework is weak in clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all. Implementation is challenged by a number of reasons for this including, but not limited to: availability of financial and material resources, capacity of human resources, complex procedures and multiple reporting lines reducing effective oversight and control. A significant risk to land rights is weak governance in land administration at all levels but particularly at local level; lack of transparency and accountability within institutions and decision making processes; corruption at various levels.

In conclusion, neither the FAO VGs nor the AU F&Gs are a common knowledge in the SAGCOT environment. Officials of government are equally unaware of these important documents. We therefore recommend that AWF initiate an outreach program around the FAO VGs and the AU F&Gs.

## **AN ANALYSIS OF THE IMPACTS AND RISKS OF THE LARGE SCALE LAND INVESTMENTS ON THE ECOSYSTEM**

A plethora of risks associated with the investments in the SAGCOT have been documented. Table 3 outlines major issues categories them into physical, biological social, policy and administration. Whilst large scale investments in agriculture have potential to address food, fuel and FDI in Tanzania, LSLA is of concern as there is potential for local people to lose out from the land deals because land compensation is problematic, and other reasons include that agriculture investors may opt for a model

that does not include local communities, and large land acquisition for agriculture requires natural resources such as water, which then means local communities suffer water loss. This is because the value of land is difficult to determine, procedures for compensation are not very clear, and promises are not written into contracts and being broken (Sulle & Nelson, 2009). The impact on local people will depend upon many factors such as how the LSLA is being planned, managed and controlled. Village people do not know exactly the size of their land, it is difficult to negotiate acreage and value (Kaarhus, 2012).

Not all is doom and gloom about LSLA, Sulle & Nelson (2009) reported that biofuel companies using out grower and other contracted smallholder arrangements have little direct negative impact on land access. According to FAO (2010), biofuel development in Tanzania could provide an important vehicle through which to revitalize agriculture by bringing a variety of investments needed to boost productivity. Increased investment may bring macro-level benefits (such as GDP growth and improved government revenues), and may create opportunities for economic development and livelihood improvement in rural areas (Cotula *et al* 2009).

A significant risk to land rights is weak governance in land administration at all levels but particularly at local level. There are a number of reasons for this including, but not limited to: availability of financial and material resources, capacity of human resources, complex procedures and multiple reporting lines reducing effective oversight and control; lack of transparency and accountability within institutions and decision making processes; corruption at various levels.

**Table 3: SAGCOT Key Environmental and Social Issues**

TOPIC	ISSUE OR RISK
<b>PHYSICAL</b>	
Water availability / timing	<ul style="list-style-type: none"> <li>• Absolute water availability for dry season irrigation</li> <li>• Effects of upstream abstraction and consumptive use on downstream needs and users</li> </ul>
Climate change	<ul style="list-style-type: none"> <li>• Effects of climate change on absolute water availability and timing</li> <li>• Effects of climate change on rain fed agriculture, especially (a) increased temperatures and evapotranspiration, and (b) increased rainfall variability</li> <li>• Effects of climate change on pests and diseases</li> </ul>
Soil	<ul style="list-style-type: none"> <li>• Management of difficult soils, especially black cotton soils to (a) avoid erosion, (b) avoid water logging and salinization, and (c) maintain pH and organic matter in acceptable range</li> <li>• Erosion from poorly designed / constructed / maintained infrastructure, especially roads / road drainage</li> </ul>
<b>BIOLOGICAL</b>	
Habitats (also affects protected areas)	<ul style="list-style-type: none"> <li>• Irreversible habitat loss and fragmentation due to conversion to other land uses, especially agriculture</li> <li>• Accelerated habitat degradation due to SAGCOT-related population in-migration and expansion</li> </ul>

<b>TOPIC</b>	<b>ISSUE OR RISK</b>
Biodiversity	<ul style="list-style-type: none"> <li>• Loss of biodiversity including local extinctions of rare, protected and charismatic wildlife due to (a) habitat degradation, fragmentation and loss (above), and (b) increased hunting and fishing pressure due to population in-migration and expansion</li> <li>• Blocking of wildlife corridors with (a) long-term effects on species survival due to genetic isolation, and (b) increased human-wildlife conflicts in short and medium term</li> </ul>
Agrobiodiversity	<ul style="list-style-type: none"> <li>• Loss of crop agrobiodiversity due to displacement of land races by improved varieties</li> <li>• Possible impacts of GMOs, both ecological and economic (e.g. loss of organic certification)</li> </ul>
Pollution	<ul style="list-style-type: none"> <li>• Ecological impacts of agrochemicals, especially persistent pesticides, on ecosystems and food webs; major concerns are (a) the use of toxic formulations by unskilled workers (including occupational health hazards), (b) bio-magnification up food chains, (c) impacts on water quality and aquatic ecosystems, especially of chemicals used in monoculture rice, and (d) increased availability of pesticides for illegal uses in hunting and fishing</li> <li>• Pollution from agro-industrial facilities, especially to the water environment</li> </ul>
<b>SOCIAL</b>	
Land	<ul style="list-style-type: none"> <li>• Real or perceived "land grabbing" by Tanzanian and/or foreign investors, i.e. take-over of large tracts of land (and/or water rights) for little or no real or perceived short or long-term benefits to local communities</li> <li>• Displacement of legal or informal land users with inadequate compensation and/or practical resettlement planning and implementation</li> </ul>
Local communities	<ul style="list-style-type: none"> <li>• Real or perceived inadequate compensation and/or benefits to local residents as a result of lopsided / inequitable negotiation processes</li> <li>• Corruption of local administrations / councils by inducements offered by investors or their agents</li> </ul>
Smallholders	<ul style="list-style-type: none"> <li>• Lack of inclusion of smallholders in value chains due to lack of agreed mechanisms tied to specific investments / investors</li> </ul>
Gender	<ul style="list-style-type: none"> <li>• Lack of inclusion in negotiation and decision-making processes resulting in little or no consideration of gender issues</li> </ul>
Pastoralism	<ul style="list-style-type: none"> <li>• Increased pastoralist/crop farmer conflicts if pastoralists are displaced or removed from land to facilitate agricultural investments</li> </ul>
Food security	<ul style="list-style-type: none"> <li>• Decreased local or regional food security if non-food commercial crops displace food crops</li> </ul>
Health, safety and human wildlife conflict	<ul style="list-style-type: none"> <li>• Increased hazards to rural workforce and communities from (a) pesticides, (b) mechanization (if untrained), and (c) work in agro-industries (if unregulated)</li> </ul>
<b>POLICY AND ADMINISTRATION</b>	
Institutional	<ul style="list-style-type: none"> <li>• Failure to achieve SAGCOT goals due to: 1. lack of agreed standard operating practices (SOPs), e.g. standardized agreements with local communities; 2.lack of mechanisms and/or institutional capacity to implement the SOPs; and 3. lack of effective monitoring and enforcement mechanisms</li> </ul>

TOPIC	ISSUE OR RISK
	<ul style="list-style-type: none"> <li>• Investor fatigue due to, e.g., (a) lack of a land bank, (b) over-complex administrative procedures, (c) real or perceived government inability to resolve value chain constraints such as port and railway capacity</li> <li>• Distortion of decision-making and capture of benefits by elites due to non-transparent structural features of the SAGCOT programme such as automatic allocation of equity in investments to government organizations at various levels</li> <li>• Potential conflict of interest in implementation mechanisms, such as RUBADA</li> <li>• Reputational risks to GoT and donors in relation to (a) perceived land grabbing, and (b) accelerated degradation and destruction of natural resources such as wetlands</li> </ul>

**Source: Adapted from Environmental Resources Management (ERM) (2012)**

In conclusion, investments in SAGCOT still face many risks, and the challenge is in the difficulty of assessing the risks for potential investors. Given the observation that challenges are significant in all areas including bio-physical, social and governance, points to the fact that the major attractiveness economically would largely be on the basis of low cost of entry. Because land can be acquired at very low cost, this may be the most significant incentive mitigating the various forms of risk identified. This interpretation of aggregate risk and how to mitigate is supported by evidence on the ground that large farms with short-term profit targets are suffering more challenges than the hub-and-spoke examples where minimal initial investment and a more long-term and patient organic growth allows for time and scope to address the intendant risks.

In terms of AWF's primary interests there is no question that biodiversity is at great risk in SAGCOT region. The general attitude of the SAGCOT efforts can be encapsulated in the saying "*There is no one who will starve so as to save a tree*". It would appear that although the government does value biodiversity and nature conservation, the short term priorities are definitely in the economic growth efforts. The 'big-results-now' approach has increased the scope of risks in terms of both possibilities of mistakes due to haste, as well as opportunity of rent seeking behaviour. The planning and demarcation of commercial farms for investors places less emphasis on nature conservation, biodiversity and ecosystem services requirements. The government entities responsible for nature are practically absent in regional offices and on the ground generally.

Risks to biodiversity and ecosystem services and social risks to communities are therefore lower priority risks to government and possibly the investors too, who would probably regard the risks as worth taking, in the hope of quick financial and economic benefits. This approach to development has been attempted elsewhere in the world with Brazil as a prime example of rapid growth 'without development' and the budget surpluses realised from exports invested into 'social protection' programmes. The Brazilian model, however, requires highly efficient and effective governmental processes, and well managed budget surpluses, and these conditions are still afar in Tanzania particularly and Africa generally.

## CONCLUSIONS

In conclusion, the assessment found out that communities lack the capacity to negotiate deals that work for them. On top of that, there is no strong representation or farmer organization at local level. Further, efforts to develop the capacities of farmers to negotiate for them are largely nonexistent. The SAGCOT goals are too lofty and lack the appropriate strong institutional structure for implementation. Institutions on the ground are not prepared for this type of intensive involvement; especially from an implementation of laws and regulations perspective, to technical as well as organization capacity standpoints. Government department and statute overlap result in a quagmire of approvals, which leaves many investors to negotiate on the ground with Village committees, who in turn lack the capacity to negotiate and implement. The aggressive targets set by the government may result in a hurried approach that results in lack of proper NRM consideration and community engagement. Models such as Rungwe Avocado Company are positive and engage the communities well, but are not the norm in the region. While the VGs provide good guidance, awareness is negligible, and at best the principles are being followed subconsciously. The information on water use and lack of water in the region is not having any impact on agriculture planning in the region and is a serious risk for sustainability of agriculture, livelihoods and wildlife.

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## APPENDICES

### LIST OF INTERVIEWEES

<b>Date</b>	<b>Name</b>	<b>Organisation</b>	<b>Designation</b>
19/08/13	Emmanuel Maziku	RUBADA	Senior Planning and investment officer
19/08/13	Elizabeth Schwabe-Hansen	Norwegian Embassy	Counsellor, Political Affairs
19/08/13	Dr Ralph Roothaert	Oxfam	Program Coordinator-Economic Justice-Tanzania
20/08/13	Geoffrey Kirenga	SAGCOT	CEO
	Tulalumbe Mloge	SAGCOT	Executive Assistant
20/08/13	Dr Julius Nungu	Government of Tanzania	Director of Environment
20/08/13	Mr Lekule	Government of Tanzania, Ministry of Lands , housing and settlements	Senior Lands officer
21/08/13	Michael Sanga, Nyasebwa Enock	Mbeya Regional office	Agriculture Officer and Regional Agricultural officer
21/08/13	Hawa Kikwele and Geofrey mwa Ngulubi	Mwiwata and GRADE	Chairperson and Executive director
22/08/13	Robert M. Clowes	Rungwe Avocado Company	Director
22/08/13	Jacob galahenga(Hr manager), Kapunga Estate Gneral Manager	Kapunga Rice Estate	General manager and Human Resources Manager
23/08/13	John Fliakos	Tandala lodge-Ruaha	Director
24/08/13	Florah S. Luvanda	Ministry of Lands , Tanzania	Assistant Commissioner of Lands

### SEMI STRUCTURED INTERVIEW GUIDE

#### ASSESSMENT OF THE IMPACT OF VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE (VGs) ON ENVIRONMENTAL AND SOCIAL SAFEGUARDS IN SAGCOT REGION

#### *Introduction*

The African Wildlife Foundation has partnered with the Barefoot Education for Africa Trust (BEAT) to assess the impact of voluntary guidelines on the responsible governance of tenure (VGs) on environmental and social safeguards in SAGCOT region. FAO and its partners embarked on the development of guidelines on responsible tenure governance. The purpose of these Voluntary Guidelines is to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support

the progressive realization of the right to adequate food in the context of national food security. Focusing both on investments that have been made and that are being planned, the assessment aims to provide:

- an assessment of applicability of and compliance to VGs on biodiversity and community social benefits and safeguards;
- an assessment of policy, legal and institutional frameworks around large scale land acquisition and how lessons from SAGCOT can be used to improve applicability of VGs; and
- a risk assessment of planned future investments and provide recommendations to minimise the risks.

Land in Tanzania is governed through the Land Act of 1999 and the Village land Act of 1999. Although a custodial duty over land is vested in the President, land administration is undertaken by specific officers legally mandated through these two acts. The two acts lay out the framework through which land can be acquired and owned in Tanzania by both foreign and domestic investors. Land in Tanzania is categorized into a) general land, b) reserved land and c) village land where village land is the largest category constituting about 70% of the total land. The VGs should contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over land, forests and fisheries as well as enhance the transparency and improve the functioning of tenure systems for better quality investments.

To successfully carry out this assessment we require the following,

1. **SAGCOT investments:** We require case information on the investments that have been made and those planned in the SAGCOT region. For each of these cases we need some information on how things are going with the investments focusing on
  - a. the land issue and how the VGs have been applied,
  - b. the business activities,
  - c. participation of communities and
  - d. Impact on biodiversity.
2. **Institutional and legal Issues:** Some cross cutting issues of concern that we also require information on include
  - a. coordination of activities
  - b. robustness of legislation;
  - c. capacity of different levels of institutions involved;
  - d. an assessment of associated risks
3. **Documents:** we require as much information as possible on investments made in the SAGCOT as well as those being planned. The required information can be in form of planning and evaluation reports, community minutes, documents that cover investments, national policy documents, reviews, national strategic plans, legislative and regulatory documents or any other documentation with relevant information. In addition it will be important to understand how various levels of government particularly in the Ministry of Agriculture, Food Security and Cooperatives and related ministries are organised to provide services and coordinate

stakeholders on issues regarding the SAGCOT. Further, an analysis of the current and future roles of various stakeholders particularly development partners, NGOs and farmer representative organizations in the SAGCOT.

**Broad questions:**

- What has actually happened, in situations where commercial land deals on customary or community land have been proposed and are being planned and to what extent have the VGs been useful in the SAGCOT investments?
- How is the process working, with what successes and challenges in relationship to a) allocating land for investments, b) managing land resources (national to local) and c) taking care of community and biodiversity issues?
- How is the legislation on land and natural resources adequate in facilitating investments and application of VGs in the SAGCOT region?
- How are smallholder farmers and pastoralists involved in the management of land and natural resources as well as their participation in business activities?
- Looking back on experience so far, what do you consider to be the most important risks associated with current and future planned investments, be they physical, biological, social and policy and institutional etc.
- How does the SAGCOT grand plan mainstream issues of environmental management particularly wildlife management?

**Information needed on specific investments**

<b>Dimension</b>	<b>SAGCOT Experience</b>
Size	
Duration	
Source	
Commodity	
Business model	
Tenure arrangements	
Resource access	
Lease / compensation payments	
Displacement	
Labour	
Settlement	
Infrastructure	