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“How come others are selling our land?” – Customary land rights and the complex process of land acquisition in Tanzania

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Abstract

The recent increase in transnational acquisitions of agrarian land raises concerns about rural people's inadequate involvement in the decision-making process, and violations of their land rights. Tanzania's statutory land laws are comparatively progressive in terms of recognising customary land rights. According to the legislation, transferring 'Village Land' to an investor requires villagers' approval. It is therefore interesting to focus on the acknowledgement of customary rights in land deals in Tanzania. This study analyses the land transfer process of a UK-based forestry company that has acquired land in seven villages in the Kilolo District. In the case of the village presented here, the investor seems to have followed the legal procedure regarding decision-making for the land deal in a formally correct way. Yet interviews with various stakeholders revealed flaws at village and district government level that have led to a conflictive situation, with numerous affected villagers having lost their land rights – and thus the basis for their livelihoods – against their will. Among those affected are several households from a neighbouring village, whose customary rights date back to the period before the resettlements of the 1970s ('villagization'). Employing the concepts of property rights and legal pluralism¹ and unbundling the role of different actors in the host country government, this article analyses the decision-making process that preceded this land transfer. It illustrates how unequal power relations lead to unequal recognition of customary and statutory law. The study concludes that even under comparatively favourable legal conditions, there is no guarantee that local land rights are fully protected in the global land rush.

Keywords: customary land rights, statutory law, global land rush, acquisition process, forestry company, Tanzania

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In recent years there has been rapid growth in the number of investors acquiring large tracts of agrarian land in countries of the Global South for food, agrofuel or forestry plantations and many other purposes. The investors are from Western and Gulf states, but also from countries of the Global South, including domestic actors.² This increase in land investments has provoked numerous hopes and worries regarding their impacts in the host countries. Supporters claim that land investments entail new income options in terms of jobs or contract farming and improved technologies and infrastructure in rural areas. Critics are concerned about violations of land rights and, ultimately, increased poverty and food insecurity in the respective areas.³ Yet, also supporters recognise certain, but they hold that these can be minimized by improving governance of land deals, for example by implementing international guidelines.⁴

Tanzania is considered a land-abundant country⁵ and is thus a typical target country for current land deals – initially mainly for biofuels, but more recently for diverse purposes.⁶ This article focuses on the case of a UK-based forestry company. Considering the expected global increase of forestry plantations, the study contributes to the so far limited scholar knowledge about such investments.⁷

As in most African countries, customary land rights play a major role in rural areas in Tanzania. The statutory legislation is comparatively progressive in terms of respecting existing local land rights – referred to as customary rights (see section 2.1) – and requiring rural people’s approval to land deals. It is therefore interesting to focus on a Tanzanian case study in order to see whether a favourable legal setting can protect rural inhabitants from negative implications of large-scale land deals. This study argues that it is important not only to focus on the land acquisition process, but also to analyse it in the context of the local land tenure regime – an aspect that other studies have often neglected. The paper looks at the matter from the perspective of legal pluralism so as to give sufficient consideration to complex land tenure settings. Further, this study argues with Wolford and her colleagues that the global land rush phenomenon should not be seen in oversimplified ways as land grabs by “predatory investors”⁸; rather it is important to acknowledge and unbundle the involvement of host country governments in such deals – an issue for which not much empirical evidence has been published until recently.⁹ This article presents a detailed and nuanced analysis of the influence of institutions as well as specific stakeholders and their interaction.

The empirical work was mainly undertaken between August 2010 and May 2011. At that time, the selected forestry company was at an advanced stage of acquiring land in the Kilolo District in Iringa Region. The data are based on qualitative interviews with government officials at national, regional, district and village levels, and with inhabitants including key persons using semi-structured interview guidelines. In the two affected villages presented in this case study, group discussions and participatory mapping exercises were also conducted and copies of the minutes of village meetings were collected. Further information was obtained in 2013 from the district land officer. Apart from one preliminary meeting in August 2010, the investing company did not agree to contribute to this study. Therefore information about the company is mainly derived from its website and from district officials and other sources. Relevant background information for this research was provided by a study conducted by Chambi Chachage and Bernard Baha who visited the area in May 2010.¹⁰

In the following section, I will introduce the concepts of property and legal pluralism. The second section provides an overview on the Tanzanian land regime and the legal regulations related to land transactions. It is followed by basic information about the investment project and a detailed description of the land deal procedure. The fourth section presents an analysis of the transaction process. The article ends with a discussion and conclusion.

Analytical framework for the analysis of property

Franz and Keebet von Benda-Beckmann and Melanie Wiber describe property as a broad concept, which “concerns the ways in which the relations between society’s members with respect to valuables are given form and significance”.¹¹ They define three major elements in relation to property:

- (a) the social unit that can hold rights and obligations (in this case individuals, the village, the Tanzanian government and the company);
- (b) the (constructed) property objects (e.g. a given plot of land);
- (c) the various sets of rights and obligations with respect to such objects.

Property rights can be broadly divided into two categories, namely rights to use and exploit economically; and rights to regulate, allocate, represent in outside relations and make decisions – in short decision-making rights.¹²

Benda-Beckmann and his colleagues further distinguish four “layers of social organization”¹³ in which property is expressed:

- Layer (1): cultural ideals and ideologies (e.g. neo-liberalism or socialism)
- Layer (2): legal regulations (e.g. state law, customary law or religious law)
- Layer (3): social relationships (e.g. between landowner and tenant)
- Layer (4): social practices or daily interactions (e.g. inheriting land or fencing)

Since property regimes evolve over time, the four layers of such a regime are not always fully coherent. Different legal regimes may coexist, each of them based on legislations such as statutory law or customary law, supported by respective sets of cultural values, and determining property relationships and practices. These regimes may coexist peacefully or be in open conflict, and may also influence each other. Such coexistence and interaction of legal regimes is referred to as legal pluralism.¹⁴

In the context of legal pluralism, people may refer to different property ideologies and legal regulations to justify and support their claims.¹⁵ However, it is not enough to assert claims. According to Meinzen-Dick and Pradhan “Rights are only as strong as the institutions or collectivity that stands behind them”.¹⁶ In this study I used the presented concepts to analyse the local property regime and to reveal the social relations that are relevant for the recognition of customary and statutory land rights during the land transaction.

Legal provisions for allocating Village Land to a foreign investor

Tanzania’s land regime and land legislation

Tanzania’s land regime is based on local laws, religious laws and German and British colonial laws. Further, during the 1970s, the resettlements under the ‘villagization’ programme (*operation vijiji*, introduced by President Nyerere’s socialist government) brought major changes to the land tenure situation.¹⁷ The current law, subdivided into the Land Act and the Village Land Act, came into force in May 2001.¹⁸

Based on former colonial law, the Land Acts retain all land as public land. Land is vested in the President, who holds the final decision-making rights as trustee on behalf of all citizens. Citizens cannot own land, but they can own *rights over* the land, i.e. rights to occupy and use land.¹⁹ ‘Rights to occupy’ may be bought or sold, and

inherited, and can thus be seen as (limited) decision-making rights. In this article citizens with such decision-making rights are referred to as 'landholders', not 'landowners'.²⁰

All land in Tanzania is divided into three classes with different jurisdictions. 'General Land' is administered by the Ministry of Lands, Housing and Urban Development (hereafter, Ministry of Lands) and comprises urban areas and land that has been allocated by the central government under entitlements, e.g. to investors. Land rights granted under this category can be held for 33, 66 or 99 years. 'Reserved Land' refers to several specific types and uses of land such as forests, national parks or highways, and is governed by the relevant Ministries.²¹

'Village Land' includes the areas of all villages, representing roughly two-thirds of Tanzanian land. Village Land is managed by the respective Village Council (VC), the elected government of 15-25 members. The VC is accountable to the Village Assembly (VA), which consists of all residents above 18 years. Village Land can be further subdivided in three categories. *Communal village land* is used for public purposes such as schools or grazing areas. *Individual land* is occupied or used by an individual, family or group of persons. The third category is unnamed but may be referred to as *spare land* for future communal or individual use.²²

A main purpose of the Village Land Act is to protect villagers' existing rights. Existing rights in rural areas are referred to as customary rights. The VC shall administer the land in accordance with customary law, provided this does not violate the main provisions of the statutory law, such as the rights of women, children or the disabled.²³ In fact, it might be questionable to term existing rights in Tanzania 'customary', given the state's strong influence during villagization and through the land legislation.²⁴ Yet, I argue with Knight that parts of the customs are preserved, and thus that the Tanzanian legislation can be termed a "customary/statutory hybrid".²⁵ According to the Village Land Act, a 'customary right of occupancy' (on Village Land) has the same legal status as given to land titles to 'General Land'. Customary rights also explicitly include unregistered rights.²⁶ Tanzanian legislation is thus praised as a progressive land law compared to other African countries in terms of respecting customary land rights and entrusting land management responsibilities to village bodies.²⁷

Transfer of Village Land to a foreign investor

Non-Tanzanian citizens cannot acquire customary rights of occupancy. They can only obtain land for investment purposes.²⁸ There are different possibilities for doing so.²⁹ The most common way is to identify suitable plots of ‘Village Land’, which are transferred to the category of ‘General Land’, whereupon the Ministry of Lands can provide title deeds to the investor. In more detail, the usual procedure – which also applied to the presented case – is as follows. Investors, together with regional or district government authorities, visit villages with potentially suitable land and inform the VC and VA about their plans. If the VA in general agrees with the project, the district land officers demarcate the respective land plot(s) and send the relevant VA minutes to the Ministry of Lands. Thereafter, the following *de jure* process of land transfer starts.³⁰ The Ministry of Lands gazettes a 90 day notice with information about the intended transfer and sends it to the respective VC. The VC shall inform all people that might be affected by such a land transfer in terms of losing customary land rights. The affected people can make representations to the VC or authorised district land officers³¹, who shall take these into account for the further procedure.

Based on recommendations from the VC, the VA can either approve or reject the land transfer in the case of areas below 250 hectares, and its decision is submitted to the President. In the case of areas above 250 hectares, the VA can only provide a recommendation, while the decision lies in the hands of the President. The President can order the compulsory acquisition of land, subject to the payment of compensation.³² However, it seems that in this context the President does not usually take a decision against the VA’s recommendation.³³ During the VA meeting, a district land officer and the investor are supposed to be present and answer questions. Thereafter, the type, amount, method and timing of the payment of compensation have to be agreed between the government – in practice usually the investor – and the affected villagers (in case of individual land) or the VC (in case of communal or spare land). Based on a detailed survey and assessment of the land, a compensation schedule must be prepared and approved by the central government. Finally, the transfer of the land is gazetted in a second notice and becomes effective within 30 days. Thereupon, within six months, either the government or the investor himself is supposed to pay compensation to the land right-holders. Compensation has to be paid for the value of the land itself and for ‘unexhausted improvements’, namely constructions, crops or trees on the land.

Additional compensation may include, among others, resettlement fees and transport allowances. The valuation shall be based on the current market value.³⁴

The land acquisition process of the UK-based forestry company in Kilolo District

The New Forests Company in Kilolo District

Kilolo is a hilly district in Iringa Region, located in the Southern Highlands of Tanzania. It features favourable conditions for the cultivation of food crops such as maize, beans, potatoes, vegetables and fruit. Many households also plant trees on some of their plots. Further, high demand for timber in Tanzania and abroad has attracted wealthy individuals from other Tanzanian regions who acquire land and grow pine, eucalyptus, cypress and other fast-growing trees.

The UK-based New Forests Company (NFC) presents itself as a sustainable forestry business with the aim of producing feed material for sawmills, board factories and pole treatment plants, and running energy-forestry operations based on plantations in Uganda, Mozambique and Tanzania. The company expects “both attractive returns to investors and significant social and environmental benefits”.³⁵

In 2006, the district’s Member of Parliament introduced NFC to Kilolo District. By early 2013, NFC had acquired 6,300 hectares of land in seven villages and was still in the process of acquiring more land. In most cases the deal involves individual land holdings, but in the case presented here, some village spare land was also affected. In the following section, I shall first show how government officials and the investor proceeded, drawing on statutory law, and how this led to conflicts. Subsequently, I shall present the relevant customary tenure regime in order to analyse in more detail the land deal process and its implications.

Initial steps in the land acquisition process in Kidabaga

In 2006, representatives of the NFC and of Kilolo District visited several villages and presented the company’s plans in VC and VA meetings. According to the minutes, both of these meetings took place on 18 October 2006 in the case of village Kidabaga.³⁶ Even at that early stage the VC members agreed to offer some village spare land to the investor. The area, called Witamasiva, is located in a sub-village roughly 15 kilometres

away from the main settlement of Kidabaga. Parts of the area had been temporarily rented out to individuals. The information about the remaining area remained unclear; it was either unused or cultivated in parts by people from the neighbouring village Kiwalamo. However, the proposal to offer Witamasiva to the investor was presented to the VA. The minutes of the meeting show that the aims of the NFC were presented as a long list of benefits besides their core activities, including “create 10,000 jobs” and “engage in the provision of education, health, water, etc.”³⁷ Although villagers raised few concerns during that meeting, the VA agreed unanimously to provide Witamasiva to the NFC.³⁸

The VA then formed a committee of six villagers responsible for showing the Witamasiva area to district officials. The first demarcation took place on 17 August 2007. A survey team from the district and NFC officials went to the respective area, together with the village committee. According to numerous interview partners, including a member of the committee at the time, this committee under the late Village Chairman did not show the precise boundary of Witamasiva, but merely pointed at it from afar. Apparently, the committee leader did not originally come from that area and did not know it properly. Hence the land survey team demarcated a much larger area than the land called Witamasiva. Yet this only came to light later.

On the basis of the generally positive signal from Kidabaga and other villages, the government gazetted a first notice on 6 February 2008. In this notice the President proposed the transfer of Village Land to General Land in several villages including Kidabaga.³⁹ The site and actual size of land that was supposed to be transferred in each village was not mentioned, although this is legally required.⁴⁰

On 11 April 2008 – thus within the given period of 90 days from the publication of the government notice – the district officials provided the information about the proposed transfer to the villagers of Kidabaga at a VC and VA meeting. Interestingly, the minutes of both meetings featured a blank space in which the size of the proposed land should have been indicated.⁴¹ This is remarkable, because on that date the district officials must at least have known the approximate size of the land, which they had demarcated nearly a year before.

According to the minutes, several questions were raised. A VC member asked about compensation for properties on the land, and one member specifically asked about compensation for people from the neighbouring village Kiwalamo who were using the

land. This indicates that VC members already knew or at least suspected that the land transfer would affect several people, and the district officials were made aware of this. Yet it is reported that the district officials continued confirming that the land to be transferred would only include spare land managed by the VC, and that property of individuals would be avoided as far as possible. If people should nonetheless be affected, they would be compensated.⁴² According to the understanding of a villager I interviewed in his subsequent position as Village Chairman of Kidabaga in 2010, it was agreed that a survey would take place first and the compensation issue would be clarified before the village and the company entered into an agreement. In this vague situation, the (potentially) affected people were reportedly not informed by the VC.

However, despite the lack of clarity about land size and potentially affected people, the minutes were considered as the VA's recommendation to approve the proposed land transfer.

Survey and first agreement on compensation

According to a district official, the village had consented to receive compensation in cash for the used part of the land only, specifically for the trees planted by the individual villagers. For the remaining area of Witamasiva, the village reportedly did not ask for compensation in cash, arguing that the land was not used.⁴³

In July 2008, after the expiry of the 90-day period, the district officials conducted a survey and an evaluation exercise at the same time, thus laying the final steps for the land transfer. They placed beacons and filled in forms regarding compensation, which were signed by the people who had planted trees and by the Village Chairman and the Village Executive Officer (VEO), an employed secretary to the VC, on behalf of the village. It was then, at the very latest, that at least the village representatives must have seen the exact boundary, as their signature is mandatory for setting up the beacons.⁴⁴ The total area provided to NFC in Kidabaga was 1,572.8 hectares.⁴⁵ However, the villagers seem to have been unaware of this figure.

Transfer of land and arising confusion and conflicts

At a VA meeting on 30 March 2009 the VC informed villagers of Kidabaga that their village had received 1.6 million Tanzanian Shillings in compensation. According to the minutes, a number of villagers were neither satisfied with the amount nor, in particular,

with the lack of clarity about the size of the land. They also complained that some extra land had been given to the investor. They asked the village government to follow up on this.⁴⁶

Four months later, on 30 July 2009, the VEO of Kidabaga invited the respective people to meet in the contested area. He found the complaints justified; the area that had been surveyed one year earlier did indeed include land held by individuals outside the area known as Witamasiva. Thereafter, on 23 August 2009, some affected villagers from both Kidabaga and Kiwalamo wrote a formal letter to the VEO, stating that they did not agree to give any land besides Witamasiva, and that they did not want to receive any compensation for the individual land, but wanted their land back. The letter should have been forwarded to the district or some other relevant body, but it is not clear whether this happened.

At roughly the same time, on 21 August 2009, the second government notice was published, announcing that the transfer of Village Land to General Land would be effective within 30 days.⁴⁷ In December 2009 NFC started to clear some land in Witamasiva and planted the first seedlings. The company apparently had received a go ahead from the district government and used the land before having received the title deed from the Ministry of Lands.

It took several more complaints by local people before another VA meeting was held in January 2010; there, the villagers of Kidabaga confirmed their position and the VEO forwarded their complaints to the district. Finally, the district recognised the claims of the affected people. However, the land had already been deemed General Land half a year before. District officials proposed that the affected villagers should be compensated. The former landholders announced their acceptance – albeit reluctantly in some cases – at a meeting on 24 March 2010. Some former landholders mentioned that they had been urged to sign the agreement with threats that they would otherwise receive nothing, while losing the land in any case. In August 2010 NFC recognised the villagers' legitimate claims too and agreed to pay compensation to those who had been left out before. The company also consented to pay for the second survey that was required as a basis for the new compensation schedule.

The September 2010 survey revealed that the demarcated area did not just cover Witamasiva but also included areas with land rights held by around 100 individuals. It was found that about half of these rights were held by people from the neighbouring

village Kiwalamo. I shall briefly outline the history of Witamasiva in the following section to give a better understanding of the reasons for this land property order.

Customary land tenure in the area acquired by the company

Before the villagization programme in 1973, the people in the area had been living in dispersed settlements. During the villagization process, people living around Witamasiva moved in different directions to form the villages of Kidabaga and Kiwalamo. However, the border between the two new villages was reportedly drawn by government officials in such a way that all land around Witamasiva now belongs administratively to Kidabaga.

When the people moved to the place called Kiwalamo to form a village, they were instructed by government officials to rearrange their land rights. The people who had been living in the area of the present core settlement of Kiwalamo before were instructed to share their land with newcomers so that the latter could establish a new household. As the available land was not enough for farming and other uses, the new arrivals continued to use the land around their former homes in addition to their newly allocated land. In turn, people who had originally lived in the area of the current village were given land use rights in part of the areas around Witamasiva that had been abandoned by the people moving to the new village. The effect of this rearrangement was that up to the present day most households in Kiwalamo have land rights both within and outside the village settlement area, whereas a major part of the area outside the settlement belongs to Kidabaga. To the minds of local people, this exchange of land rights was not carried out in the sense of an exchange of land holdings, but rather in the sense of a permanent or long-term exchange of land use rights. In other words: people who had been living in the area around Witamasiva still consider themselves to be entitled to that land, but part of that land is regarded as tantamount to being 'rented' to those people in Kiwalamo who in turn 'rented' part of their land to people from Witamasiva. This 'rent' or exchange of land use rights involves no payment. If a newcomer to the village (for example teachers) wished to get land rights, he or she needed to buy it from the original settler on that land.

From the perspective of elders interviewed in Kiwalamo, land tenure is regulated through mutual acceptance among villagers. In their view, villages are administrative institutions with no particular power over land property. Although they

recognise that their land is located within the boundaries of Kidabaga, the villagers I interviewed still feel that it belongs to them.

Revised land survey and compensation agreement

In the second survey, in 2010, only a small part of around 2.8 hectares was considered Kidabaga's spare land; this was the area that had already been compensated. The remaining area of around 1,570 hectares in Kidabaga, which had been provided free of charge, was categorised as land held by individuals, both from Kidabaga and Kiwalamo. District officials I interviewed claimed that it was only then that they had realised that Witamasiva was merely a small proportion of the total area. In the renewed compensation schedule based on that survey, the customary land rights illustrated above were taken into account in the following way. Former landholders in the area, both from Kidabaga and Kiwalamo, were listed as being entitled to compensation for land plus unexhausted improvements (crops and trees), if there were any. The people from Kiwalamo who had been 'renting' the land were supposed to be compensated only for unexhausted improvements. As there was no settlement on the transferred land, no related compensation had been foreseen. The total compensation amounted to 687,645,900 Tanzanian Shillings (around USD 455,000 in 2010). There was some discussion between the village governments of Kidabaga and Kiwalamo regarding the land held by villagers of Kiwalamo. The government of Kidabaga was of the opinion that its VC, the formal manager of land within village boundaries according to statutory law, was also entitled to compensation. Finally, it was agreed that compensation be paid to the individual landholders after deducting 2% for Kidabaga.

Although the new compensation schedule had been ready since November 2010, NFC hesitated to accept the new survey and only paid the compensation at the end of 2011. Reportedly, the Regional Office had advised the district officials to hold back the company's title deed until it paid the compensation.

Immediate consequences for local land rights and livelihoods in the villages Kidabaga and Kiwalamo

Part of the area around Witamasiva was used when NFC arrived in 2006. Cultivation was largely concentrated on more fertile land closer to rivers and included food crops and trees, while some of the drier hills were used for grazing cattle.

A solution was found for the dispersed plots of grazing area that people lost; another neighbouring village gave part of its communal land as a common grazing area. The situation proved far more tense regarding land for cultivation. Since 2009 representatives of the company and the local government had told the former land users that it would be illegal for them to continue using the land, as it belonged to NFC. While some affected households still had land elsewhere, others, mainly from Kiwalamo, complained about their complete loss of subsistence farmland, reduced food security and a lack of income to cover expenditure such as school fees. Some villagers from Kidabaga shifted their activities to new land, which they rented from other inhabitants. Given that they had not yet received the compensation by then, they argued that they were unable to buy land and lost a considerable amount of money paying the annual rent.

In Kiwalamo, the agreement based on the second survey had further complex consequences. From a point of view of customary law, people who had been living around Witamasiva earlier lost all of their landholdings for which they had decision-making rights. The land within the settlement on which they have built their homes is regarded as having been 'rented' and is therefore considered less secure. The other people from Kiwalamo lost 'only' land use rights, albeit long-standing ones. They were therefore not compensated for loss of land, only for crops. There was no spare arable land in Kiwalamo under the management of the VC that could have been distributed among the affected villagers, and it seemed that there was also no substantial amount of individual land that might have been bought or rented from other villagers. Some of the people therefore argued that they would have to move away and try to find land for settlement and cultivation in another region. As they would probably be unable to find land for all the affected households in the same place, they feared that they would be scattered in different villages, disrupting existing ties among relatives and neighbours. However, I was unable to explore this development any further within the time frame of this research.

Conceptual analysis: "How come others are selling our land?"

In the area around Witamasiva – which is located within the boundaries of Kidabaga, but partly used by villagers of Kiwalamo – customary and statutory land orders have coexisted since the 1970s without creating major tensions. However, their discrepancy

became obvious when the investor sought to acquire the land.⁴⁸ On the one hand, affected former landholders from Kiwalamo feel that it is their land, based on long-standing customary rights. This view is partly shared by their neighbours from Kidabaga. It is obvious that these land claims grounded in customary law were not protected. Thus an elder man from Kiwalamo asked:

How come others are selling our land?

On the other hand, some of the inhabitants and village representatives in Kidabaga feel that they rightfully decided to transfer Witamasiva – and accidentally also some area around Witamasiva; they claim that it is their village's land. One interviewee from Kidabaga said:

Witamasiva was at that time [when the VA decided to give it to the investor] used by people from Kiwalamo, with the permission of Kidabaga, but only temporarily. It was generally known that it belongs to Kidabaga, and that Kidabaga could take it back when needed.

This view refers to the legislation as set in the statutory law, which views the VA as the legitimate institution for taking decisions about any land within village boundaries.

The decision-making for the land transfer followed not the customary law cited by some villagers of Kiwalamo and Kidabaga, but statutory law – though not without considerable flaws, as will be discussed in further detail below. According to Meinzen-Dick and Pradhan, it can be concluded that the legitimising institution behind the statutory law was stronger than the collectivity behind the customary law.⁴⁹ Although customary law is integrated into Tanzanian state law (see section 2.1), from the perspective of legal pluralism it makes sense to present the two laws and their backing institutions and stakeholders in juxtaposition, in order to illustrate the discrepancies between the two regulations and the related consequences.

The recognition of statutory and customary law

When foreign investors wish to acquire land in rural areas, they draw on ***statutory law*** – publicly accessible regulations that are promoted by the national government. The legitimising institution behind the statutory law is obviously the state. Not only the

investor, but also the villagers and VC members I interviewed generally respected the Tanzanian state and never fundamentally questioned it in our interactions. When it comes to land issues in Kidabaga and Kiwalamo, the state is usually represented by the district officials. District officials generally enjoy a high level of respect from local people, including VC members. They have a certain knowledge about state law⁵⁰, which they have acquired through formal education, and the power to implement legal procedures by dint of their position. Villagers' respect is also indicated in the minutes of the VC and VA, which refer respectfully to "experts" from the district.⁵¹ In the presented case, the Member of Parliament for Kilolo and a former Cabinet Minister, who accompanied the representatives of the district and NFC in some of their promotional meetings, further strengthened the authority of the district officials. At one stage in the process the President even came into play – namely when he (in fact rather the Commissioner of Lands on the President's behalf⁵²), as per legal requirement, finally effected the land transfer. Affected villagers from Kiwalamo and Kidabaga were informed accordingly that the decision was "signed by the President", as interviewees often quoted officials. The reference to this figure of authority contributed to villagers' feeling that they had no other option than to come to terms with the transfer.

The villagers I interviewed not only respected the state, but the statutory land law too. Even people negatively affected by the land deal did not question the law as such. Though they did not know much about it in detail, they expected the law to be designed in a way that it would protect their rights, if implemented properly. In sum, statutory law and its backing institution – the state and its representatives – are recognised by all stakeholders involved.

Customary law is sustained by villagers who have lived in the area for generations. They claim that numerous mutual and often long-standing agreements among individuals in a community constitute the land tenure order, and that village boundaries have no particular effect in the issue of use rights to members of neighbouring villages. As I have outlined above, to some extent statutory law recognises customary law as the main basis for land governance in villages. From the state's point of view, the VC is responsible for the management of Village Land. But the elected VC has authority from a local point of view too. Village councillors are usually respected and comparatively knowledgeable members of the village community. External stakeholders usually come to the VC to identify land in a given village. Yet, as

I have shown, it can be very difficult for village representatives to know about and identify all local arrangements. Thus VC members may not always be fully able to back customary rights.⁵³

My analysis of the institutions and social relations reveals that statutory law – broadly recognized among stakeholders and promoted by respected authorities – has more powerful backing than customary law, which is only fully recognised and maintained by groups of villagers. The village government has a challenging double role in this regard, since it represents both statutory and customary laws.

Flaws in the implementation of the land transfer process according to statutory law

Statutory law was the basis for the land deal, but numerous errors hampered the implementation. They happened both at village and district levels.

- (a) The committee of village representatives approved by the VA in 2006 was responsible for showing the land to the district officials, but apparently did not fulfil its task properly.
- (b) In the April 2008 meetings, when the VC and VA were officially informed about the intended land transfer based on the government notice, the district officials reportedly did not inform them about the size of the area, even though the plot had already been demarcated for transfer.
- (c) After that, the VC of Kidabaga did not inform all affected villagers in Kidabaga and Kiwalamo about the proposed land transfer, even though village councillors must have known or at least suspected that holders of land rights were affected. Had the VC informed them at the time, people would have had time to raise objections within the period set by the first government notice.
- (d) Instead of taking the hints about affected right-holders in the above-mentioned meetings seriously and trying to get a clearer basis for the rest of the process, the district government interpreted the VA meeting as a sign of approval for the land deal.
- (e) Village government representatives did not react in a timely manner to clarify and report the problems when doubts regarding the size of the land and compensation were raised at a VA meeting in March 2009, and when villagers

from Kidabaga and Kiwalamo complained in different ways. By the time they finally looked into the matter, the land transfer had become effective.

- (f) When the claims of the affected people were finally accepted, one legal requirement for the land transfer – namely the agreement on compensation by all affected stakeholders – was no longer fulfilled. One could argue that the basic requirement – the VA recommendation to approve the land transfer – had also become weak or void, as the VA decision had been taken on the basis of missing and false assumptions. However, instead of restarting the whole process, the district protected the investor's land claim and strove to delivering the legal basis for the land transfer as quickly as possible by asking the former landholders to agree to the compensation. The fact that NFC had already planted on the land – with the go-ahead of the district government – helped to strengthen the company's claim and stir up a belief among local people that the land transfer could not be undone.

The following two issues, related to the **Village Council's role**, do not conflict with legal regulations regarding the land transfer, but had an impact nonetheless.

- (g) Only affected people, not the entire VA, were invited to the March 2010 meeting at which the former landholders were requested to sign the acceptance of compensation. Some interviewees, including a well-informed businessman who was not personally affected, felt that the village government had done this intentionally. Without the support of the other villagers, some of whom were more educated, the landholders had less power to resist such a request.
- (h) Overall, villagers' respect for the VC influenced the decision-making at the VA. This was illustrated when I asked about their first meeting with NFC. Most of the interviewees in Kidabaga did not feel that they had taken the decision of giving Witamasiva to NFC, despite having participated in the respective VA. In their view, the VC had already taken the decision and presented it to the village meeting.

Perhaps the most important weakness in the process was the **unequal knowledge** among the stakeholders involved. The land law foresees that villages should benefit from information provided by district officials when deciding about land transfers. In Kidabaga, the villagers and their representatives had an opportunity to question the

district officials during at least two meetings of both the VC and the VA. The district officer confirmed that he had presented the necessary information about the procedure and the villagers' rights during the meetings. Yet, villagers and village government generally had a very low level of awareness and knowledge about statutory law and formal procedures to defend their land rights, as I observed throughout the interviews. Considering the complexity of land law and the relatively low level of formal education overall, it is not surprising that the information shared at a few public meetings is insufficient for the majority to fully understand the legal process. Consequently, several people in Kidabaga blame the village government and the government in general for not having informed them properly about their land rights. This is even more the case in Kiwalamo, where people were not involved in formal meetings at all. An interviewee claimed:

The government should have informed us people about land rights and rules before the company came. Everybody has rights. But the government just forced us.

Flaws in the law

It is unclear whether the customary land rights in Kidabaga and Kiwalamo would have been protected, if the process had followed legal procedure as laid down in statutory law from the outset. In any case, the decision – or rather the recommendation to the Ministry for approval or rejection of the land transfer – could lawfully only be made by the VA of Kidabaga. And even if the people of Kiwalamo had been invited to the VA meeting, it would still not have been formally possible for them to take part in the decision, as they were not residents of that village. Even if the affected villagers of Kidabaga had realised the imminent loss of land, they could not have decided whether to accept the investor or not on their own. The law does not stipulate that affected individuals or households have the sole decision-making power or a right to veto; they can only contribute to the decision as VA members. Hence affected individuals could have been overruled. But, at least their objections could have been included in the minutes and taken into account during decision-making at different levels. Further, affected landholders from Kidabaga and Kiwalamo could theoretically have delayed and hampered the land transfer by not agreeing to the compensation. It would ultimately have been up to the High Court to decide on compensation but not on the transfer of Village Land to General Land as such.⁵⁴

One further issue relates to potential relocation. Although the transfer of land did not lead directly to resettlement, it might *de facto* have led landholders of Kiwalamo to move to other villages due to lack of sufficient land for their livelihoods. The Village Land Act does not foresee such a case of 'collateral forced resettlement', and no related compensation was paid in the examined case. Both points – affected villagers potentially being overruled by VA decisions, and resulting resettlement not being compensated in any case – can thus be identified as weaknesses in Tanzanian law.

Discussion and conclusion

This study examined the process of transferring village land to an investor against the backdrop of an analysis of the local land tenure regime and by highlighting the role of actors of the host country government. It focused on the example of a UK-based forestry company that acquired land in Tanzania – a country with a legal framework that is considered one of the best in Africa in terms of its protection of local land rights.

The case of Kidabaga and its neighbouring village Kiwalamo I have presented illustrates first the importance of a legal pluralism perspective if one wishes to understand the complexity of such land transactions and their immediate implications for local livelihoods. It was found that customary rights only have some standing vis-à-vis external stakeholders when they are backed by statutory law. In Tanzania, statutory law protects customary law, but only as long as the latter does not go beyond village boundaries, as the statutory regulations are based on villages as units. Yet, as we have seen, for historical reasons – namely the villagization process – customary tenure regimes are not limited to areas within village boundaries. A second limitation on statutory law's protection of customary rights is that it expects the collective decision-making of Village Assemblies to consider the customary rights of individuals (within and beyond village boundaries), but this is not necessarily the case.

Second, by focusing on the relationships between the stakeholders involved – as stipulated by the employed property concept – the study reveals the relevance of power inequalities between actors in terms of asserting land rights. When customary law conflicts with statutory law, people who represent statutory law – district government officers for example – and people who rely on statutory law – for example foreign investors – are more successful at imposing their views and claims. This is because the institution behind the statutory law, i.e. the state and its representatives, is more

powerful than the collectivity behind customary law, namely individual villagers. The power inequality is expressed in two main aspects and leads to several **weaknesses in the implementation of legal procedure**:

- **Unequal social relations** between government authorities and villagers and between members of the Village Council, other villagers and non-village members; they lead not only to statutory law being stronger than customary law when there are doubts, but also to Village Assembly decisions being influenced or pre-decided. Hence there is a risk that powerful village members will take decisions that elide interests of weaker villagers and non-village members.
- **Unequal knowledge about land rights** of local people compared to representatives of the district and the investor; though villagers respect statutory law, they have little knowledge of it. Thus, when mistakes occur during the land transfer, it is difficult for affected people to defend their rights. The knowledge inequalities cannot be balanced out during the process, although state regulations contain certain provisions.

The example from Tanzania shows us that even statutory land law that supposedly offers relatively good protection for customary rights does not do so in a foolproof manner. This is because of weaknesses in the law, namely regarding collective decision-making about land transfers and potential ‘collateral forced resettlements’ – weaknesses that could arguably be overcome. But more importantly it is because of several flaws that can occur during implementation. The study sheds light not only on the influence of investors, but on the crucial role and relations of actors at the local and the middle level of the host country government – levels that are often missing in land grab literature.⁵⁵ Overall, unequal power relations between these actors were found to be most relevant in shaping the effects of land deals. The study concludes with German, Schoneveld and Mwangi that the law is not sufficient to protect people’s rights.⁵⁶ The claim that transnational land deals can be disciplined by improved regulations is therefore highly questionable.⁵⁷

The challenges of a land transfer process may affect not only local landholders and land users, but may also have negative consequences for the government officials involved and for the investor in terms of increased costs, time and workload. For

investors, relying on the procedural steps as defined in law and on the respective village representatives is no guarantee of a conflict-free land transaction.

Finally, the analysis illustrated in detail how the flaws during the land transfer may have adverse implications for the affected villagers, such as major delays in compensation payments and the hardship this causes. In the most extreme cases, this may include people losing their land against their will and even having to relocate their households due to a shortage of land in the area. Less knowledgeable people, people with limited livelihood resources and people living in complex land tenure settlements – arguably a significant share of the population of the Global South – are particularly at risk. Thus, this study confirms observations made in other contexts that such land investments are likely to exacerbate existing social inequalities.⁵⁸

In sum, my analysis raises severe doubts as to whether large transnational land deals can be conducted in a way that fully respects existing land rights. The findings of this study support voices that call for alternative pathways of agrarian development that do not affect people's land rights.

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Notes

1. Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property.”
2. Deininger and Byerlee, *Global Interest in Farmland*; Cotula, “The International Political Economy”; Borrás et al., “Land grabbing and global capitalist accumulation”; Locher and Sulle, *Land Deals in Tanzania*.
3. Cotula et al., *Land Grab or Development Opportunity?*; De Schutter, “How Not to Think of Land-Grabbing”; Li, “Centering Labor in the Land Grab Debate.”
4. Deininger and Byerlee, *Global Interest in Farmland*; von Braun and Meinzen-Dick, “*Land Grabbing*” *Risks and Opportunities*.
5. Deininger and Byerlee, *Global Interest in Farmland*, 89.
6. Locher and Sulle, *Land Deals in Tanzania*; Mwamila et al., *Feasibility of Bio-Fuel Production in Tanzania*.
7. Cotula, “The International Political Economy,” 651.
8. Wolford et al., „Governing Global Land Deals,” 191.
9. Pedersen, “Access to land reconsidered”.
10. LARRRI, *Accumulation by Land Dispossession*.
11. Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 14.
12. Meinzen-Dick and Pradhan, “Implications of Legal Pluralism,” 11; Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 17.
13. Ibid., 15f.
14. Meinzen-Dick and Pradhan, “Implications of Legal Pluralism,” 11.
15. Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 19.
16. Meinzen-Dick and Pradhan, “Implications of Legal Pluralism,” 11.
17. Shivji, *Not yet Democracy*, 2f, 12.
18. URT, *Land Act (No. 4)*; URT, *Village Land Act (No. 5)*; Alden Wily, *Community-Based Land Tenure Management*, 15.
19. URT, *Land Act (No. 4)*, sec. 4(a); Alden Wily, *Community-Based Land Tenure Management, 1999*.
20. See URT, *Land Use Planning Act 2007*, sec. 2.
21. URT, *Land Act (No. 4)*, sec. 7.
22. URT, *Village Land Act (No. 5)*, sec. 8(1), 12(1).
23. Ibid., sec. 3; Alden Wily, *Community-Based Land Tenure Management*, 18.
24. Boone classifies contemporary African land tenure regimes as either ‘neocustomary’ – meaning land orders based on indirect rule in which local leaders backed by the state

exercise authority within (ethnic) communities – or ‘statist’, meaning land orders under direct control by the central state. She terms the Tanzanian land order ‘statist’, given that the government has interfered considerably during villagization and by replacing traditional chiefs with VCs; Boone, “Land tenure regimes and state structure,” 182-84. While I acknowledge these academic concerns, in this article I employ ‘customary rights’ in accordance with the terms used in Tanzanian legal regulations.

25. Knight, *Statutory Recognition of Customary Land Rights*, 217.
26. One of the law’s aims is to increase security by providing the opportunity to register customary rights locally. Landholders can obtain a Certificate of Customary Right of Occupancy (CCRO) from the VC, URT, *Village Land Act (No. 5)*, sec. 29. CCROs are not dealt with here, as they were not used in the case study area.
27. Alden Wily, “‘The Law Is to Blame’,” 747.
28. URT, *Land Act (No. 4)*, sec. 19(2).
29. Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods*; Abdallah et al., “Large-Scale Land Acquisitions in Tanzania,” 40, 42.
30. URT, *Village Land Act (No. 5)*, sec. 4.
31. Authorised district land officers represent the Commissioner of Lands, a government official appointed by the President and responsible to the Minister for the administration of the Land Act. URT, *Village Land Act (No. 5)*, sec. 4.(7); URT, *Land Act (No. 4)*, sec. 9(1), 10(1).
32. The President can transfer Village Land to General Land or Reserved Land for “public interest”, whereas public interest includes “investments of national interest”, which are not further described in the law, URT, *Village Land Act (No. 5)*, sec. 4(1, 2).
33. See also Isaksson and Sigte, “Allocation of Tanzanian Village Land,” 25; German, Schoneveld, and Mwangi, “Processes of Land Acquisition,” 7.
34. URT, *Village Land Act (No. 5)*, sec. 4(8), 4(11); URT, *Village Land Regulations*, sec. 9–19; URT, *Land Act (No. 4)*, sec. 34(3).
35. NFC, “The New Forests Company”; see also Locher and Müller-Böker, “Investors Are Good, If”.
36. LARRRI, *Accumulation by Land Dispossession*, 29.
37. *Ibid.*, 29f.
38. *Ibid.*, 30.
39. URT, *Notice of Intension to Transfer Village Land*.
40. URT, *Village Land Act (No. 5)*, sec. 4(3).
41. LARRRI, *Accumulation by Land Dispossession*, 32.

42. Ibid., 31.
43. Obviously, the legal provision that land – whether used or unused – should be compensated based on market value was not followed. Compensation is an important issue, which also led to major conflicts in other villages where NFC has acquired land, and elsewhere in Tanzania. Locher and Müller-Böker, “Investors Are Good, If,” 253; Massay, “Compensating Landholders in Tanzania”; Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods*.
44. URT, *Village Land Regulations*, sec. 63.
45. Interview with district official 2011.
46. LARRRI, *Accumulation by Land Dispossession*, 32.
47. URT, *Notice of Transfer of Village Land*.
48. Obviously, Kidabaga and Kiwalamo did neither have a ‘Certificate of Village Land’ as per *URT Village Land Act (No. 5)*, sec. 7, nor a ‘Village Land Use Plan’ as per URT, *Land Use Planning Act 2007*, sec. 27(1), 22(3), both of which could have clarified conflicting land rights earlier. In mid-2010, only about 10 per cent of all Tanzanian villages had a village land use plan. Interview with official of the National Land Use Planning Commission 2010; Isaksson and Sigte, “Allocation of Tanzanian Village Land,” 31; Abdallah et al., “Large-Scale Land Acquisitions in Tanzania,” 42.
49. Meinzen-Dick and Pradhan, “Implications of Legal Pluralism,” 11.
50. Conducting interviews in Kilolo and numerous other districts, I found the district officials’ knowledge about land laws in many cases rather limited; however, from the point of view of village inhabitants, district officers’ knowledge is substantial.
51. LARRRI, *Accumulation by Land Dispossession*, 29.
52. See footnote 31.
53. It is obvious that the VC members did not support villagers and their customary rights in the most effective way throughout the transfer process. This can partly be explained by the difficulty of identifying local land orders in complex land tenure regimes, as revealed by other studies; Locher, Steimann, and Upreti, “Investment Principles and Plural Legal Orders”; Abdallah et al., “Large-Scale Land Acquisitions in Tanzania.” However, various problems also occurred in other contexts (elaborated in section 4.2), for which the reasons cannot be revealed in this study, but they could be linked to a fear of a backlash from more senior government officials who support the investor, as suspected by LARRRI, *Accumulation by Land Dispossession*, 36.
54. URT, *Village Land Act (No. 5)*, sec. 4(8).

55. Pedersen, "Access to land reconsidered"; Locher, '*Global Land Rush*', *Local Land Rights and Power Relations*, 60.
56. German, Schoneveld, and Mwangi, "Processes of Land Acquisition".
57. See also German, Schoneveld, and Mwangi, "Processes of Land Acquisition"; Locher, Steimann, and Upreti, "Investment Principles and Plural Legal Orders".
58. For example Bottazzi, Goguen, and Rist, "Conflicts of customary land tenure in rural Africa"; Sulle, "Social Differentiation and the Politics of Land".

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