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BUREAUCRACY VERSUS LAND GRABBING? REPLACING THE STATE IN A FASHIONABLE DEBATE IN TANZANIA.

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“So how will you just make a grab on village land? If you want a village land you have to get first of all the consent of the villages and then go another step, make a transfer from village land to general land. And then from general land, getting the land as a derivative title of Tanzanian Investment Center. All these steps. If you have to go through all that kind of bureaucracy and you’re still making grab [rire] it’s either intended that you have that land but not land grabbing, no. That will not be possible. [...] the land tenure system itself has got its own cumbersomeness. And you won’t be very successful in land grabbing. Show me just two or three successful land grabs in Tanzania where you can sit back and say OK, this one is successful.” (Interview with a Tanzanian land lawyer, 15/04/2015, Dar es Salaam). Tanzania is considered a target country of the recent wave of land investment which has been hitting the Global south since the late 2000s (Cotula, 2013 ; Deininger et al, 2011; German et al, 2011¹). The debate refers to a seemingly new dimension of land transfers, commonly qualified as land grabbing, whereby private stakeholders and multinationals acquire large plots in countries where land is supposed to be abundant, idle and unused. Seeking for food security, alternative energy sources or more material objects of speculation, investors from industrial and emergent countries negotiate land deals especially for the cultivation of food crops and biofuels. Regarding the situation of land investment in Tanzania, the Landmatrix, an international database capturing land deals all over the globe, records 36 land transfers between the Tanzanian government and foreign investment companies in 2016.²

This hype about the accumulation of land deals has

triggered a heated controversy in Tanzania which is stimulated by politicians, journalists and experts. Many debates focus on the question whether a land deal can be labelled as a land grab or not. Civil society organisations and media actors are very committed to the issue and conduct research to identify cases of dubious land acquisitions. Their reports about land grabbing are contested by state agencies or land lawyers. As demonstrated in the introductory statement by an independent land expert from Dar es Salaam, one of their arguments is that the procedures of land acquisition by foreign investors are too complex to allow land grabs by outsiders. We argue that the debate about whether there is land grabbing or not veils an important scope of analysis, which is the role of state institutions and state-building processes in the negotiation, promotion, but also the circumvention of such land deals. Basing, firstly, on a review of the legal land acquisition processes and, secondly, on the land deal with the British company Sun Biofuels (SBF) in the district of Kisarawe, we defend the thesis that state actors keep on influencing the negotiation of land deals. Whereas the case of SBF has been viewed as a prime example of the foreignisation of land control in Tanzania, a more detailed analysis sheds light on the complex set of interactions between administrative authorities, institutions and state agents which form the core of the transaction. We argue that contradicting interests and power struggles on different bureaucratic levels can influence, detour or even circumvent the success of a land transfer.

Unbundling the Tanzanian state in the context of land deals

The international image of land grabs, shaped by an important media hype, refers to more or less arbitrary land acquisitions by foreigners whereby the investors’ interests are seen to be the driving forces of the transactions. It depicts dichotomous and asymmetric

¹. This article is based on two periods of field work (April-June 2014, April-September 2015) in Tanzania.

². <http://www.landmatrix.org/en/get-the-detail/by-target-country/united-republic-of-tanzania/>

actor's constellations, whereby a stronger (in terms of economic, knowledge-related and relational resources) stakeholder seizes the (more or less acknowledged) land rights of a weaker single or group of actors. States where land is grabbed are considered as being weak, fragile or even absent. This strong versus weak-dichotomy of the land grabbing discourse and the focus on the role of the investors disguises the complex negotiation processes which can provide significant insights into the analysis of state formation. Although some scholars have shifted their focus on the impact of the host states in land deals, the literature generally equates the state to a homogenous entity acting through one single voice (Wolfard *et al.*, 2013). Secondly, the authors who address the intervention of host states often limit their scope on the collaboration between state elites and foreign investors. According to Sandra Evers *et al.* "the state [...] acts as a crucial actor in creating the fertile ground for foreign investment" (Evers *et al.*, 2013). If state actors or rules intervene in the deals they necessarily pave the way for land acquisitions.

However, in the case of Tanzania, land transactions are characterised by complex and sometimes contradicting interactions of state and non-state actors. In order to understand these land deals it is therefore important to unbundle the state in its different administrative levels and actors as well as the numerous bureaucratic steps of a transfer. The Tanzanian land laws provide a specific multi-level procedure which structures land deals with foreign investors. This process which is embodied in the Land Acts of 1999, constitutes the legal basis of state action in the context of land deals by involving various administrations and different levels of decision-making. In a first step we will outline this state-structured procedure. Then we will strengthen the argument with empirical data by discussing the negotiations of the land deal with Sun Biofuels in the district of Kisarawe.

Land deals according to the law: a fertile ground for state intervention and complex interplays

In Tanzania, most of the land deals which result from the recent rise of foreign investment concern village land³ (Locher & Sulle, 2014). Yet, foreign investors cannot directly acquire village land but can only obtain a derivative right of occupancy over general land. Therefore, a village land plot must first be converted into general land through a process which involves state actors on different administrative levels.⁴

³. The Tanzanian land tenure system distinguishes three categories of land: village land (about 70 % of the country's surface, managed by village authorities), reserved land (about 25%) and general land (managed by the central government).

- **On the national level:** foreign investors are first received by the Tanzanian Investment Centre (TIC) in Dar es Salaam which is an interface between the government and private stakeholders. Hosting representatives of several state agencies, the role of the TIC is to facilitate the implementation of an investment project. Regarding land deals, the TIC is supposed to either propose an already demarcated land plot or to direct the investor to a specific region with suitable land for the investment purpose.

- **On the district level:** once the investment project has been approved by the region the matter is transferred to the district level. Several departments of the district councils interact directly with the investors. The principal role of the land department is to identify a suitable plot for the project in one or several villages of the district. Land experts often assume an intermediary function between the investors, the council and the villages.

- **On the village level:** according to the land laws, the villagers have the last say in the decision-making regarding the conversion of village land into general land. The issue must be discussed in one of the quarterly Village Assembly meetings. If the land conversion is approved by the village institutions, the decision is forwarded to the Ministry of Lands which gazettes the land for a period of 90 days.

This summary is a simplified representation of the procedures. The actor's constellations and levels of decision-making can vary from one investment project to another. However, it becomes clear that during a land transfer, the Tanzanian state unfolds into various institutions, actors and administrative levels which can shape the outcomes of the process. One can suppose that the multiplication of bureaucratic steps and decision processes creates a fertile ground for power struggles between stakeholders and authorities.

The local state at work: the role of district officials in the land deal with Sun Biofuels

The controversial case of the British company Sun Biofuels (SBF) in the district of Kisarawe reflects the complexity of land deals in Tanzania and, more particularly, a local state machinery at work (Bierschenk & Olivier de Sardan, 2014), which negotiates and shapes

⁴. For a detailed discussion of land transactions with foreign investors in Tanzania: Isaksson, Rebecka and Ida Sigte, "Allocation of Tanzanian Village Land to Foreign Investors Conformity to Tanzania's Constitution and the African Charter on Human and Peoples' Rights." Umea: University of Umea, 2009.

land transactions. The company presented its investment proposal to the TIC and the district authorities in 2006 in which it declares that it “aims to become one of the biggest biofuel producer in the world⁵”. In fact, SBF planned to develop a jatropha plantation in order to produce biodiesel by leasing land from eleven villages in Kisarawe district. In May 2009 the company obtained its certificate of occupancy signed by the Commissioner for Lands who attests SBF’s right to occupy and develop 8211 hectares during a period of 99 years. Five years after the beginning of the negotiations the British company announces its bankruptcy (Wa Simbaye, 2011). The parts of SBF were first sold to the Mauritius based company 30 Degrees East, but in 2014 another investor, called Mtanga Foods Limited, announced a cattle-keeping project on the farm.

Since the bankruptcy in 2011 the case of SBF attracts the attention of media and NGOs on the local as well as the international level (The Citizen, 2013 ; Bergius, 2012 ; Carrington, 2011). Focusing on the negative impacts of the failure, the majority of the reports blame SBF for the breach of its promises. One of the principal commitments of SBF was to contribute to the socio-economic development of the villages by creating employment. In fact, the company declared that “it is expected that several thousand people will be employed⁶” in the course of the project’s progress. The failure of SBF and its successors to create long-term jobs for the promised number of villagers is one of the principal arguments of activists who qualify the company as a land grabber. The case of SBF is one of the first showcases of land grabbing by foreign investors in Tanzania. However, we argue that the discussion about whether the project can be considered as a land grab or not masks the determining role of state agents and the complex negotiation processes which shaped the land deal. Two empirical elements underline this argument. Firstly, central government institutions like the TIC or the Ministry of Lands are not the dominating decision-makers in the land deals. In fact, state agents at the district council in Kisarawe turn out to have a pivotal function in the negotiations of both the project of SBF and Mtanga Foods. Secondly, the negotiations about the land transfer have led to power conflicts between district officials and village leaders, the latter

complaining that the district council was favouring the objectives of investors rather than advocating the interests of the citizens. District officials from Kisarawe act as intermediates and the district council is a platform between the central government, village institutions⁷ and representatives of the investing companies. For instance, the Memorandum of Understanding (MoU) which records SBF’s commitment to create employment and to contribute to development projects in the eleven villages is countersigned by the Chairman of the Kisarawe District Council (KDC). The provisions have principally been negotiated between representatives of the KDC and SBF. Furthermore, district officials influenced the procedures of the compensation by SBF which was paid to the District Council before being distributed among the different villages. According to the Tanzanian land laws, land owners must be compensated before the final conversion of village land. When SBF received the right of occupancy in 2009 the compensation of the community land was still pending. Several district officials had already addressed a document to the Ministry of Lands certifying the fulfilment of all the requirements by SBF in order to obtain the certificate, including the exercise of compensation (The Citizen, 2013).

However, the district administration’s impact on the negotiations cannot be limited on its function as a collaborator of the investor. Whereas several officials try to fast-track the administrative procedures of the land transfer⁸, others exercise their role as a supervisor of the incoming companies. One of the project managers of the shareholder Mtanga Foods describes the cumbersome bureaucracy on the district level. “to get here was quite an obstacle and a lot of bureaucratic involvements especially when you get down to the council level, the Kisarawe district council⁹”. By introducing a new investment activity which no longer focuses on large-scale agriculture but on livestock-keeping, the new shareholder must request a change of land use which implicates different bureaucratic steps and decisions. With the beginning of Mtanga Foods’ activity in Kisarawe in 2014 the importation of cattle was suspended by the KDC for several months.

The land deal of SBF had also led to power conflicts and mistrust between district officials and village

⁵. Extract of the MoU between SBF and KDC.

⁶. Extract of the MoU between SBF and KDC.

⁷. At the village level, land questions are discussed by a set of actors and institutions such as the elected village council, the land committee, the Village Chairman, the impartial Village Executive Officer and the village assembly which includes all persons aged 18 and above. Villages therefore shall not be considered as a homogenous government level but rather as a host of constant negotiations and contention about rule and. However,

this article does not provide a deeper analysis of institutional dynamics regarding land allocation in the case of SBF.

⁸. Informal conversation with a district official, Dar es Salaam, 11/04/2015.

⁹. Interview with a programme manager of SBF, Dar es Salaam, 25/06/2015.

¹⁰. Focus group discussion with members of the task force team, Marumbo village, 06/05/2014.

¹¹. Interview with the Village Chairman, Mhaga, 06/05/2014.

institutions. The village leaders of Marumbo consider district officials from Kisarawe as advocates of the land deal with SBF acting against the interests of the citizens.¹⁰ The chairman of Mhaga underlines this argument: “The contract is between the investors and the DC. Villagers have no say.¹¹” He further explains that the village council has not been informed or consulted properly: “Because there was no negotiation between the village council and the villagers and the investor. No negotiation at all.” However, in 2013 the villagers established a “task force” with the support of the NGO Action Aid Tanzania. The leaders of several villages informed the Ministry of Lands about the failure of SBF and its successors to pay the compensation for the acquired community land. It turned out that the district’s document proving the integrity of the administrative procedure had been falsified. The Ministry convoked a stakeholders’ meeting with the task force team, district officials and members of Action Aid Tanzania in order to clarify the situation and to set terms for the payment of the compensation. In January 2014, the new investor Mtanga Foods paid a compensation of 500 million Tanzanian shillings to the inhabitants of the villages where communal land was acquired.

Concluding remarks

As illustrated in the introductory remarks, several stakeholders contest accusations about land grabbing by referring to the cumbersome bureaucracy. However, more than a counterargument of dubious land acquisitions, the administrative procedures represent an original entry point to analyse the impact of state activity in land deals. The example of Sun Biofuels shows that the configurations of land deals can go beyond the dichotomy of strong investors versus weak states. State authorities on different scales intervene, monitor and negotiate the deals. During the land transactions administrative units, officials, and representatives sometimes have conflicting interests and act against each other. The analysis of land deals in Tanzania therefore goes hand in hand with an approach of unbundling the state in its different rules, scales, administrations and agents.

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