



EUROPEAN REPORT
ON **DEVELOPMENT**

PRESSURES ON LAND IN SUB-SAHARAN AFRICA: SOCIAL DIFFERENTIATION AND SOCIETAL RESPONSES

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MOBILISING EUROPEAN RESEARCH
FOR DEVELOPMENT POLICIES

SYNOPSIS

This paper focuses on large-scale land acquisitions and the implications of these new trends for land tenure rights in sub-Saharan Africa. It highlights trends in legal and policy approaches; describes and analyses new pressures on land and related natural resources; provides an analysis of drivers of resource scarcity and competing uses; summarises what is known about better and worse practices in partnerships between local communities and external investors; and concludes with recommendations for development partnerships.



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Abbreviations

AgriSA	Consortium of South African Farmers
aGter	Association pour contribuer à Améliorer la Gouvernance de la Terre, de l'Eau et des Ressources Naturelles
AU-ECA-AfDB	African Union–Economic Commission for Africa–African Development Bank
CAADP	Comprehensive Africa Agriculture Development Programme
CIRAD	Centre de coopération internationale en recherche agronomique pour le développement
CNOP	Coordination Nationale des Organisations Paysannes
COP	Conference of the Parties
CSO	Civil society organisations
DFID	Department For International Development
DUAT	from the Portuguese, or right of use and benefit of land
EITI	Extractive Industries Transparency Initiative
ESIA	Economic Social Impact Assessment
EU	European Union
FAO	Food and Agriculture Organization
FPIC	Free, prior and informed consent
GIS	Geographic information systems
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GRAIN	Genetic Resources Action International
GTZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HCLEP	High-level Commission on the Legal Empowerment of the Poor
IDLO	International Development Law Organisation
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ILC	International Land Coalition
LPI	Land Policy Initiative
LVC	La Via Campesina
MCC	Millennium Challenge Corporation
NEPAD	New Partnership for Africa's Development
NGO	Non governmental organisation
NTD	Nile Trading and Development Inc.
PLAAS	Institute for Poverty, Land and Agrarian Studies
RECONCILE	Resource Conflict Institute
REDD	Reducing Emissions from Deforestation and Degradation
RPF	Resettlement Policy Framework
TNCs	Transnational companies
UNAC	National Union of Peasants in Mozambique
UNDP	United Nations Development Programme
ZAL	Zambia Land Alliance

1 Introduction: key issues in land and development patterns

Land is central to the prospects for development in sub-Saharan Africa. While a growing proportion of the region's population is living in urban settlements, the absolute rural population continues to grow. The vast majority depend on land-based livelihoods derived mostly from the region's 80 million small-scale farms. Yet many have precarious livelihoods, in part due to the chronic under-investment by states and the private sector in African agriculture and associated infrastructure. Their hold on land, water and other crucial natural resources remains dependent on customary land rights that are often not adequately secured in law or practice; less than 10% of land in the region is privately titled. Into this context, rising pressures towards the commercialisation of land uses, and towards land leasing to (largely transnational) investors, are raising the stakes over who holds what rights to what land in Africa. Long-term competition over resource rights is likely to be aggravated as these multiple competing claims and interests in land confront one another, in a context of growing populations and climate change.

This paper focuses on large-scale land acquisitions and the implications of these new trends for land-tenure rights in sub-Saharan Africa. It highlights trends in legal and policy approaches; describes and analyses new pressures on land and related natural resources; provides an analysis of drivers of resource scarcity and competing uses; summarises what is known about better and worse practices in partnerships between local communities and external investors; and concludes with recommendations for development partnerships.

2 Land tenure in Africa: theory and practice

Secure land rights are a necessary precondition for economic development, but they are also insufficient (Toulmin and Quan, 2005). People need secure rights to land in order to invest in economic activities on it. Securing land tenure may involve a number of aspects: recognition of rights through statutory reforms; restoration of rights following dispossession or displacement; redistribution of rights in contexts of great inequality; and registration of rights in response to demand (Meinzen-Dick et al., 2008). Instrumentalist arguments for securing land rights are dominant among international development organisations, which emphasise the positive outcomes of tenure security for internal re-investment by smallholders, investment by external investors, social and political stability, and economic growth. Economic benefits of secure tenure have been shown to include the ability to reap direct-use benefits, incentives to invest, rising asset values, greater transfers to those better able and willing to use it (especially in the context of migration and limited access to inputs among landholders), the basis for promoting credit markets, more sustainable land use and management practices, and a reduction in conflict and displacement. There is evidence of a virtuous circle in some contexts, in which secure rights create incentives to invest, but also vice versa: people invest in land as a way to secure their rights to it (Platteau, 2000). These arguments tend to converge with those of human rights advocates who emphasise the need to recognise and secure land rights.

If rights to land and property are clear and secure, this can help to boost economic growth, tackle inequality and reduce poverty. These rights enable people to invest in their future which means they are more likely to do so. They open up space for new housing and provide opportunities for investment and accumulation of wealth... They also encourage business which stimulates economic activity. Secure property rights provide a basis for tackling disputes over land and can reduce the risk of conflict. And, once people have security of place, this provides them with a platform to establish a broader spectrum of rights. (DFID, 2007)

Controversies abound over land tenure and the most effective means by which to secure tenure rights. Should this be through private ownership or customary land rights or other forms of rights? How can reforms confront and overcome inequalities, rather than entrench them? Is there an accepted version of 'custom' or is it changing? In many countries, notions of 'living customary law' have overtaken the notion of official and codified custom. In such a context, can some elements of custom be supported (such as locally legitimate practices and institutions) while rejecting other elements (such as gender discrimination and a central role for unaccountable or unelected leaders)? Who holds authority and accountability? How can costs be minimised and access to democratic and legitimate institutions promoted?

2.1 Formalisation, individualisation and titling

A hierarchy of land rights?

Historically, many African (and other) governments have considered customary land-tenure systems to be 'backward' and a constraint on development, while private freehold has been considered a superior form of tenure. This modernist understanding has envisaged an evolution of tenure systems from one to the other, in response to individualisation of land uses and trends towards urbanisation. Platteau (1996) famously characterised and critiqued this dominant understanding of land tenure in Africa as being an 'evolutionary theory of land rights', which imposed Western presumptions of a historical teleology of tenure systems. 'A central tenet of this theory is that under the joint impact of increasing population pressure and market integration, land rights spontaneously evolve towards rising individualization and that this evolution eventually leads rightsholders to press for the creation of duly formalized private property rights – a demand to which the state will have an incentive to respond' (Platteau, 1996: 29). His review of evidence from several countries concludes that 'most of the beneficial effects usually ascribed to such a reform are grossly over-estimated and that, given its high

cost, it is generally advisable to look for more appropriate solutions that rely on existing informal mechanisms at community level' (Platteau, 1996: 29).

Private property?

The privatisation of property in Africa has been given added impetus by the writing and advocacy of Peruvian economist Hernando de Soto, whose *The Mystery of Capital* argues that formalising property rights to land and houses can enable poor people to realise their 'dead capital' by using it as collateral or by renting or selling it (de Soto, 2000). These ideas influenced UNDP's High-level Commission on the Legal Empowerment of the Poor (HCLEP) and informed donor practices, including for instance the Millennium Challenge Corporation (MCC), established 2004, which has promoted privatisation of land to encourage foreign investment in several sub-Saharan states, advocating a market-based solution to food security. The de Soto paradigm has been extensively critiqued (e.g. Cousins et al., 2005). Experience in Africa demonstrates that it is a myth that 'private property creates security and leads to investment', according to Lund (2008).

Failed titling in Kenya

In Kenya, individual titling following the 1954 Swynnerton Plan created an indigenous landed class. However, as Okoth-Ogendo (1991) observed, it also created the corollary: a landless class. This, he shows, formed the basis for long-term conflicts in Kenya over land claims, taking the forms of litigation and violent ethnic clashes. The title system created a chronic disjuncture between the deeds registry and rights in practice. Problems with the model were that 'those who gained were the rich, the powerful and the loyal' (Sorrenson, 1967). Individualised rights undermined the claims of secondary rights-holders, particularly women. Some of the lessons from the Kenyan experience are that rights in customary systems are often non-exclusive and are overlapping and perform the function of a social safety net – aspects which are lost with the individualisation of titling (Okoth-Ogendo, 2002).

Stalled privatisation in South Africa

South Africa's failed privatisation of communal land demonstrates the potential resistance from rural people such initiatives can elicit. Unlike the Kenyan approach, the South African approach was to propose titling of 'tribal land' at the community level. The Communal Land Rights Act 11 of 2004 provided for the conversion of customary rights to freehold tenure. It proposed the creation of 'traditional communities' as legal entities under the administration of 'traditional councils'. Rights currently vested in individuals and households under customary practices, then, would become subject to these councils comprised largely of unelected leaders. The danger of this approach is that it would be costly and slow to implement, leaving the vast majority of rural dwellers with insecure rights, pending this upgrade. Critics further questioned what purpose would be served by securing the outer boundary; what benefits this would bring to residents, and whether it would secure their rights, was unclear. In response to litigation by four affected communities claiming that the titling process would violate their rights to gender equality and to democratic governance, the Constitutional Court declared it unconstitutional in 2010. Lessons from this stalled attempt at formalisation are to avoid massive top-down approaches and to focus on securing the rights of land rights-holders themselves, rather than the rights and powers of those administering land, such as traditional leaders.

Titling of rural land, involving rigorous surveying, mapping and registration of individual land parcels, is neither feasible nor sustainable across most of sub-Saharan Africa. Although advanced geographic information systems (GIS) technology, funding and institutional support could enable substantial extension of national cadastres, the challenge is not merely a technical one, to be overcome through technical solutions. Rather, the challenge is to find systems for recording and registering rights, in a context where land is communally held and there are overlapping and 'nested' levels of rights, quite at odds with presumptions of exclusive rights. Even the World Bank's policy research report, *Land Policies for Growth and Poverty Reduction* (Deininger, 2003) acknowledges that the Bank's prior promotion of titling was a mistake, and advocates instead local-level registration of rights in low-cost and decentralised systems, noting with approval the ejido reforms of Mexico and the certification system used in Ethiopia (Deininger, 2003).

2.2 Recognition and registration of customary rights

From the 1990s there has been growing recognition among African states as well as their development partners that resource tenure systems include not only state law but also local practices and customs – and that these too provide part of the architecture of tenure security, to be supported rather than superseded (EU, 2004; DFID, 2007; UNDP, 2008). Across many countries, reforms were enacted to recognise informal and unregistered land rights through law, rather than making recognition contingent on cumbersome processes of formalisation, especially at the central government level. Many reforms focused in the registration of right and individual or community level.

Limits of titling – and alternatives

Alternatives to titling may involve a land-administration system that is fast, cheap, efficient and reliable; recording of land rights based on locally agreed-upon boundaries; approximate and locally accessible systems of registering rights; and a system of more loosely defined boundaries based on what landholders themselves decide is workable and sustainable (Alden Wily, 2002). There are many variations in how such approaches may be conceptualised and implemented. Three examples from Southern Africa demonstrate some of the more innovative attempts to provide effective means of securing tenure at local level, and with legal recognition.

Statutory protection in Mozambique

Mozambique's Land Law of 1997 aimed to respond to the challenge of insecure rights in a country where land had been nationalised and where displacement because of the civil war resulted in multiple conflicts. Added to these challenges were growing tensions between the rights of landholders and the interests of investors – and the need to mediate terms on which communities could transact but also defend their rights. The law maintained state ownership but provided statutory recognition of the unregistered rights of occupiers as constituting real property rights in law. This gave customary occupation legal force. The law enabled registration of community land (DUAT – from the Portuguese, or right of use and benefit of land), though this was not required, and prescribed community consultation by investors. Later regulations specified further the format and processes required for such consultations. The purpose, then, was first to secure rights, and second, to facilitate negotiation between local communities and outside investors – required in terms of the law. In practice, though, rising control by local chiefs (*regulos*) and re-centralisation of certain powers by government, have undermined implementation of the Act. Yet, 'if used as intended by its architects, the Land Law can facilitate a process of local development in which a kind of equitable enclosure process linked to agreements between local people and investors can allow the locked up capital value of local land rights to be made available to local people' (Tanner, 2005: 18).

Decentralised certification in Madagascar

In Madagascar, most property rights are unregistered and, under the unwieldy legal system inherited from the colonial era, registration of property rights through central government took 24 steps, taking six years on average. This resulted in massive failure of the formal deeds registry to extend to the majority of citizens. Following a 2005 reform, a bottom-up process of formalisation was adopted, in which '*petit papiers*' (small papers) were issued by local authorities (*fokotany*, or municipalities), providing recognition of existing rights. These 'do-it-yourself' land certificates confirmed the identity of the title-holder, validation of the title by neighbours, the estimated surface area, the type of land occupancy and use, and the nature of the rights. The positive outcome of this reform is that, by 2009, 80% of all land titles and certificates had been issued in the three-year period since 2006 (Teyssier, 2010). Despite a substantial backlog, and imperfect and the weakness of the institutions responsible for administration of this new decentralised system, the reform is nevertheless bringing greater certainty to the area of land rights.

Local land boards in Botswana

Botswana diverged from other approaches in the region by adopting a model of Land Boards to govern 'tribal land'. Shortly after independence, this system was adopted, which removed traditional authorities (chiefs and *indunas* and other levels of the chieftaincy) from a role in land allocation, and established 12 main land boards and 38 subordinate land boards across the country. The boards issue use rights (not freehold) and maintain local land registers. Over time, practices have become fairly centralised, with the national minister appointing members of these boards, which now include state employees, elected representatives and traditional leaders (chiefs). The approach is innovative and has achieved some successes in establishing relatively transparent systems. However, challenges remain as there is a lack of checks and balances, and there have been some conflicts between bureaucrats, chiefs and elected leaders. Even so, the Botswana experience has been relatively effective in securing rights, and combining customary authority and state administration (White, 2010).

2.3 Lessons from land-administration practices in sub-Saharan Africa

Secure land rights do not depend on and indeed can be undermined by private titling, a process that has proved to be costly and slow, often resulting in out-of-date registrations that bear little resemblance to actual practices. One of the major challenges encountered in formalising customary land rights into private titled systems has been that the exclusivity of rights entrenches (gender and other) inequalities, effectively downgrading or ignoring the entitlements of secondary rights-holders. Securing land rights in order to promote investment by landholders and investors requires statutory protection and decentralised land administration. Locally legitimate customs and institutions can be supported to register rights, where a demand emerges, and to mediate conflicts between current occupiers and other claimants, for instance returnees in post-conflict situations.

Positive lessons are to decentralise to local-level institutions (as in Madagascar); to secure occupation rights and require community consultation by investors, by law (as in Mozambique); and to include traditional authorities in democratic structures subject to state (as in Botswana). Negative lessons are to avoid massive titling programmes (as in Kenya), not to codify customary laws or titles and not to predefine membership of local administration bodies.

Dealing with inequality remains a challenge. Securing land rights requires horizontal as well as vertical protection. As noted by UNDP (2008), 'Formalizing land rights of legal claimants in settings marked by high degree of inequality is likely to formalize land claims by the non-poor, mostly elite, claimants'. This implies the need to secure the rights, particularly of vulnerable community members relative to other community members, but also to secure community rights (both substantive and procedural) vis-à-vis outsiders, including the local or national state and external investors. An alternative to bottom-up economic development is allowing external investors to obtain a land concession. Yet this underlines rather than removes the need for strong systems of land governance.

3 Debates about 'land grabbing' in sub-Saharan Africa

Africa is at the centre of the new 'global land rush' – pejoratively termed 'land grabbing' or approvingly named 'land-based foreign direct investment' or, more neutrally, 'large-scale land acquisitions'. Whatever the prevailing terminology and ideologies, there is now ample evidence that large swathes of African farmland are being allocated to investors, usually on long-term leases, at a rate not seen for decades – indeed, not since the colonial period. The fact that much of this land is being acquired to provide for the future food and fuel needs of foreign nations has, not surprisingly, led to allegations that a neo-colonial push by more wealthy and powerful nations is underway to annex the continent's key natural resources. While no solid dataset tells us precisely the scale and distribution of the phenomenon, all the major studies conducted so far confirm that Africa is the global centre of land grabbing (Cotula et al., 2009; Oakland Institute, 2011; von Braun and Meinzen-Dick, 2009). The land is equivalent to all the farmland of France, Germany Italy and the UK combined.

Concern has been raised about the scale of the phenomenon; very long duration of some of these agreements, which usually take the form of leases for an initial period of anywhere between 25 and 99 years, often renewable, suggesting that, in practice, alienation of land from local users is likely to be permanent; the dramatic changes in the environment that are often brought about, for instance deforestation and/or the replacement of multiple land uses with mono-cropping and changes in production and contribution to national food supplies, given the prevalence of production either of crops for export markets, or biofuels to meet demand elsewhere, notably in the EU. The sections below briefly outline the drivers of land deals in Africa; debates about under-use and displacement; speculative interests in land; whether what is underway is essentially a 'water grab'; and whether there are direct trade-offs between 'food versus fuel'.

3.1 Drivers of land deals in Africa

This dramatic rise in land acquisitions across Africa and elsewhere originates in three main drivers, which are reflected in the term 'the triple-F crisis': food, fuel and finance. The food price spikes of 2007–2008 showed just how vulnerable food-importing nations are to fluctuations in global commodity markets. These led many, including the Gulf States and several East Asian countries, to re-evaluate their strategies and secure land and water elsewhere, essentially turning to 'offshore' food production to supply their growing populations. This food crisis plunged an extra 100 million people globally into hunger, from which most have not recovered. This situation has set back by many years progress in achieving Millennium Development Goal 1: to eradicate extreme poverty and hunger.

The rising and fluctuating oil prices in the period 2007–2009, and the realisation that we might have hit peak oil production, created powerful incentives for companies to acquire land for the production of 'agrofuel' or biofuel' crops. Compounding the rush towards biofuels are policies like the EU target of 10% renewable content in its fuel stocks by 2020, which by itself constitutes a very substantial demand for renewables.

The meltdown in international financial markets in late 2009 and the subsequent recession led investors to consider those markets volatile and risky. Many sought to invest in the more tangible asset of farmland, with the promise that rising demand for food and fuel would make this a secure investment in an increasingly unpredictable global system. While some may have long-term plans for these investments, others are clearly speculators, bargaining on short-term gains. Private equity groups have established 'farmland funds', buying up portfolios of land in numerous countries and promising their clients annual returns of 30% over a five-year period. This figure is entirely unrelated to actual farm production, but is based on cheaply acquired land and a gamble on projected growth in demand for farmland, which will create

secondary markets for further transfers of these leases to other buyers – indeed, most of the contracts reviewed by Cotula et al. (2010) allowed onward transacting, a trend also noted by Hall (2011) in Southern Africa.

Some analysts are now pointing to a fourth driver, the growth of carbon markets. Reducing Emissions from Deforestation and Degradation (REDD) is an instrument that emphasises the strategic importance of controlling forested land – and most of Africa's savannah can be counted as natural forest for these purposes. So as well as acquiring land to cultivate, investors are looking to acquire land in order not to cultivate it, in order to earn carbon credits.

While these drivers are widely recognised and agreed upon, what is more disputed is the degree to which the re-valuation of farmland is driven by rising global resource scarcity. On the one hand, there is evidence of the declining ability of certain regions of the world to produce sufficient food and fuel for their own consumption needs (Godfray et al., 2010). On the other hand, a critique has emerged demonstrating the degree to which 'resource scarcity' is socially constructed, exists only in relation to specific desired ends, and, as a policy narrative, is used to justify actions that might undermine development agendas (McCarthy and Wolford, 2011; Mehta, 2010). In this sense, the 'drivers' of large-scale land acquisition should be understood as a partial explanation of the complex and context-specific factors that lead to the convergence of interests between foreign and domestic actors.

3.2 Debates about under-use and displacement

The re-valuation of land in Africa is based on widespread agreement among development agencies and investors that much of the arable land of the continent is un- or under-used, and that new investments and introduction of commercial agriculture (among other uses) will have zero opportunity cost. Prime among the exponents of a massive commercialisation initiative for the continent, on the basis that the land is available for this purpose, is the significant report entitled *Awakening Africa's Sleeping Giant* (World Bank, 2009).

Although not all of the African Guinea Savannah zone is suitable for agriculture, clearly it represents one of the world's largest underused agricultural land reserves. There is no question that to feed the world, meet the growing demand for agricultural raw materials, and generate the feedstuffs needed for production of biofuels, a significant share of this zone will eventually have to be converted to agriculture, probably under more intensive land-use systems than are currently prevalent. (World Bank, 2009: 171)

Land in Africa may, however, be less under-used than claimed, because of the importance of shifting cultivation and fallow systems that underpin dryland cropping (as well as fodder for livestock in mixed farming systems). FAO's Global Agro-ecological Assessment, based on satellite imagery, produced estimates for sub-Saharan Africa of 807 million ha total cultivable land, of which 197–227 million ha (24%–28%) were under cultivation, as at 1995–1996 (Cotula et al., 2009). These measurements do not capture practices of shifting cultivation and fallow systems, yet in sub-Saharan Africa, a ratio of five plots under fallow to every plot under cultivation is quite common. This implies that the range of the total 'cultivated' land could in reality be far higher. In addition, since 1996, there is likely to have been an increase in land under cultivation, plus a decline in available agricultural land due to competing land uses.

Box 3.1 The 'wasteland narrative'

Mounting evidence shows that much of the land being allocated on long-term leases or concessions to investors is already occupied and used – mostly by Africa's 80 million small-scale farmers who supply most of Africa's food needs and produce 30% of its GDP. While powerful narratives rationalising such deals emphasise that land being targeted is 'idle land' or 'wasteland', case studies suggest that these terms often reflect an assessment of the productivity, rather than the existence, of current land uses. The International Institute for Environment and Development (IIED), for instance, found that in Ethiopia, all land allocations recorded at the national investment promotion agency are classified as involving 'wastelands', with no pre-existing users. But in a country with a population of about 75 million, the vast majority of whom live in rural areas, this formal classification is open to question. Indeed, shifting cultivation and dry-season grazing have been widespread in these regions, but have gone unacknowledged by officials in charge of leasing out land. Now, a growing body of more detailed case studies shows the extent to which small-scale farmers have been displaced; pastoralists have lost their grazing land; and rural people have lost access to crucial common property resources. In sum, even land that is not farmed is often used by and important to the survival of local communities. Thus, discourses about 'empty land' are deeply and dangerously misleading.

Sources: IIED (2009); Cotula et al. (2009)

The World Bank hoped that commercialisation would focus on more marginal regions, bringing un- or under-used land into production and increasing overall output. However, research now suggests that investors are favouring areas with higher rainfall and proximity to urban centres and transport infrastructure – in other words, those areas already most prized by existing small-scale farmers. The report of the United Nations Special Rapporteur on the Right to Food, Olivier de Schutter, showed this pattern, noting that the areas most sought after by investors are those with relatively fertile land, with good rainfall and with prospects of irrigation, close to transport infrastructure (de Schutter 2011). Indeed, the World Bank (2010) study, *Rising Global Interest in Farmland*, shows that weak laws enable investors to get access to resources and notes that – contrary to its own prescriptions of 'good governance' to attract investment – investor interest is inversely correlated with good governance. Typically these deals involve low prices, offering minimal direct financial rewards for governments or local populations; vague promises of investment, which limits enforceability; long-term concessions or leases, which limit reversibility and restitution of rights; and conflict with local land users/rights-holders. The case of the South African investment in Congo, as shown in Box 3.2 below, epitomises some of the complexities of these deals, and the disputed question about the implications of large land deals for displacement of existing populations.

Box 3.2 South African deal in Congo

The resource-rich Central African country, Congo Brazzaville, enjoys fertile, rich and under-used land. Since the colonial period, the government has entered into various land deals with foreign companies to boost agricultural production and earn foreign exchange. In order to facilitate transfer of land to the foreigners, the Congo government annexed public land and registered it as state farms. The foreign partners abandoned the land during the war. The indigenous populations encroached onto the land and are currently sustaining their livelihoods on these former state farms. As the country emerged from the war, the government sought out investors to revive the agricultural sector. In October 2009 the government allegedly signed a deal with a consortium of South African Farmers known as AgriSA. The deal aimed to transfer at least 200,000 ha to AgriSA for the South African Farmers to invest in agricultural development. The land that was earmarked for this development is in the fertile Niari valley. The details of the contract are not available, but it is believed that this is where the land is located. The contract was signed between the government and AgriSA in a bilateral agreement. The Ministry of Agriculture and Ministry of Land Management in Dolisie facilitated the mapping of the land and AgriSA reconnaissance of the area. A site visit in August 2011 revealed that the area under discussion involved some three to seven villages in Niari. The villages include Dehesse, Malolo Village I, Malolo Village II and Macabana. The population includes former refugees who were fleeing the war from Angola, the indigenous Bakka, the Kuni and Punu local populations. The communities are involved in subsistence and commercial agricultural activities. The communities rely heavily on forest produce. Jobs are scarce since the main commercial agriculture and mining activities were closed down during the war. In January 2011, officials from the Ministry of Lands visited Malolo Village II to inform the villagers about the land deal. Although they have not signed any paper and were explicitly told that no monetary compensation will be given, the community was excited at the prospect of revived development, market and employment opportunities. In Dehesse, the chief was aware of the deal but nobody had informed or consulted him. All he has seen was people pitching pegs in his village fields, grazing, forest and schoolyard and water source. He does not know if the village will be relocated. Since he has not spoken to anyone or signed any agreement, he does not know if he and his village will be compensated.

Sources: Hall (2011); PLAAS fieldwork notes (2011)

The Bank's *Sleeping Giants* report acknowledged that, without land-tenure reforms and improved land administration, its proposals for commercialisation would be likely to lead to widespread abuse and dispossession:

Providing secure and transferable land rights is critical to protecting the interests of indigenous populations while allowing entrepreneurial farmers to acquire unused land in regions of low population density. This allows land to change hands over time and to flow to those who can use it most productively, which in turn provides incentives to invest in increasing land productivity. The new Mozambican land policy and land law provide a state-of-the-art framework for balancing competing interests, and the legal frameworks of Madagascar and Zambia are similarly well designed. (World Bank, 2009: 182)

But the countries mentioned as 'best practice' examples of land-rights administration – including Ethiopia, Madagascar, Mozambique, and Zambia – are centres of major transnational land deals that appear to be excluding local small-scale farmers from new patterns of accumulation, transforming some small-scale farmers into low-paid wage labourers, and producing land-related conflict. As Alden Wily (2011) has noted, legal reforms to secure land rights are necessary but not sufficient as a condition to safeguard the land rights of local populations living under forms of informal, unregistered and customary tenure in the face of investor and state interests.

3.3 Speculative interests in land

Financial institutions – banks, sovereign wealth funds, but also hedge funds – have become significantly involved in acquiring rights to African farmland (Daniel, 2011).

Box 3.3 below illustrates the very lenient terms and large scale of a land deal, and the ways in which weak consultation prior to concluding this lease, and the loose definition of the terms of the contract, potentially threatened the land rights and livelihoods of a large number of people. The context of this deal was that, by early 2011, shortly before the independence of South Sudan, 9% of the area of this new country had been leased out in large-scale land deals, and 98% of the land transacted in this way was designated 'community land', not 'state land' (Deng, 2011). After high-profile negative publicity, the deal was ultimately cancelled in August 2011 (Fake, 2011).

Box 3.3 Nile Trading and Development Inc. in South Sudan

The Nile Trading and Development Inc. (NTD) is one of the largest deals in South Sudan. Located in Central Equatoria State, this company acquired an allocation of 600,000 ha with the option to expand by an additional 400,000 ha. Nile Trading cited three intended land uses: timber extraction and plantations; biofuel production of palm oil and biodiesel plants like jatropha; and carbon credits – though the contract itself is highly permissive about land uses, stating that: 'The Cooperative acknowledges and agrees that the Company may undertake any other activity permitted by the laws of Southern Sudan on the Leased Land.' The contract was concluded between NTD (a US-registered company) and Mukaya Payam Cooperative (the district council in the area concerned). The contract was signed by the paramount chief and endorsed by the governor of Central Equatoria State. The terms of the contract required the payment of a one-off fee of 75,000 Sudanese pounds (equivalent at the time to about US\$25,000). This was paid to the chief of just one of the four districts in the county affected by the deal; although no regular rental was payable the district council would acquire 40%–50% of profits. The lease was for 49 years, but these rights were transferable – in other words, they can be sold on. Despite being projected as a forestry/carbon/conservation project, the contract included full mineral rights. It contained no specification of responsibilities on the investor's part to create jobs, to avoid displacement of local people, or to compensate them. There were allegations that local communities in affected area were not consulted at all and are unaware of the terms of the deal, that the council pursued a 'divide and rule' strategy, and did not provide the affected communities with consistent information. Depending on how land was to be used, the deal could potentially affect tens or even hundreds of thousands of people living on and using the land in question. No environmental and social impact assessment was conducted.

Sources: Deng (2011); Oakland Institute (2011a).

The case above demonstrates the need to improve governments' capacities to leverage better terms, to specify allowable land uses and resource access, to set in place limits on the size and duration of deals, to conduct (and require investors to conduct) consultations sufficient to meet the international standard of 'free, prior and informed consent' (FPIC), and to conduct valuations of land (and water and other natural resources) that take into account the true opportunity cost for local people and the nation, for the full duration of the contract.

3.4 Water grabbing?

Water is a central but often ignored component of land deals. The right of investors to access the water required to cultivate acquired land is embedded within land leases, but is seldom paid for (Woodhouse, 2011). Most investors favour land with good access to water and the potential for irrigation: contrary to the World Bank's expectations of commercialisation in the Guinea Savannah zone, little of the investment is for rain-fed cropping. Given that much of the continent is projected to experience greater water scarcity, the impacts of land deals on other water users, now and into the future, are critical areas for investigation. The presence of large,

corporate water users is likely to spark conflicts between competing uses and users – as has already been seen in the volatile regions around the shrinking Lake Chad (ILC, 2011 forthcoming).

Allen (2011) shows how the outsourcing of food production to meet demand in the West (and East) amounts to the de facto export of 'virtual water' from Africa and other regions being targeted, and how its corollary – water shortages – are being imported to these regions. This growing competition over control of water resources is likely to become more pronounced in the future, and already its potential to shift geopolitical alliances, and to generate political instability within and between countries, is becoming evident. The competition over control of the substantial irrigable land of the Suud in South Sudan is one example; in this case, investors from Europe and North America are joined by those from the Gulf States of the Middle East, as well as China and South Africa, among others, in a complex process of competition for control of water, specifically in the context of agreements concerning off-take from the Nile (Keulertz, 2011). The combination of geopolitically strategic location, secure water resources and fragility of political institutions and land governance in this case make for high stakes over allocation of long-term leases.

Box 3.4 on the Malibya deal in Mali illustrates the ways in which the rights of local land and water users may come to be seen as impediments to national economic development objectives. The context for the deal is that Mali is aiming to become a food exporter, the 'granary of West Africa'.

Box 3.4 Malibya deal in Mali

The Malibya deal was concluded between the Government of Mali and the state-owned Libyan Africa Investment Company, involving the allocation of 100,000 ha in the Office du Niger region of Mali, for free (no rental) for a period of 50 years. The aim of the project was to produce hybrid rice and raise cattle, and the Government of Mali expected benefits in the forms of major investment in irrigation infrastructure (especially canals) as well as roads. 'Food security' is one of the objectives of the contract, though it is unclear whether this refers to the food security of the investor or host country – nor is there any restriction on export of produce. The contract itself involves no provisions for compensation; rather it specifies that the Government of Mali holds responsibility for any displacement. It provides the investor with elaborate tax breaks, including a total exemption from production tax for 30 years, an eight-year exemption from license and corporate fees, and tariff and duty exemption for imports of inputs and equipment. The contract, just six pages long, was not made available to local people or civil society organisations (CSOs) until months after it was signed. As Ibrahim Coulibaly, President of the farmers' organisation, Coordination Nationale des Organisations Paysannes (CNOP) complained: 'It was a fait accompli. It was negotiated between the Malian president and the Libyan head of state. And no president anywhere has the right to give away his land like that'. Like many other deals, the Malibya contract includes the right of the investor to the water required, without any mechanism to adjust this entitlement in the face of changing water availability in the future. It specifies the right of Libya to the 'necessary amount of water in the period from June to December and will plant less water consuming crops than rice for the dry period.' This entitlement for the investor implies a corresponding obligation on Mali to enable this access to water, even at the cost of other water users, now and in the future. The potential impact on the Niger River was not estimated; indeed, it is unclear whether any environmental and social impact assessment was conducted. The Government of Mali expressed the expectation that irrigation construction would spur local development, but this was not specified as a requirement, and the Libyan investor awarded contracts for this construction to a Chinese company, CGC. The hybrid rice seed to be cultivated is also owned by a Chinese company. In this context, the major benefit for local people would be through employment, and the contract envisaged that the project could 'provide employment for all inhabitants of the region Ségou' and 'priority will be given to the local population', but did not specify any commitments in terms of the scale, duration or quality of employment. As one observer

noted, 'The whole area is used by herders, smallholder agriculture, cattle trails and other natural resource uses. They have customary rights which are ignored by the new investments, because the government does not recognise them.' Further, it is clear that local people were differentially affected: 'Women farmers who produced and sold vegetables from garden plots have been adversely affected by the Malibya project. Canal construction resulted in the loss of the women's land and livelihoods without compensation or consultation.' As Mama Keita (aged 73), leader of Soumouni village, recounted, 'They told us this would be the last rainy season for us to cultivate our fields; after that, they will level all the houses and take the land... We were told that Qaddafi owns this land.'

Sources: GIZ (2011); Oakland Institute (2011b).

3.5 Food versus fuel?

Contestation over the changes brought about by large-scale land acquisitions extend not only to issues of access to and control of land and related natural resources, but also the types of uses to which these are put. A key dispute among stakeholders, and a concern for development partners, is whether the rapid expansion of feedstocks for biodiesel is displacing food production, and therefore whether there is likely to be a direct negative impact on food security at household, community and national levels. In Africa, most of this expansion has taken the form of cultivation of *jatropha curcas*, the Latin American shrub from whose seeds oil can be extracted; sugar cane for refining into bio-ethanol; and to a lesser degree maize, soy and palm oil. There is evidence that transitions of land uses from food crops to biofuels have deepened poverty and gender inequality (Nhantumbo and Salomao, 2010; Oxfam International, 2008), but also that, depending on appropriate institutional arrangements and business models, smallholder production can be combined with food crop production through intercropping, and that local refining of biodiesel could play a crucial role in meeting the fuel needs of rural communities (Schut et al., 2010). Increasingly, there appears to be convergence of agreement that, while the biofuel expansion has been controversial, it is not these crops in themselves that threaten food security, but rather the social relations through which their production is organised. With impetus from the Sustainable Biofuels Initiative, the search is on to improve the ways in which the biofuels industry can support improved land governance, equitable benefit-sharing and food security in its areas of operation. At the same time, there is evidence that many investors in this sector have not used much of the large areas they acquired during the oil price spikes a few years ago, and that the feasibility of many projections for this industry are now in doubt (World Bank, 2010). The case of Tanzania, as described in Box 3.5 below, suggests that these problems require systematic responses from government, and the framing of new policy that addresses concerns over displacement of local people and their land uses.

Box 3.5 Biofuels in Tanzania

In Tanzania, 640,000 ha have been allocated for biofuels production – for jatropha, sugar cane and palm oil – and potential investors have applied for a total of 4 million ha. The areas targeted are forested areas on which villagers depend for food and livestock grazing – a crucial source of livelihood. Although the Village Land Act of 2009 requires that people be compensated for any land loss, the processes for consulting on this, and determining the level and manner of payment of compensation, was fraught with conflict, not least because much of the compensation was paid to state authorities rather than local people. Investments based on out-grower models have reportedly been less conflictual and secured more local support. Following widespread opposition to land allocation to biofuels investors, and evidence of people being dispossessed, the government imposed a moratorium on new projects, and developed in consultation with civil society a set of National Biofuels Guidelines to address concerns about the displacement of local people and the shift from food to fuel production.

Source: Sulle (2009)

The Procana case in Mozambique demonstrates the possibility of national governments enforcing terms of lease agreements. In Gaza province in Mozambique, a company named Procana acquired 30 000 ha for sugar-cane production in 2007, on the basis of a lease concluded with the Mozambican government. Its purpose was to produce bio-ethanol as well as co-generation to produce electricity, thereby supplying national energy needs. The community consultation process was flawed, in that negotiations were highly centralised and the agreement was shrouded in secrecy, meaning that many community members were not consulted at all. Over time, the company encroached onto the community's arable land and diverted the water source used by local farmers for its own purposes. The company failed to honour pledges to drill boreholes, set aside land for subsistence in the irrigation scheme and to invest in other infrastructure that would be of benefit to surrounding populations. Its projections of the value of investment were not realised. These lapses on its part, and violation of the terms of its lease, incensed the community and tensions were rising. After several failed mediation efforts by Mozambican NGOs, the government cancelled the land lease. However, the land was not restored to the community (Borras et al., 2011b).

At the same time, emerging evidence shows that the use of innovative tools and more inclusive and localised negotiations can potentially produce land deals that are more sustainable and responsive to the situations of local communities. Box 3.6 summarises such a case in Sierra Leone.

Box 3.6 Inclusive, equitable land deal in Sierra Leone

In Sierra Leone, the Chiefdom Councils Act, Section 28 (d) of the Local Government Act 1994 and the Provinces Lands Act (Cap 122) require a company wanting to lease land to pay surface rent to local authorities. In the arrangement with the government, the Paramount Chief, his Native Administration, the District Council and the landowners sign an agreement/lease and share the surface rent in equal proportions. Compensation is required if housing and crops of local people in the surface rent area are affected and compensation must be negotiated separately. The biofuel venture in Sierra Leone was initiated by Addax Bioenergy (see www.addaxbioenergy.com). The company aimed to produce irrigated sugarcane on about 10,000 ha and food crop production on additional land. After initial Economic Social Impact Assessment (ESIA) estimates found that the lease could directly affect 13,617 people (1,375 households) the venture was redesigned so that in the end only 77 people in two small hamlets were affected. To minimise the resettlement impacts, the ESIA recommended Addax develop a comprehensive Resettlement Action Plan in accordance with the Resettlement Policy Framework (RPF). The legal provisions and the ESIA process allowed locals to secure additional benefits and compensation payments from Addax. Addax's estate-design process avoids using wet lowlands that most residents rely on

for most crop production. Addax also intended to compensate the small number of livestock farmers through rental payments. Impacts on natural resource use have also been minimised by Addax avoiding forest areas that are the main source of these resources. Local residents have, and will continue to be given, the opportunity to harvest any natural resources they need from the leased land before Addax proceeds to cultivate the biofuel feedstocks. Getting investors to engage land rights-holders to negotiate lease agreements forced discussions about land and displacement to be initiated much earlier and in more detail. It also resulted in some committees being set up to resolve particular issues and the establishment of a company–community relations office and grievance mechanisms.

The Sierra Leone case underlines the relative benefits of lease agreements and payments being made with and to the land rights holders. This leaves land ownership in community hands and can ensure that land rights-holders receive annual rent payments. Although the proposed rental payments in the Addax case were not sufficient to compensate for lost livelihoods based on cultivation, they were significantly better than the one-off compensation payments some biofuel companies paid to communal land rights-holders in other African countries.

Source: Andrew and van Vlaenderen (2011)

The above case presents one of the emerging examples of how land deals could be done in ways that not only improve land governance by increasing transparency but also minimise costs to the community and improve outcomes in the short and long term. The example also highlights how innovative tools like the ESIs can be used to forecast and pre-empt the impact of land deals on community livelihoods in this case by changing the location, size and boundaries of developments to reduce displacement impacts (Andrew and van Vlaenderen, 2011).

4 Outcomes of and responses to ‘land grabbing’

Compared to the situation three years ago when very little was known about the character and scale of large-scale transactions in land, the debates about what is happening and how to respond have evolved with the rapid mobilisation of various stakeholders. These include the international community, the investors, the host countries in Africa, Asia, Latin America and Eastern Europe and the communities whose livelihoods have been directly affected by the commercial pressures on land. These debates have since broadened from highlighting the immediate impacts of the deals to projections by economists, environmentalists, sociologists, lawyers and political scientists on the possible long-term impacts of the developments (Borras et al., 2011). The generation of a body of knowledge on the phenomenon of large-scale transactions has provided a basis for more analytical work and formulation of strategic plans (Foresight, 2011; IFAD, 2011). This section focuses on some of the initiatives and outcomes of the activity regarding commercial pressures on land, specifically in sub-Saharan Africa. The discussion illustrates not only the diversity of players but also draws attention to the positions of various stakeholders and those who are shaping policy discourses. It highlights the forms of social differentiation that have arisen and the diverse responses by civil society to the impacts of the commercial pressures on land in sub-Saharan Africa.

4.1 New forms of social differentiation

This section deals with the differentiated impacts of pressures on land, noting that communities in areas affected by large-scale land deals are not affected in uniform ways. Rather, the emerging evidence suggests that while some local people are well placed to benefit from new investments, others may carry the costs of land-use change and displacement. One set of outcomes that has been documented is the concentration of landholdings and capture of income streams by elites, and increased landlessness. However, there are various practices, and some better involving distribution of benefits among affected populations, and efforts to mitigate the effects on poorer and more vulnerable members of communities, have been noted.

The commercial pressures exerted on land may alter landholding structures in ways that influence people’s relationships with the resource and also shape class formations. Large-scale transactions in land have precipitated the conversion of customary land to private and in many cases corporate hands (Daley and Englert, 2010). Where communities were previously pursuing similar livelihood options, differentiation may occur. Differentiation refers to the development of increasingly complex structures within societies, in particular more elaborate divisions of labour. Through this process, the peasantry splits into different classes, namely capitalists, wage labourers, non-agricultural petty commodity producers. Second, differentiation may refer to a stratification process within the peasantry (Bernstein, 1986; Maast, 1996). Market expansion and/or modernisation such as that caused by commercialisation of land induce differentiation. This is explained in terms of altered relations to the means of production, in this case land. Commercial pressures of land alter relations by introducing a market and capitalist mode of production into predominantly peasant mode of production. As a result there will be diversification.

Concentration

Some people and or institutions will accumulate land at the expense of others. This process of concentration is defined by Reyna (1987) as the process by which a large number of people are disposed of land and it concentrates in the hands of a few. Concentration also occurs through pledging and personalisation of common land by local leaders (Berry, 1988). The resultant class formation is one in which some fewer individuals control land while others increasingly become landless. Those who accumulate land are the ones who can afford to purchase the commodity. This results in what Nidhi Thandon calls ‘a portrait of contradictions’ in which large-scale land transactions simultaneously create large-scale farmers who will earn super profits as commodity speculators, and the production of a class of peasant farmers who

depend on the land but do not and increasingly cannot own land (Thandon, 2010). The process has been observed by Chachage (2010), who recorded a 467% rate of increase of large-scale farms in Kigoma region of Tanzania between 1987–1988 and 1994–1995. In another Tanzanian example, in October 2009 Prime Minister Mizengo Pinda visited the area as part of his mission to promote the government's agribusiness-oriented 'Kilimo Kwanza/Agriculture First' initiative. While there he was quoted in various media sources as directing regional and district officials to remove about 2,000 villagers from the farm and relocate them elsewhere. In line with the discourse of invasion that informs many governmental evictions in the country, these villagers were labelled 'squatters'/'invaders' who were said to be occupying, albeit illegally, about 300 ha of the farm (Chachage, 2010).

Dispossession

The dispossessed people will move into smaller pieces of land where they are characterised by impoverishment and loss of control and eventually landlessness as they abandon an increasingly unviable livelihood. Greater population density, in-migration and competition over land resources precipitated by commercialisation results in increased conflict. Exclusionary metaphors are used to narrow the definition of those who belong. Since, in patrilineal areas, primary claimants are male, females become increasingly vulnerable to dispossession. The outsiders are labelled as 'squatters', strangers or immigrants.

Intergenerational relations: In situations where communities previously followed a subsistence lifestyle, commercialisation of the land interferes with inheritance-based transfers. The demand for land leads to a land market and increasingly smaller and unviable parcels. As a result, the younger generation have to work ever-decreasing plots of land. Faced with unviable livelihoods, the younger generations will become workers on the commercial farms while others will abandon agricultural livelihoods and migrate out of the area to seek alternative livelihood strategies.

Gender

The ways in which women in rural Africa relate to land makes them specifically vulnerable to commercial pressures on land. Land is the foundation for the ecosystem and supports community livelihoods. Women's access to land is a source of identity. The identity renders a woman eligible for social support and security from other community members. The value of land for women transcends mere economic value especially for those who are marginalised from mainstream economic activities. Women's responsibility for household food security in customary tenure areas means that the land is an important strategic resource. The current land transactions tend to ignore their possible gendered impacts. This is because women are treated as an invisible component of homogenous communities. Research by Tsikata and Golah (2010) on globalisation and land tenure showed that as a result of the failure to take gender relations into account, the impacts on women are neither anticipated nor proactively mediated. Awumbila and Tsikata (2010) demonstrate that gender relations are one of the several social relations implicated in the reorganisation of livelihoods, intersecting with class, ethnicity, kinship, relations between migrants and locals and between chiefs and users and livelihood options of men and women (Tsikata, 2010). The commercial pressures on land, which induce social differentiation, therefore influence gender relations, either exacerbating or ameliorating gender inequalities. Land grabbing is exerting pressure on customary tenure land, which relatively is the most accessible form of tenure for women in Africa. The differential gender impacts of large-scale transactions in land are summarised in Box 3.6 below.

Box 4.1 The gendered distribution of costs of large-scale land deals

Women bear disproportionate costs: Displacement and land reallocation increase pressures on women's already tenuous land rights. Displacement also undermines women's capacity to meet their primary role in subsistence food production. The common lands (usually grazing and forest) upon which women depend for foraging and firewood are most likely to be given away for foreign investment. Consequently, women will disproportionately bear the burden of biodiversity loss. Women directly bear the costs of higher food prices that result from the commercialisation of staple foods. Women will experience greater demand on their labour if the commercial activity on the land is labour-intensive. If land grabbing is accompanied by water appropriation, this may have a negative impact on women's access to water for domestic use through the pollution of water sources, reduction of the water table and/or the privatisation of a water source. Women who are responsible for securing water for domestic use will be forced to adjust to such changes.

During the transaction: Women and men are not likely to be equally represented in decision-making fora. Women lack education and adequate information to make informed decisions. Women's inferior position in domestic land relations mean that they lack legal resources to defend any land claims they may have.

Women are marginalised in the sharing of benefits from large-scale transactions in land: Benefits in the form of compensation, employment and income-generation opportunities normally privilege titled and primary right-holders, who are men. This increasingly marginalises women-headed households. Men are better placed to assume control of the benefits of the transactions. Where employment opportunities are available, women are more likely to be employed as casual labourers with less secure employment and land-tenure rights. Mothers will be marginalised in employment schemes that do not acknowledge the need to provide child-care facilities.

Sources: Behrman et al. (2011); Daley (2011); Tsikata and Golah (2010)

The example in Box 4.2 illustrates the gendered impact of a large-scale land investment in Maragra, Mozambique.

Box 4.2 Gendered impacts of sugar contract farming in Mozambique

In 2007, the Mozambican government approved the strategy of the Green Revolution to stimulate agricultural production and alleviate poverty. This resulted in the revival of abandoned sugar plantations. The Green Revolution introduced opportunities for employment, training and access to loans for participants to invest in sugar-cane production. In Maragra, sugar-cane producers are small-scale farmers who are sub-contracted to produce for the factory. As part of the programme, peasants, 80% of them women, were organised into associations to enable them to participate. Most of the women in Maragra are lone mothers, whose average age is 26 years. The women hired by the factory are mainly unskilled casual workers whose conditions of employment mean that they are paid less and have less job security than male workers. Women's employment status excludes them from old-age benefits, childcare assistance and secure land tenure. Their labour rights are restricted by the fact that trade union membership and attendant benefits marginalise seasonal work. As sugar cane is a non-food crop, the women still need to produce and or secure subsistence food for their families, balancing this against factory work. The company has provided plots of land for workers to produce subsistence food, but this is fully allocated and is occupied by the families of retired workers, usually older women. Newer employees and casual workers, the majority of whom are young women, either have to rent subsistence land from the retired workers' families or use the land that is located further away from the factory. The distance adds to the work burden and makes it difficult for these women to balance subsistence labour, childcare and casual employment in the commercial farming venture. As a result, women often resort to hiring out their labour to those who have land closer to the factory or renting land for subsistence use. This places additional pressure on their meagre salaries and their labour. The programme also increases the demand for land, which in turn pushes up the cost of renting it. Women, who represent the majority of tenants, struggle to pay the high rentals and are increasingly forced to farm on smaller pieces of land. The growing competition for land has prompted inheritance-related disputes as relatives of deceased men seek to dispossess widows of land to take advantage of the land market.

Source: Andrade et al. (2010)

Commercial pressures on land in sub-Saharan Africa have increased inequality among the different groups. Land concentration in the hands of the few has meant that an increasing number of rural people have limited control over land and other natural resources. While the social differentiation arising from large-scale land deals is not new in itself, the number of the vulnerable classes is much higher. Unfortunately, the current structuring of land deals marginalise those who stand to lose the most, which in effect increases their vulnerability. Women and peasant farmers are among the majority of those who, over time, are being dispossessed from the land and from the benefits accruing from the investments. It is important to broaden the frameworks within which land deals are formulated to ensure wider participation of and evaluate impacts on the more vulnerable members of society.

4.2 Civil society responses

The increasing pressures on land and livelihood vulnerability of the poor have precipitated an interest in the resource by institutions that are involved in land governance. These institutions range from state to non-state actors and civil society organisations (CSOs). The latter are motivated by reasons which range from concerns about the lack of capacity of the affected communities, lack of resources to mobilise the law and other mechanisms to defend their land rights and the power asymmetry between communities and investors. The state's failure to fulfil its role as a regulator and of resource transactions and protector of poor people's land rights has created a vacuum that some CSOs have mobilised to fill. Some global organisations are working to regulate what seems to be a 'free for all' plunder of developing countries' land resources by financial investors from the more developed world, while CSOs are working

individually, in regional coalitions as well as forming global coalitions across the North–South divide.

The International Land Coalition (ILC) has identified some CSO efforts to track land-based investments, for example by organisations like GRAIN which documents reports of land-related investments and leaks contracts of 'land grabs' on the dedicated www.farmlandgrab.org website; desk-based research papers by PLAAS and IIED; empirical research papers by GTZ, OECD, and related developments including the IFPRI guidelines, FAO Voluntary Guidelines on land and the African Union Framework and Guidelines (Taylor and Bending, 2009).

The ILC, with its partners Oxfam-Novib, RECONCILE, IFPRI, Agter, CDE, CIRAD, ActionAid, IALTA, and GRET, have set up a web-based portal to collect, systematise and publish information on commercial pressures on land, large-scale land acquisitions and alternatives to them. It is meant to fuel awareness and evidence-based debate on this phenomenon, and promote the ability of all stakeholders to identify and promote informed and equitable solutions (<http://www.commercialpressuresonland.org>).

Other CSOs are making practical interventions. For instance, the National Union of Peasants (UNAC) in Mozambique, which is playing a leading role in *defending* the rights and interests of its members, promoting sustainable agriculture and integrated development with the aim of achieving social justice and securing peasants' livelihoods. UNAC together with Justiça Ambiental has been working with peasants to generate tangible evidence on the negative impacts of commercial pressures on land. Their study involved the mapping of investments, extent, type of tenure arrangements and the use to which the land was being put as well as highlighting potential conflict areas for monitoring and mitigation. The initiative aims to use the information to make recommendations for improving the governance of large-scale commercial land transactions (Justiça Ambiental and UNAC, 2011).

The International Development Law Organisation (IDLO) is involved in a community land-titling initiative in Liberia, Mozambique and Uganda, gathering evidence on the type of support that communities require to successfully complete community land titling, and on what support best helps to protect the land rights of vulnerable groups in the context of decentralised land management and administration. The action-research provides communities with different levels of legal assistance with respect to land titling (www.idlo.int).

The Zambia Land Alliance (ZAL) has mobilised community leaders and NGOs to lobby for improved land governance, land policy and dialogues on land grabbing. In 2010, ZAL facilitated a dialogue with traditional leaders, which resulted in a declaration delivered to the Zambian government. The ZAL has also been working with other CSOs in Zambia to push for the development of a national land policy as a basis for improving the governance of large-scale land transactions.

The International Institute for Sustainable Development (IISD) and the Institute for Poverty, Land and Agrarian Studies (PLAAS) organised a seminar with the Pan African Parliament in July 2011. The seminar provided a common platform for African parliamentarians as well as CSOs from West, Central, East and Southern Africa to be more involved in discussions and decision-making on the problems and challenges facing the continent and create a roadmap for further continental action. Parliamentarians, government officials, the African Union–Economic Commission for Africa–African Development Bank (AU-ECA-AfDB) Land Policy Initiative (LPI), NEPAD Planning and Coordinating Agency, donors, academics and CSOs all attended. The meeting produced a set of recommendations and a draft resolution aimed at improving the governance of large-scale transactions in land, calling on the African Union to generate guidelines concerning such transactions, and for a moratorium on further large-scale leases pending adoption of such guidelines.

In June 2011, women and men from across sub-Saharan Africa attended a conference (convened by Oxfam in partnership with numerous farmers' associations and others) in Nairobi to inform and review the progress on the advancement of women's rights to land, property and freedom from sexual and gender-based violence. The conference communiqué called on

national governments, the African Union, and CSOs, grassroots women and development partners to take action aimed at securing women's land rights against commercial pressures on land. Box 4.3 below highlights some of the communique's calls:

Box 4.3 Mobilising for African women's land rights

- Engage governments and multilateral institutions in the development and reviewing of international guidelines and instruments in order to improve the recognition of the rights, roles and needs of women in them;
- Engage with governments on reviewing national land policies and laws using the AU Framework and Guidelines on Land Policy in Africa, and monitor the implementation of agriculture and land policies and ensure that gender indicators are incorporated in the tools used;
- Commission the drafting of a women's rights analysis and an ecological sustainability analysis for each of the four CAADP pillars;
- Lead and resource a process for integration of gender and climate change in the roles, responsibilities, and accountability mechanisms of CAADP to ensure adaptation and capacity building for women and ensure that financing climate change will mainstream women as custodian of land and forests;
- The development and finalisation of agricultural and food security policies, legislations, and programmes that involve and prioritise women's secure access to land;
 - enhancement of the realisation of the right to food and the food sovereignty concepts and principles;
 - ending the corruption and poor governance that allows investors to undermine the rights of women;
 - the promotion of agriculture Investments in that benefit woman and other small scale farmers and pastoralists;
 - ensure gender-sensitive resettlement processes that provide women land titles and resettlement packages, and protect the rights of orphaned children;
 - ensure that policy, programmes and budgets take into account the specific needs and roles of women farmers and give priority to systematic involvement of women and smallholder farmers in agricultural policy making, programme design, implementation, monitoring and evaluation and conduct gendered social and ecological impact assessments prior to signing off any national agricultural investment plans.

Source: www.landforafricanwomen.org

CSOs have been marginalised from large-scale land transactions, mainly because the deals are signed between governments and investors. This lack of transparency also means that there is little information on the size of the deals, their potential impact and the identity of the signatories around which CSOs can strategise. As a result, they tend to focus on post-deal implementation, which means that most CSOs are clustered around research, whistle blowing, information-generation, watchdog functions and litigation on behalf of and dialogue with affected communities. This means that CSOs are generally found opposing land deals rather than looking for joint solutions with stakeholders in the deals. Positioning themselves as critics puts CSOs on a potentially confrontational path with investors and government negotiators. The ideal situation is for more transparent, participatory and inclusive land deal governance.

4.3 Trends and potential future trajectories of conflict, social and political unrest

The re-valuation of African farmland as a destination for global investment, and the rise in the number and size of transnational land leases, raise crucial questions regarding the future of land-based livelihoods in rural Africa. Will these deals offer new avenues to employment and cash incomes in 'de-agrarianising' societies or will they enclose common property resources (CPR) with little investment or output to show for it? Will social differentiation prompt new struggles at the local level, between women and men, between cultivators and herders, between the poor and elites, between chiefs and citizens? How will governments, at local, regional and national levels, manage their competing imperatives to secure the rights and livelihoods of citizens and attract investment? How will investors respond to challenges concerning the legitimacy of their land leases, and how will disputes between investors, governments and/or local communities be resolved, and in which fora? Will these deals precipitate new (or aggravate existing) competition and tensions over land? How much of this might take on an ethnic, or nationalist, character? To what degree could the rising pressure on land alter migration patterns, both within and between countries?

These are complex questions regarding the long-term implications of large-scale land deals in Africa, and there have been no definitive studies on the long-term implications for conflict, as far as we are aware. Three dimensions that should be considered in any assessment of the potential future trajectories for conflict arising from growing pressures on, and competition for, land are: competition among (i.e. between) rural populations; conflict within rural populations; and links between rural and urban mobilisation.

Competition among rural populations

Nunow (2011) shows how longstanding conflicts between settled cultivators (the Pokomo) and pastoralists (Oromo and Wardei) in the Tana River Delta on Kenya's coast may be aggravated as large tracts of land over which both groups have struggled to gain control is now being leased out to investors from Canada, China, India, Qatar, South Africa, India and the USA among others (see Box 4.4). This demonstrates the degree to which emerging and documented conflicts run across at least four axes: (a) between local land users and their national government, which has allocated what they consider their land to commercial investors; (b) between local land users and local authorities, including traditional chiefs, local elites, and district or provincial governments; (c) between local land users and investors themselves, or their local intermediaries or representatives, for example in the form of damage to property; and (d) among different and competing categories of land users, as competition over resources is exacerbated, notably in this case between settled cultivators (many displaced) and pastoralists.

Box 4.4 Emerging dimensions of conflict in Tana River, Kenya

Kenya's Tana River delta, a biodiversity hotspot, is home to small-scale cultivators (Pokomo) and pastoralists (Oromo and Wardei). The delta is under unprecedented threat as corporations and foreign agencies scramble to exploit its riches for export crops, biofuels and minerals. So far, 40,000 ha have been allocated for a sugar plantation, and further proposed deals include 90,000 ha for a Canadian-based biofuels company to grow *jatropha curcas*; 120,000 ha to Qatar to grow food crops; and 20,000 ha to a Canadian mining company to mine titanium, among others. While the delta provides immense environmental services to the country, and livelihoods to its inhabitants, these developments may lead to the collapse of most of its services, displace settled farmers and fence off the grazing land of pastoralists. More than 25,000 people living in 30 villages will be evicted from their ancestral land due to the first of these deals alone. 'The delta's people are trying to fight their own government over the huge blocks of land being turned over to companies' (McVeigh, 2011). The conflicts already documented are not merely between local land users and their national government, but also are fuelling longstanding conflicts between settled cultivators farming on the floodplains, and pastoralists reliant on access to seasonal grazing lands and to water resources. Local leaders have threatened 'war' against the investors, and national and regional institutions (including the national government ministry) perceived to have leased out community-owned land. In the context of the wider politics of land in Kenya, such threats are to be taken seriously, particularly given the potential for such conflicts to take on an ethnic dimension. Nunow further points out that displacement of local food production has fuelled protests over food prices. In the Delta, one community elder, Omar Bocha Kofonde, claimed: 'The hippos have gone, the fish, the birds, and the soil is salty. The goats and cattle have no grazing. The rivers used to flush out the sea water, now the sea is coming up on to our land because there is no river. Everything is in danger. People thought they owned the land, we have been here for hundreds of years. Now we will fight; we are ready to die, for what else is there?' Another community representative, Ali Saidi Kichei of Ozi village, said: 'This land ownership is giving us a headache. We know there are people who have sold our land when it isn't theirs to sell. They are criminals and we will fight them, with guns and with sticks.' His community had sent a delegation to Nairobi to demand a meeting with the minister for lands, but could not obtain an adequate response which, he claimed, was what was fuelling ongoing conflict in the Delta: 'We lived in paradise, in peace. Now what? No water, only salty water, land thieves and water thieves, and children with empty stomachs.'

Sources: McVeigh (2011); Nunow (2011)

ILC (2011, forthcoming) also documents the growing transborder conflicts among communities in Niger and Chad affected by declining and unpredictable access to water in the regions bordering Lake Chad, which has shrunk dramatically. Given the nature of the water resources on which rural farmers depend, and the transboundary nature of water catchments, it is to be expected that such conflicts among populations may well take on an international character, as conflicts between states. As ILC has noted, conflicts are likely to emerge where resources are patchy and livelihoods are mobile, notably where concentrations of water lead to seasonal migrations that may be disrupted through increased off-take of water for new commercial farming enterprises, affecting downstream users as well as seasonal migrants, pastoralists and fishing communities. Despite transboundary water-management institutions – such as the Lake Chad Basin Commission, which brings together Cameroon, Chad, Central African Republic, Niger and Nigeria for co-management of its crucial water resources for neighbouring countries' farming and other sectors – allocation of large-scale land leases in this water-stressed region has not been done through this multilateral forum, but rather by national governments. In this case, shrinkage in Lake Chad is a cause of conflicts among these diverse land users – conflicts which take on a transboundary, regional, and even ethnic, character – but is also likely to be exacerbated by growing large-scale commercial operations being established through land deals upstream, suggesting that the kinds of conflicts already experienced and documented could well take on a new scale and severity in the coming period.

Conflict within rural populations

One widely documented early outcome of large-scale land deals is the rising social differentiation among affected communities. In contrast to investors' depiction of local communities as uniformly benefiting from land-based investments, it is clear that neither do local communities benefit uniformly from such investments, nor that (in most cases) all local people lose out. Rather, the key question is about who wins and who loses (Borras et al., 2011). Typically, it appears that these deals generate new dynamics of accumulation at the local level, through fees and duties (whether formal or informal), through value-chain linkages to upstream and downstream industries, through creation of employment (often highly gendered) and through partnerships with local producers. While in general it may be that rising inequality is a predictor for conflict, this has not been a necessary outcome of such deals. It is likely that longitudinal studies in the future will address the question of impacts on social relations over time, and search for correlations with various forms of conflict (whether overt or covert).

Conflict between local populations and investors

As the costs of displaced land uses become apparent, conflicts have been recorded between local populations and the incoming investors in their area – particularly prompted where the costs of curtailed land access are felt most keenly and the promised jobs have not materialised. One such case is at Chisumbanje in Zimbabwe's Sabi River Valley, where 40,000 ha claimed by the state was allocated by a national para-statal to a company comprising national and foreign investors to produce sugar cane for bio-ethanol. While local villagers had used this land for diverse cultivation purposes since the 1950s, their continued access to 10% of the land would become contingent on producing sugar cane as out-growers, on contract to the investors; other land uses, and access beyond this 10%, would be prohibited. As Chaunza (2011) documents, as a result of the conflict over the terms on which these investors acquired land in their area, a 'multimillion dollar Ethanol production plant which is nearing competition is being threatened with destruction by disgruntled villagers who plan to invade the 40 000 hectare sugar cane irrigation plantation to grow cotton'. The local traditional leader, Headman Chisumbanje, is on record warning that:

The whole community is from next week going to plough in the area... We are not afraid of what comes after because we have no source of livelihood... other than the land which the company grabbed from us. As a matter of fact we have been battling with this company since it came here three years ago that we need our land which we used to rely on. We have been further impoverished by this company. (cited in Chaunza, 2011)

Emerging social movements and other responses

Although most of the documented work on land transactions has focused on the behaviour of the investors and governments, there has to date been limited coverage of social responses and organised resistance to the phenomenon. The institutions that have been involved in organising such resistance range from global movements like FIAN and La Via Campesina (LVC) to communities mobilising at the local level to engage with an investor and/or to defend their livelihoods.

At the global level LVC, a movement that defends family-based production and food sovereignty, has been mobilising communities against land grabbing. The movement has been working with farmers' organisations and peasant movements in Africa to explore alternatives to the neo-liberal model; building the capacity of local farmers through education, coalitions, facilitating networks; advancing alternative projects such as organic farming and sustainable agriculture; and mobilising affected farmers' organisations, rural workers and landless people to engage with transnational companies (TNCs) and national governments. For example, LVC mobilised communities for a demonstration during the COP 17 meeting held in Durban in December 2011. It also held an International Farmers' Conference in Bamako 17–19 November 2011, which brought together people adversely affected by land grabs to 'develop strategies to end the seizure of farmland at the expense of the rural family farming that feeds 80% of the African population'. In Mozambique, LVC has worked with UNAC to establish

cooperative associations in the provinces and districts to dialogue and implement small sustainable and organic farming projects; train farmers and provide political education; and strengthen the farmers' production base (Schachet, 2009; La Via Campesina 2011).

In addition to the more organised responses, there have been cases of spontaneous resistance. Sam Moyo refers to processes of illegal restitution called 'squatting' or 'land self-provisioning' as a crucial aspect of social responses to commercial pressures on land. Actions that Moyo broadly describes as 'opposition to international conditionalities and narrow racially-defined landed interests' have been taken by communities in South Africa and Zimbabwe to express their frustration with the pace of the state-led initiatives to address longstanding historical grievances over large-scale land transfers (Moyo, 2000). The example of Chisumbanje community in Zimbabwe illustrates this response.

The Mozambican community in Maragra, a sugar plantation situated outside Maputo, mobilised about 3,000 people and the media to demonstrate against land grabs. The government reacted by seizing the demonstrators' agricultural tools and threatening them with arrest and eviction (participant in the ActionAid Consultation, 2010). While the power asymmetry between communities and other stakeholders in land transactions undermine the community's capacity to respond and defend its land rights, the example from South Sudan illustrates how stakeholder coalitions have become an effective mechanism for mobilising responses to commercial pressures on land.

The deal described in Box 3.3 was halted because of combined efforts of civil society groups, the media and the community. Civil society blew the whistle by publishing the deal on its website. This raised the community's awareness. The local community and parliamentarians worked together and approached the national government to express their objection to this deal. Following extensive media coverage and protests, the South Sudan government cancelled the deal (see: <http://www.qurtong.net/ECM/Editorial/tabid/124/ID/5582/Default.aspx>).

In another example, which set an important precedent for communities who are losing their land rights, in 2010 the Enderois community won their case to retrieve land that was taken by the Kenyan government about 40 years after their eviction. The African Union endorsed an earlier ruling by the African Commission on Human and People's Rights that found the Kenyan government guilty of violating the human rights of the Enderois by evicting them in the 1970s in order to create a wildlife reserve. The Kenyan government is obliged to compensate the Enderois and restitute their lands (see: [http://hub.witness.org/Rightful place](http://hub.witness.org/Rightful_place)).

Links between rural and urban mobilisation

A core question for the future is whether rural populations affected by displacement or disruption to their land rights and livelihoods as a result of land deals might form links with urban populations affected by rising food prices. In September 2010, for instance, as several rural Mozambican communities were affected by large-scale land leases, largely for the production of feedstocks for biodiesel and bio-ethanol, urban food riots in response to price rises led to several deaths. While the urban mobilisation was explicitly directed towards the Frelimo-led government, rural resistance, where this has emerged, has tended to focus on local-level leaders who are considered to have acted as intermediaries to facilitate the conclusion of land leases, and the external investors themselves.

The increasing pressures on land will invariably increase tensions between the various communities and among the individuals within these communities. The conflicts could pit various communities against each other, e.g. migrant workers versus the local populations, displaced persons versus those whose land rights have been relatively untouched by the land transfers, and the various responses that people invoke to cope with the pressures could be sources of friction between the various stakeholders. Although some of the impact will become apparent in the longer term, there is a dearth of information on the exact dynamics at the local level. There are, however, various initiatives that aim to fill this gap, including the LVC conference and research being undertaken by the ILC, FIAN and Oakland Institute. The examples highlighted in this section illustrate the diversity of movements, and the scale, direction and geographical impact of social responses to the commercial pressures on land.

They demonstrate the varied fora within which responses are articulated, which include legal and extra-legal fora, the media, formal and informal engagements, state and non-state actors, and invented and invited spaces. Although responses can be short term, localised and focused the experiences of the Enderois and LVC show that engagement can be long term, intergenerational and span geographical divides. The experiences of the Enderois community and the Sudanese who halted a land deal illustrate the potential to re-visit, cancel and overturn signed and sealed land contracts. Whether this will catalyse the formation of sustainable social movement on the continent remains to be seen.

5 Ways to mitigate conflict, social and political unrest

Although developing countries could use the investment that comes with large-scale transactions in land to improve their economies, the manner in which this is currently done is potentially explosive. This is precipitated by the poor governance practices involved in these transactions, which are largely conducted in secret and to the exclusion of communities who may stand to benefit but also to bear the brunt of the transactions. The localised eruptions of violent protest and resistance could potentially lead to mobilisation at the national and regional levels and foment social and political unrest. The experience of Madagascar, where a head of state was deposed on the back of a deeply unpopular land transaction, suggests that this is a real and tangible possibility.

5.1 Legal and policy frameworks governing land

Consensus is emerging among a wide range of actors of the need to regulate large-scale land deals in Africa, and to draw lessons on best (or at least better) practices from the continent, or elsewhere. Core to such initiatives will be the strengthening of land rights in law and policy at the national level. The African Union's Framework and Guidelines on Land Policy (African Union, 2009) offers an important starting point for such reforms, but does not prescribe how national governments should interpret the guidelines. Indeed, it appears that, since their adoption in 2009, there has been little if any progress in putting them into practice. The priority now must be on regional initiatives to take forward this Framework, through regional economic commissions down to the level of national governments. The substance of the agenda must be to *secure* the existing rights of legitimate landholders and users – in law and practice – in ways that can enable people either to leverage preferential terms in any transaction with outsiders, or to resist new claims on their land.

Based on experiences with land law reforms and implementation, priority principles to guide legal and policy reforms include:

1. *Legal reform*: give statutory recognition of *de facto* rights (i.e. existing occupation and use) in law – including overlapping rights.
2. *Registration*: develop mechanisms for low-cost registration and verification as a basis for transacting rights (e.g. local land rental markets).
3. *Decentralisation*: decentralise administration of land rights to local government authorities (with representation of traditional leaders, where these exist).
4. *Land taxes*: introduce taxes on leased properties to discourage speculative land acquisitions.
5. *Consultations*: Specify in law the procedural requirements for consultation between investors and affected communities, as well as guidelines regarding minimum forms and levels of compensation.

5.2 Procedural better practice: partnerships and negotiations regarding land-based investment

Land-tenure reforms are a precondition but insufficient to protect local landholders from exclusion in processes of land-based investments. For this reason, and in order to mitigate the potential conflict and defuse existing simmering anger among those affected who feel they have been treated unfairly, improved procedures are needed to guide, even regulate, the allocation and acquisition of land to investors. This is particularly important for indigenous communities, in view of the discrimination and marginalisation to which they have historically been subjected (de Schutter, 2011). The principle already enshrined in international law of 'free prior and informed consent' (FPIC) potentially offers a way to obtain community consent in large-scale land investments. In instances where land deals have already been signed, these

should be revisited with a view to facilitating 'meaningful company–community engagement, in which host communities influence investment design and participate in on-going processes of shared decision-making' (Deng, 2011b: 6). Based on experiences from cases documented across the region, five recommendations for improving the procedural dimensions of any negotiations regarding land transactions in this context are:

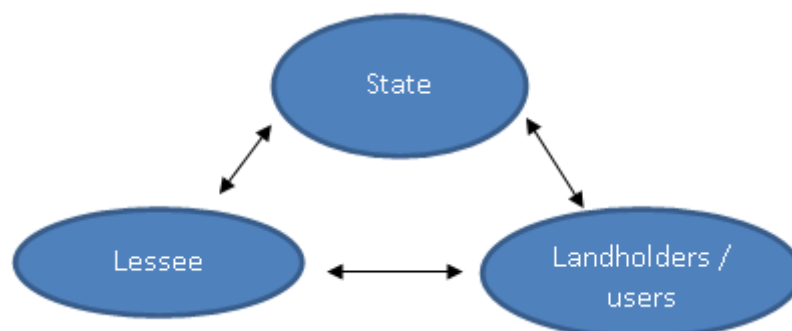
1. *Consent*: specify the FPIC principle among local and affected communities as a standard required before any land lease is concluded.
2. *Prioritisation*: give preference to those forms of investment that avoid the displacement of existing populations, and disruption of existing land rights; invest in small farmers, rather than engaging in land transactions.
3. *Participation*: broaden participation in land deals to include communities and CSOs, to enable fuller representation and improved transparency.
4. *Proactive*: promote coalitions of states, communities and CSOs, e.g. ESIA interventions to enable them to shape rather than be mere recipients of investor-led land-deal proposals.
5. *Direct transactions*: revisit the role of the state in land deals; in many cases, the state should not be the lessor of customary lands, or even a signatory to the deal, but remain outside as a mediator and guarantor of transactions between rights-holders and investors.

5.3 Substantive better practice: structures and designs of inclusive business models

While there are strong calls for an end to large-scale land leasing in developing countries (FIAN, 2011; LVC, 2008), given the priority placed by African governments on attracting external agricultural investment, it is likely that the trend will continue. The question then is of what forms of investment will happen, how it will be governed and regulated, and whether the widespread abuses already documented (and highlighted in this paper) can be stopped, while allowing different, and better, forms of investment to proceed. But what are the better forms of investment? Substantial research and policy debate is now emerging about 'inclusive business models' that can involve meaningful benefit-sharing between local communities and investors (IIED, 2011).

In addition, legal research on the terms of land deals (Howard and Smaller, 2009; IIED, 2010) is now showing that the terms of contracts are often poorly conceived, poorly drafted, and limit government capacity to make future policy in the interests of their citizens. In addition, a range of other forms of regulation – from domestic law, to bilateral investment treaties, to international law – also govern these transnational investments. These multiple levels of law intersect with a wide spectrum of actors. Highly caricatured notions abound about how land deals are included, who the actors are, and how they interact (or could do so). While several initiatives envisage three central actors that are party to negotiations for land leases – state, community and investor – this is seldom the case (see Figure 5.1 below).

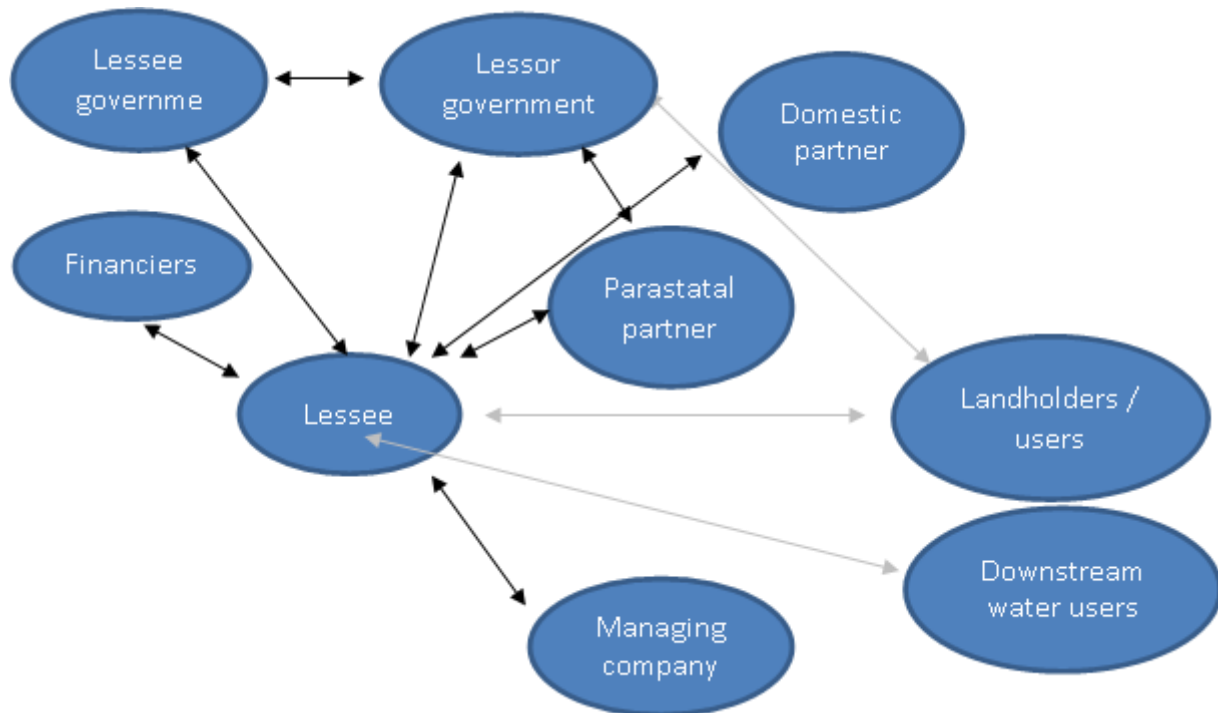
Figure 5.1 Contracting in large-scale land deals: caricatured assumption about actors



Source: the authors

Hall (2011) shows that, in many cases in Southern Africa, the lessee is not the investor; rather, there are onward transactions of land leases to third parties. Similarly, the leasing authority (often the state) is often not locally recognised as the rights-holder (Alden Wiley, 2011). Further, the terms of the deals are substantially determined by financiers and other parties who might have no operational role in the project itself. The emerging evidence on the parties to land deals in Africa suggests that the reality is far more complex than is suggested by this triumvirate of state–community–investor. In other words, rather than Figure 5.1 above, case studies suggest that parties and contractual relationships in land deals rather resemble Figure 5.2.

Figure 5.2 Contracting in large-scale land deals: typical range of actors and deals



Source: authors' own, based in part on IIED (2010)

This more messy set of practices is significant for policy-makers seeking effective measures for regulation: land leasing embodies *many* different legal frameworks, from the national to the international, as well as a range of other norms and standards, including those promoted by the private sector. These have very different weight in law and in practice.

Better practices and innovations in the terms of contracts

In this context, there is a need to acknowledge the array of actors, while also using the primary land-lease contract as the means by which to set standards that must be adhered to – regardless of the multiple parties to the project. Specific examples of better practices emerging from the literature include:

1. *No carte blanche*: conclude contracts only for short durations that are renewable subject to achievement of specified milestones of investment and benefit-sharing.
2. *Specification*: include very specific definitions of the land and other resources that are being allocated, including water, and valuation of these resources.
3. *Flexibility*: provide for re-negotiation over time of contracts, including rental payments and the level of other forms of compensation.
4. *Sovereignty*: explicitly subordinate entitlements of investors to national law and development priorities (including food supply, water availability, environmental and social protection); restrict the right to export in contexts of food shortages, and avoid 'stabilisation clauses' in lease contracts.

5. *Transparency*: establish norms requiring publication of contracts and ratification by national parliaments (as is the case in Liberia).

Better practices and innovations in benefit sharing and compensation

Inclusive business arrangements include direct rental payments being made to affected communities, preferential terms for employment of local people, shareholding partnerships, and supply-chain partnerships, such as out-grower schemes or contract farming. However, the widespread hope that the latter type of partnerships can produce 'win-win' solutions for investors and local people alike (von Braun and Meinzen-Dick 2009; IIED 2009) seems ahistorical in the light of experience with contract farming in commercial agriculture in sub-Saharan Africa (Little and Watts, 1994). Yet the poor track record in this area could give way to improved practices, particularly if the terms of deals between investors and local communities can be structured to involve meaningful partnerships for joint production and development, with guarantees regarding benefit-sharing, or substantial compensation for local people. Specific examples of better practices emerging from the literature include:

1. *Shareholding*: avoid reliance on dividends as the only form of benefit for local communities – ensure some benefit as a percentage of turnover rather than declared profit, to address limited community control over (re)-investment decisions and the potential for 'transfer pricing'.
2. *Subsidiarity*: funds and inclusion in decisions taken at the most local level through community and governance structures.
3. *Temporal equity*: in the interests of future generations, avoid simple lump-sum payouts in the short term, as grievances will be likely to re-emerge; not just in relation to the next generation but also growing population pressure on finite resources.
4. *Jobs and infrastructure*: specify enforceable commitments (including qualitative as well as quantitative indicators) and accompanying sanctions for non-compliance in contracts; provide for phased transfer of ownership, for instance through skills transfer.
5. *Multiple land uses*: provide for local uses/users for food production and livelihood purposes, alongside commercial production by investor. The aim must be to look for complementarities including in input supply and value adding – rather than limiting locals to primary production.

Self-regulation by the private sector

It is worth bearing in mind that international investors – especially large transnational corporations (TNCs) – are highly susceptible to reputational risk, and may be responsive to negative publicity, and willing to amend the terms of their investments, and improve the nature of partnerships with local people. Private-sector initiatives, such as those initiated by the Roundtable on Soy, the Roundtable on Palm Oil, and the emerging Sustainable Biofuels Initiative, have attempted to establish norms to guide the expansion of this industry, and similar initiatives abound in other sectors, including the Equator Principles guiding financial institutions, the Extractive Industries Transparency Initiative (EITI) and the Better Sugar Initiative. Finding ways to monitor industry codes, and to build bridges between multilateral and government regulations, and private-sector voluntary regulation, will be important.

Conclusions

Tenure security contributes to economic development in both direct and indirect ways. Given the diverse experiences with legal, policy and institutional reforms enacted across the continent, thinking about best practices has evolved far beyond the 'titling' approaches of the 1970s and 1980s. Securing tenure requires legal reforms to recognise occupation, accessible and decentralised systems of land administration, and investing in institutions performing land-administration functions. It does *not* require (and indeed can be undermined by) private titling of customary lands, central government registration, and the devolution of all land administration to traditional leaders.

Rising investor interest in African farmland – in a context of concerns about global food supply in the long term, fuel security in the medium term, and profits from financial investments in the short term – the forms that these land deals are taking is diverse, and no simple or formulaic solutions should be imposed. There are certain principles, norms and standards, however, which could assist in strengthening land laws and policies; procedural requirements for any land-based investments; and substantive requirements and better practices that can promote more inclusive forms of development that mitigate the risks of conflict and promote development agendas of poverty reduction, while also promoting more intensive use of land to meet household food security needs and the national priorities of investment, poverty alleviation, development.

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