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# ‘Land grabs’ in Africa: Pathways, trends and the role of legal contracts

Large land acquisitions can have a deep, lasting effect on livelihoods, food security and the future of agriculture, so there is a need for strategic thinking, vigorous public debate and government responsiveness to public concerns, especially in recipient countries.

Large-scale, international land acquisitions have been much in the news over the past few months. But quantifications of the phenomenon, such as its

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scale and whether it is in fact on the rise, are still thin on the ground.

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## ■ International land acquisition: trends and drivers

Quantitative inventories of documented, approved land allocations in Ethiopia, Ghana, Madagascar and Mali, carried out as part of a collaborative study by the International Institute for

Environment and Development (IIED), the Food and Agriculture Organization of the UN (FAO) and the International Fund for Agricultural Development (IFAD), help to shape an evidence-based picture of trends. The inventories were undertaken by national researchers, and relied primarily on host government sources (such as investment promotion agencies, ministries for agriculture) cross-checked through multi-stakeholder interviews.

Allocations in Ethiopia, Ghana, Madagascar and Mali from 2004 to 2008 total some 2 million hectares. This excludes allocations below 1,000 hectares and those pending negotiation. Many approved deals have not yet been implemented on the ground. Further growth is anticipated, however, particularly given pending negotiations reported in the media, the establishment of specialised investment funds for acquiring lands in Africa, and host country efforts to attract investment. For example, in July 2009, the government of Ethiopia reportedly marked out 1.6 million hectares of land, extendable to 2.7 million, for investors willing to develop commercial farms (Reuters, "Ethiopia sets aside land for foreign investors", 29 July 2009).

The size of single land acquisitions can be very large. Documented acquisitions include a 452,500 hectare biofuel project in Madagascar and a 100,000 hectare irrigation project in Mali. But even in these cases, production is only starting on a much smaller scale, and is phased up to full capacity over relatively long periods of time.

Private sector deals account for about 90 percent of allocated land areas in Ethiopia, Ghana, Madagascar and Mali. Government-owned investments make up the remainder. But the home country governments of investors may play a major supportive role, providing diplomatic, financial and other support to private deals. Equity participations in investment projects by home country governments, through state-owned enterprises, development funds or sovereign wealth funds, may also be growing.

Foreign investment accounts for the bulk of the deals in Ethiopia, Ghana, Madagascar and Mali: about three-quarters of allocated land areas in the four countries. While media reports have focused on acquisitions by Middle Eastern and East Asian investors, the

*While land deals are unfolding fast there is an urgent need for governments in recipient countries to respond to the concerns of local people.*

quantitative inventories suggest that key investor countries are in Europe and Africa as well as the Gulf and South and East Asia. For example, in Madagascar, European investors account for 70 percent of allocated lands, while investors from South and South-East Asia account for 19 percent and Middle Eastern operators for 11 percent. Land acquisitions by domestic investors are also significant.

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### ■ Mitigating risks, seizing opportunities

For countries on the receiving end, increased investment may bring macro-level benefits (GDP growth, greater government revenues), and create opportunities for raising local living standards. Investors may bring capital, technology, know-how, infrastructure and market access, and may therefore play an important role in catalysing economic development in rural areas.

But as outside interest rises, and as governments or markets make land available to prospecting investors, local people could lose access to the resources on which they depend – not just land, but also water, wood and grazing. While there is a perception that farmland is abundant in certain countries, these claims are not always substantiated. In many cases, land is already being used or claimed – yet people using the land have no formal land rights. Even where some land is available, large-scale allocations may result in people's displacement as demand focuses on higher-value lands (for example, those with greater irrigation potential or proximity to markets).



Ultimately, if international land deals are to boost opportunities and mitigate risks, each project will need to be properly scrutinised, and have the right terms and conditions. These will have to consider how risks are assessed and mitigated, what business models are used, how costs and benefits are shared, and who decides on these issues and how. So it is important to 'unpack' details on specific deals to examine how they tackle these issues.

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### ■ Unpacking the contracts: the challenges to fair deals

Land deals are embodied in one, or several, contracts. These need to be examined along with other legal texts defining their broader legal context, including national and international law. Contracts are complex and differ hugely among countries and even projects. More work is needed to identify trends in contractual practice and



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compare contractual options. But the analysis of a small number of contracts from Africa highlights challenges that can threaten the balance of a deal.

**Safeguarding local interests.** Land leases, rather than purchase, predominate in Africa, with durations ranging from short terms to 99 years. Host governments tend to play a key role in allocating land leases, not least because they formally own all or much of the land in many African countries. Therefore, the extent to which governments take account of local interests in land, water and other natural resources is key.

An important problem in this regard is that host governments may contractually commit themselves to providing land before any consultation with local land users has taken place. Also, lack of transparency in negotiations encourages corruption and benefits ending up with the rich and powerful. In Mozambique and other countries,

national law does require investors to consult local people before land allocations are made. In Ghana, deals with local leaders are common. But even in these cases, shortcomings in implementing legal requirements and in the accountability of local leaders are a recurrent problem.

Security of local land rights is also key – both to protect people from arbitrary dispossession, and to give them an asset to negotiate with. National laws vary, but some recurrent features undermine the position of local people. These include insecure use rights on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, compensation only for loss of improvements such as crops rather than land, and often outdated compensation rates. As a result, local people may lose out, and investors that aim for good practice suffer from a lack of clear government procedures and guidelines.

**Maximising local benefits.** Another area of concern relates to the economic equilibrium of the deal. Land fees and other monetary transfers are generally absent or small, due to efforts to attract investment, perceived low opportunity costs and a lack of well-established land markets. This alone does not mean the deal is unbalanced: benefits to host countries may include investor commitments on levels of investment and development of infrastructure such as irrigation systems.

Given the prominence of investment commitments in the economic equilibrium of land deals, enforceability of such commitments is particularly important. Government land allocations are usually subject to the investor's compliance with investment plans for the first few years of the project, after which the allocation is confirmed. But in the past, African governments have rarely used this lever to hold investors to account. Also, the wording of contracts may not be specific enough to be enforceable. And one-off assessments at an early stage of implementation do not enable continued monitoring and sanctioning of investment performance over a project's lifespan.

In several key respects affecting economic equilibrium, the contracts reviewed tend towards the unspecific, particularly compared to contracts in other sectors, such as mining and petroleum. With considerable variation among cases, the contracts tend to lack robust mechanisms to monitor or enforce compliance with investor commitments, promote smallholder participation in production activities, and balance food security concerns in both home and host countries.

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### ■ Not just any investment: promoting good deals

The land investment story currently unfolding in a number of developing countries reflects deep global eco-

conomic and social transformations with profound implications for the future of world agriculture. Decisions taken now will have major repercussions on the livelihoods and food security of many people for decades to come. Today's choices must be based on strategic thinking about the future of agriculture, the place of large and small-scale farming within it, and the role and nature of outside investment – bearing in mind that in many parts of the world, small-scale farming has proved economically competitive and able to respond to changing challenges. Therefore, while land deal negotiations are unfolding fast, there is a need for vigorous public debate and government responsiveness to public concerns in recipient countries.

**Roles for host governments.** Where international land deals are seen as a useful element of strategies to promote national and local development, a number of factors need to be in place: greater transparency, effective regulation, skilfully negotiated contracts, and robust social and environmental impact assessments. Some recent, very large investments seem unrealistic, and host governments should carefully scrutinise investors' capacity to deliver on very ambitious projects.

Rather than uncritically endorsing large plantations, host governments

should use policy incentives to promote inclusive business models that share value with local enterprises, including small-scale farmers, processors and service providers. This may include equitably structured contract farming, and joint ventures where local people contribute land in exchange for a stake in the project.

Governments should also seek more specific and enforceable investor commitments on investment levels, job creation, infrastructure development and public revenues; and effective mechanisms to hold investors to account. Some recipient countries are themselves food insecure, and workable arrangements must protect local food security, particularly in times of food crisis. These improvements can be achieved, and experience with improving transparency and contractual terms in other sectors such as oil can provide useful lessons.

Apart from carefully negotiating individual deals, recipient governments should ensure that their national legal frameworks are geared towards minimising risks and maximising benefits for local people. As interest in land grows, many countries should step up efforts to secure local land rights. Measures may include stronger legal recognition of local (including customary) rights; collective land registra-

tion where appropriate; ensuring the principle of free, prior and informed consent; providing legal aid and assistance; and improving governance of land and related resources. Adequate representation and protection of local interests in water allocation decisions are also key.

**Roles for the international community.** Development agencies can play a useful role by:

- creating space for public debate;
- given the major power asymmetries in contract negotiations, strengthening host government capacity to negotiate and civil society capacity to scrutinise;
- accompanying efforts to secure local land rights, and supporting local groups in their negotiations with government and investors;
- sharing lessons from international experience, for instance on tackling issues of food security, the balance of large and small-scale agriculture, robust contracts and equitable business plans;
- ensuring that international rules establish robust safeguards and are backed by effective monitoring and enforcement.

### Zusammenfassung

Zwar vergeht kaum ein Tag, an dem nicht über einen neuen spektakulären Fall von „Land-grabbing“ berichtet wird. Doch verlässliche Daten zu Größenordnungen und Trends, zu Investoren und Zielländern, zu Vertragsgestaltung und Umsetzung der Pläne liegen kaum vor. In einer gemeinsamen Studie haben IIED, FAO und IFAD in vier afrikanischen Staaten untersucht, aus welchen Ländern die Investoren stammen, wie groß die durchschnittlich gehandelten Flächen sind und ob private Unternehmen oder Regierungen hinter den Transaktionen stecken. Einige der abgeschlossenen Verträge wurden genauer unter die Lupe genommen, um aufzuzeigen, wie die Interessen der lokalen Bevölkerung ge-

wahrt werden können und wie es – wenn überhaupt – möglich ist, die häufig zitierte Win-Win-Situation zu erreichen. Welche Rolle dabei den Regierungen der Zielländer zukommt und wofür die internationale Staatengemeinschaft sorgen muss, zeigen die Autoren ebenfalls auf.

### Resumen

Si bien apenas pasa un día en el que no se informe sobre un nuevo y espectacular caso de apropiación de tierras (*land grabbing*), en realidad no contamos con datos confiables sobre las magnitudes y tendencias, sobre inversores y países meta, sobre la formulación de los contratos y la implementación de los planes. En un estudio conjunto sobre cuatro estados africanos, el

IIED, la FAO y el IFAD han tratado de hallar respuesta a diversas preguntas: de qué países provienen los inversores, cuál es la extensión promedio de las áreas adquiridas y quiénes se hallan detrás de las transacciones (¿empresas privadas o gobiernos?). También se analizaron en detalle algunos de los contratos suscritos, para determinar de qué manera cabe salvaguardar los intereses de la población local y cuál sería la forma de llegar al tan mentado beneficio para todos los involucrados – en caso de que tal situación fuera realmente factible. Los autores explican asimismo cuál es el rol que compete a los gobiernos de los países meta y cuáles serían los aspectos por los que debe velar la comunidad internacional de estados.