

The Governance of Large-Scale Farmland Investments in Sub-Saharan Africa

A Comparative Analysis of the Challenges for Sustainability

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**The Governance of Large-Scale Farmland Investments in
Sub-Saharan Africa**

A Comparative Analysis of the Challenges for Sustainability

**Het Beheer van Grootschalige Landbouw Investerings in
Sub-Sahara Afrika**

Een Vergelijkende Analyse van de Uitdagingen voor Duurzaamheid

PROEFSCHRIFT

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For Nicky, always

Table of Contents

List of Figures	iv
List of Boxes	iv
List of Tables	v
Acronyms	vi
Acknowledgments	viii
1. Introduction	I
1.1 African farmland and the modern accumulation crises.....	I
1.2 Agricultural investment trade-offs.....	4
1.3 Positioning governance.....	7
1.4 Research design.....	9
1.4.1 Research questions.....	9
1.4.2 Approach.....	10
1.4.3 Methodology.....	12
1.5 Outline.....	17
2. Drivers of investment	19
2.1 Introduction.....	19
2.2 Challenges in quantifying large-scale farmland acquisitions.....	21
2.3 Methodology.....	24
2.3.1 Land acquisition analysis.....	24
2.3.2 Land use competition analysis.....	26
2.4 Farmland acquisition trends.....	26
2.4.1 Geographic patterns of investment.....	26
2.4.2 Sectoral trends of investment.....	30
2.5 Potential implications for host countries.....	37
2.5.1 Threat of land use competition.....	37
2.5.2 Accommodation of customary land rights.....	40
2.5.3 Alignment with domestic market needs.....	43
2.6 Conclusion.....	46
3. Ethiopia	51
3.1 Introduction.....	51
3.2 Background.....	53
3.2.1 The irresistibility of modernization schemes.....	53
3.2.2 Agricultural investments in Ethiopia.....	55
3.3 Methodology.....	57
3.4 Overview of case studies.....	58
3.5 Results.....	61
3.5.1 Land identification and allocation.....	61
3.5.2 Pre-implementation incorporation.....	65
3.5.3 Impact mitigation and community development.....	68

3.5.4	Dispute resolution.....	76
3.6	Discussion and conclusions	78
4.	Ghana (impacts)	85
4.1	Introduction	85
4.2	Background	86
4.2.1	Biofuels and the evolution of plantation agriculture	86
4.2.2	The risks and opportunities of plantation agriculture	88
4.3	Methodology.....	91
4.4	Case study background.....	93
4.5	Local impacts of plantation agriculture	95
4.5.1	Impact of land use change.....	95
4.5.2	Impact of employment.....	100
4.6	Discussion	103
4.7	Conclusion.....	105
5.	Ghana (governance)	107
5.1	Introduction	107
5.2	Background	108
5.2.1	Large-scale farmland investment trends in Ghana	108
5.2.2	Alignment with policy aims.....	109
5.3	Methodology.....	110
5.4	The statutory underpinnings for farmland acquisitions	112
5.5	Evidence from implementation	115
5.5.1	Lack of external guidance	115
5.5.2	Elite capture and opacity of the negotiation encounter	116
5.5.3	Insufficient consideration for loss of livelihood.....	119
5.5.4	Poor inter-institutional coordination and accountability	121
5.5.5	Contestation of rights infringements.....	122
5.6	Conclusion.....	123
6.	Nigeria.....	127
6.1	Introduction	127
6.2	Historical background	129
6.2.1	The rise and demise of the plantation economy	129
6.2.2	From empire forestry to strict conservation	132
6.3	Methodology.....	134
6.4	Findings.....	135
6.4.1	Privatization of defunct state farms	135
6.4.2	Greenfield developments.....	145
6.5	Discussion and conclusions	152
7.	Zambia.....	157
7.1	Introduction	157
7.2	Background	158

7.2.1	The biofuel polemic	158
7.2.2	Sector evolution.....	160
7.3	Understanding targets	161
7.4	Understanding mechanisms.....	162
7.4.1	Sectoral legislation and strategies	162
7.4.2	Extra-sectoral legislation and strategies	163
7.5	Understanding effects	168
7.5.1	National economic benefits	169
7.5.2	Rural economic development.....	172
7.5.3	Safeguarding against social and environmental risks	174
7.6	Conclusion.....	181
8.	Conclusion.....	185
8.1	Introduction	185
8.2	Project outcomes.....	186
8.3	Key outcome determinants.....	189
8.3.1	Deficiencies in the law	190
8.3.2	Elite capture	191
8.3.3	Co-optation and conflicts of interests	193
8.3.4	Capacity constraints and cross-accountability	194
8.3.5	High modernist ideologies	195
8.3.6	Limited contestation of rights infringements	197
8.3.7	Incompatibility of production systems	198
8.3.8	Misalignment of corporate accountability	199
8.4	Implications for governance.....	200
8.4.1	Host country governance.....	202
8.4.2	International governance.....	206
8.5	Conclusion.....	210
	References.....	216
	Annex	259
A1.	Global market trends	259
A2.	Country-disaggregated investment flows.....	261
A3.	Suitability overlap maps for key investment crops	264
A4.	Governance of agricultural investments: theory versus practice.....	266
A5.	Sustainability criteria.....	278
	Summary	283
	Samenvatting.....	291
	Biography.....	301

List of Figures

Figure 2.1: Destination of investments	27
Figure 2.2: Origin of non-domestic investments	29
Figure 2.3: Primary crop type cultivated	31
Figure 2.4: Area of suitable land under competing uses	38
Figure 2.5: Proportion of suitable land under competing uses	38
Figure 2.6: Map of suitability overlaps.....	40
Figure 3.1: Topographical map of Ethiopia	59
Figure 3.2: Landscape transformation in Gambella Region	66
Figure 3.3: Landscape transformation in SNNPR	71
Figure 4.1: Distribution of biofuel feedstock plantations.....	89
Figure 4.2: Band 5, 4, 3 false color composite of plantation area	95
Figure 4.3: Changes in average household landholdings by community	97
Figure 5.1: Sectoral composition of farmland investments (2005 - 2011).....	109
Figure 6.1: Map of Cross River State and its protected areas	133
Figure 6.2: Distribution of selected concessions	139
Figure 6.3: Land-use change 1986 - 2002	143
Figure 6.4: Land use along MCC road in 2002	151
Figure 7.1: Ownership structure of Zambian biofuel investments	170
Figure 7.2: Business models employed by Zambian biofuel investors.....	173
Figure 7.3: Distribution of land acquired for Zambian biofuel investments.....	175

List of Boxes

Box 2.1: Comparing different types of large-scale land acquisitions	23
Box 2.2: Is 'available' land really available?	41
Box 5.1: Potential implications of land alienation on rural livelihoods	120

List of Tables

Table 2.1: Examples of 'failed' mega-deals	22
Table 2.2: Distribution of data by type of data source	25
Table 2.3: Large-scale farmland acquisitions in numbers	26
Table 2.4: Selected explanatory variables for investment	28
Table 2.5: Primary type of end-market and regional origin	30
Table 2.6: Profiles of farmland acquisitions in Africa	35
Table 2.7: Land acquisitions and land availability	39
Table 2.8: Customary rights and terms of alienation.....	42
Table 2.9: Potential contribution of biofuel projects to energy security	44
Table 2.10: Potential contribution of cereal projects to food security	45
Table 3.1: Overview of the investment governance process	57
Table 3.2: Overview of case study investments.....	60
Table 3.3: <i>Ex ante</i> land use <i>within</i> concession.....	63
Table 3.4: Employment data	73
Table 4.1: Population information of affected communities	96
Table 4.2: Changes in livelihood portfolio.....	99
Table 4.3: Perceived livelihood impacts of land loss	100
Table 4.4: Benefits of employment	101
Table 5.1: Overview of parameters	III
Table 5.2: Legal provisions regulating farmland acquisitions	II3
Table 5.3: Extent of displacement of customary landholdings.....	120
Table 6.1: Privatization status of Cross River State estates.....	137
Table 6.2: Large-scale private plantations.....	146
Table 7.1: Policy mechanisms envisioned for achieving policy aims	164
Table 7.2: Investor incentives	165
Table 7.3: Content requirements for the Project Brief and the ESIA.....	169
Table 7.4: Investment performance, 2007 - 09	171
Table 8.1: Projects involving loss of access to land and compensation.....	186
Table 8.2: Investor initiatives.....	188
Table 8.3: Projects located within significant landscapes	189
Table 8.4: Summary of key parameters on customary rights protection.....	190

Acronyms

ADC	Agricultural Development Corporation (Nigeria)
AISD	Agricultural Investment Support Directorate (Ethiopia)
ATA	Agricultural Transformation Agenda (Nigeria)
BAZ	Biofuel Association of Zambia
CARES	Cross River Agriculture and Rural Empowerment Scheme
CDC	Commonwealth Development Corporation
CEEC	Citizen Economic Empowerment Commission (Zambia)
CLS	Customary Land Secretariat (Ghana)
CofO	Certificate of Occupancy (Nigeria)
CREL	Cross River Estates Limited
CRS	Cross River State (Nigeria)
CR-SEEDS	CRS Economic Empowerment and Development Strategy
CSO	Civil Society Organization
DIN	Development in Nigeria
DRC	The Democratic Republic of the Congo
EC	European Commission
ECZ	Environment Council of Zambia
EIA	Ethiopian Investment Agency
EMP	Environmental Management Plan
ENDC	Eastern Nigeria Development Corporation
EP	Equator Principles
EPA	Environmental Protection Agency (Ghana and Ethiopia)
ERB	Energy Regulation Board (Zambia)
ESIA	Environmental and Social Impact Assessment
ETB	Ethiopian Birr
EU	European Union
EWCA	Ethiopian Wildlife Conservation Authority
FAO	Food and Agriculture Organization of the United Nations
FBD	Farm Block Development (Zambia)
FDI	Foreign Direct Investment
FDRE	Federal Democratic Republic of Ethiopia
FPIC	Free, Prior, and Informed Consent
FRN	Federal Republic of Nigeria
GCAP	Ghana Commercial Agriculture Project
GDP	Gross Domestic Product
GIPC	Ghana Investment Promotion Commission
GIS	Geographic Information System
GTP	Growth and Transformation Plan (Ethiopia)
GPS	Global Positioning System
HSM	Al-Habasha Sugar Mills
IFAP	International Federation of Agricultural Producers

IFC	International Finance Corporation
IGR	Internally Generated Revenue
IIAG	Ibrahim Index of African Governance
IPB	Investment Promotion Bureau (Nigeria)
IPPA	Investment Protection and Promotion Agreement
IUCN	International Union for Conservation of Nature
LAP	Land Administration Project (Ghana)
MACO	Ministry of Agriculture and Cooperatives (Zambia)
MBI	Market-based Instruments
MEWD	Ministry of Energy and Water Development (Zambia)
MIGA	Multilateral Investment Guarantee Agency
MoARD	Ministry of Agriculture and Rural Development (Ethiopia)
MoFA	Ministry of Food and Agriculture (Ghana)
MoU	Memorandum of Understanding
MoWE	Ministry of Water and Energy (Ethiopia)
NEP	National Energy Plan (Zambia)
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
NIJAL	Nigeria Joint Agency Limited
NNPS	Nigeria National Parks Service
NTFP	Non-Timber Forest Product
OASL	Office of the Administrator of Stool Lands (Ghana)
OECD	Organisation for Economic Co-operation and Development
PRAI	Principles on Responsible Agricultural Investment
RED	European Commission's Renewable Energy Directive
REDD+	Reducing Emissions from Deforestation and Forest Degradation
RRDC	Rainforest Resource and Development Center (Nigeria)
RSB	Roundtable on Sustainable Biofuels
RSPO	Roundtable on Sustainable Palm Oil
RTRS	Round Table on Responsible Soy
SNNPR	Southern Nations, Nationalities, and Peoples' Region (Ethiopia)
UAC	United Africa Company
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax
WCS	Wildlife Conservation Society
WWF	World Wide Fund for Nature
ZDA	Zambia Development Authority

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Introduction

The Sustainability Challenge

1.1 African farmland and the modern accumulation crises

Farmland has in recent years become an increasingly important asset class. In many countries in the developing South, private investors, and sometimes governments, have acquired vast tracts of land on long-term leases or through outright purchase, ostensibly for establishing large-scale (monocrop) plantations for food crops, biofuel feedstocks, or timber and pulpwood trees (von Braun and Meinzen-Dick 2009; Cotula *et al.* 2009; Anseeuw *et al.* 2012a). Gaining momentum in 2008, the media, civil society organizations, and some academic circles warn of a 'neo-colonial land grab', in which vulnerable populations devoid of secure property rights are dispossessed and displaced in the name of the interests of corporate accumulation (GRAIN 2008; Friends of the Earth 2010; Borras and Franco 2010a; Economist 2011; Hall 2011; Oxfam 2011; McMichael 2012). Despite a dearth of accurate data, these threats are said to be especially significant in sub-Saharan Africa; on the one hand due to comparatively weak capacity to effectively regulate land transfers and protect customary claims to land (Alden Wily 2011; German *et al.* 2013) and on the other due to the disproportionately high interest in its farmland (World Bank 2011a; Anseeuw *et al.* 2012a). Some attribute the latter to the availability of cheap agro-ecologically suitable land (FAO 2008a; Fischer *et al.* 2009; Schoneveld 2010), while others claim that investors purposely exploit weak tenure regimes (Arezki *et al.* 2010; Deininger 2011).

Considering sub-Saharan Africa's colonial history, it could though be argued that the appropriation of land for plantation agriculture is not necessarily a new

phenomenon. In the late 19th century, for example, Africa became an important Imperial source of raw materials for industrial expansion (e.g. rubber and timber), food staples (e.g. maize and wheat), and 'colonial goods' (e.g. sugar, coffee, tea, palm oil) (Hobsbawn 1987; Alden Wily 2012a). Colonial entrepreneurs were allocated large areas of land for cultivating cash crops, such as rubber in West Africa, oil palm in the Belgian Congo, and tea and coffee in East Africa (Wickizer 1958; Munro 1981; Christopher 1985; Byerlee 2013). Moreover, in areas conducive to European settlement, particularly in Southern and Eastern Africa, the most fertile lands were typically allocated to Europeans and Boers (Friedmann 2006; Huggins 2011). Although some of the larger tree crop plantations in West Africa remain operational to this day, much of the plantation land was redistributed following decolonialization, albeit rarely equitably, or abandoned as a result of civic and political turmoil.

For many years following independence, governments across sub-Saharan Africa continued to actively support the development of plantation agriculture - though rather as a tool to 'modernize' the agricultural sector and in support of import substitution industrialization policies (de Schutter 2011a; Deininger and Byerlee 2012). This largely took the form of state farms; most of which ultimately failed as a result of mismanagement, labor shortages, and structural adjustment reforms (Benneh 1972; Hill 1977; Eicher and Baker 1982; Bonneuil 2000; Amanor and Pabi 2007). Efforts to promote large-scale private farms - typically with multi-lateral donor support - ran into a similar fate (Tyler 2011; Byerlee 2013).

The contemporary rise in demand for Africa's farmland, therefore, certainly has its historical precedents. Nonetheless, early evidence suggests that the pace and scale of this demand has taken on unprecedented proportions (World Bank 2011a; Deininger 2011; Anseeuw *et al.* 2012a). In particular, current processes reflect more fundamental shifts in the configuration of global agricultural production networks. This can be attributed to transformations in international power relations and the convergence of important global social, economic, and environmental issues - signifying a structural, rather than transient, development.

Margulis and Porter (2013) suggest that these new investments are taking place within an increasingly complex and polycentric political-economic environment. In contrast to the traditional 'core-periphery' relations that has long characterized the post-World War II hegemony of US and allies (and preceding colonial relations), the recent emergence of the so-called BRICS (Brazil, Russia, India, China, and South Africa) and numerous Gulf States are increasingly challenging prevailing global economic structures and patterns of exploitation. This has also had important implications for the *international food regime* - the rules that shape the global production, distribution, and consumption of agricultural commodities (Friedmann and McMichael 1989). From the 1930s, global agricultural markets evolved around cheap, subsidized food from Northern economies, institutionalized through the World Trade Organization (WTO) (*ibid*; Friedmann 1993), which has served to articulate and advance primarily the interests of US and European agri-

businesses (McMichael 2009; Akram-Lodhi 2012). In order to reduce dependency on these agribusinesses and incite 'regime change', emerging economies are increasingly seeking to exert greater direct control over means of production (Borras *et al.* 2013). This is reflected, for example, in Brazil's rising intra-regional agricultural investments, purchases of large Australian and New Zealand farms by Chinese investors, and India's recent spate of acquisitions in sub-Saharan Africa (Schoneveld 2011; Carmody 2013; Margulis and Porter 2013).

Although the concentration of revenues within processing and distribution has long discouraged agribusinesses from participating in direct production (Eriksen 2007; Cotula 2012), the rising investor demand for farmland highlights what appears to be a shift towards vertical integration in the sector. While this can partially be attributed to the aforementioned geopolitical transformations, a myriad of market and policy forces are also at play. Underlying this is what McMichael (2012) terms the neoliberal 'accumulation crisis', as expressed through the conjuncture of the food, energy, and financial crises. One could arguably also add to that a fourth crisis: an environmental crisis (e.g. climate change) that has spurred pro-biofuel policies and incentives in industrialized countries, such as the EU Renewable Energy Directive (RED) and the US Renewable Fuel Standard (RFS 2).

Between 2005 and 2011, global food and energy markets experienced extreme volatility, with the World Food Price Index more than doubling and the Oil Price Index almost trebling (see figures in Annex A1). The precise causes of the food price crisis remains a topic of debate, though is thought to be the result of a range of interrelated factors, including global stock depletions, poor cereal harvests, the diversion of food crops for biofuel production (particularly maize-based ethanol in the US), financial speculation, high cost of inputs resulting from high energy prices, and the imposition of export bans to protect domestic supplies (FAO 2008a; DEFRA 2010; HLPE 2011). In contrast to most historical oil price shocks, the recent oil price spikes was largely the product of a stagnating global supply, resulting from the unwillingness/inability of major oil producing countries to meet rising (and price inelastic) global demand (Hamilton 2009).

These crises coincide with and are partly driven by processes of financialization - whereby profits increasingly accrue through financial (e.g. liquid) channels, as opposed to commodity trade - resulting from the deregulation of the financial services sector (Harvey 2003; Arrighi 2007; Moore 2012). This has resulted in a rapid expansion of commodity derivative markets, especially for futures (Knoepfel 2011; McMichael 2012). Between 2003 and 2008, the value of outstanding commodity derivatives rose from US\$ 13 billion to US\$ 317 billion (Kaufman 2010, cited in McMichael 2012). This has exposed commodity markets to financial speculation, adversely impacting global price stability (DEFRA 2010).

In this context, land is increasingly perceived to be an attractive new asset class, particularly as a hedge against market fluctuations (Buxton *et al.* 2012; Cotula 2012). With food and energy prices outperforming financial markets in the context

of the Global Financial Crisis (see Annex A1), the agricultural and biofuel sectors had become comparatively safe investment options.

The food and energy crises have also revealed structural global issues related to long-term food and energy supplies and security. This has exposed the vulnerability of many import-dependent economies to instabilities within international markets. In the context of a rapid growing global population, changing consumption patterns within emerging economies, finite fossil fuel supplies, and climate change, security of access to natural resources to produce essential reproductive goods such as food and energy (e.g. in the form of liquid biofuels) is becoming an economic imperative. Countries with insufficient supplies of natural (and arguably human) resources, but with sufficient capital are, therefore, increasingly encouraged to secure access to these resources beyond national boundaries (von Braun and Meinzen-Dick 2009; Zoomers 2010; de Schutter 2011a). Public policies promoting transboundary investments are consequently becoming important drivers of investment (Schoneveld 2011; Toulmin *et al.* 2011; Cotula 2012; Woertz 2013). As the geographies of supply and demand become more distinct, the private sector is increasingly positioning itself to capitalise on the trade opportunities this creates (e.g. by shifting to upstream value chain activities overseas).

1.2 Agricultural investment trade-offs

Despite widespread introduction of statutory tenure norms, most rural land in sub-Saharan Africa continues to be governed by customary law (Alden Wily 2011). Deininger (2003) estimates that not more than ten percent of the land area in sub-Saharan Africa is under title, with most titled lands allocated to large farms in South Africa. During the 1960s and 1970s, most African governments nationalized land ownership under the pretext of social egalitarianism (Francis 1984; Hammond and Antwi 2006). This was followed by land registration and titling programs, which were premised on the assumption that secure and individualized landholdings would promote land investment and productivity (Boone 2007; Place 2009; Sikor and Müller 2009). These programs tended to exacerbate conflicts by failing to recognize overlapping and secondary rights to land and reinforcing existing inequalities (Shipton and Goheen 1992; Platteau 1996; Toulmin and Quan 2000; Fitzpatrick 2005; Peters 2009). Other than in Kenya, in most of sub-Saharan Africa titling has failed to materialize for much of the rural population and is largely confined to elite who are able to bear the costs (Alden Wily 2012a). While this has rendered most Africans mere tenants of the state, since the late 1990s a number of countries (e.g. Ghana, Mozambique, Tanzania, South Sudan, and Uganda) have begun to extend legal recognition to customary ownership rights without requiring legal formalization (Alden Wily 2011, 2012b; Amanor 2012).

Despite notable exceptions, the African land sector continues to be characterized by legal pluralism, in which customary claims remain subordinate to state ter-

ritorial authority. Coupled with market-oriented liberalization reforms of the structural adjustment era that further facilitated (foreign) investor access to land (Cotula *et al.* 2004; Manji 2006; Alden Wily 2012b), rising commercial demand for farmland exposes the rural population to involuntary displacement and dispossession of valuable livelihood resources. A growing body of research has illustrated how investments, often through leasehold titles of a lengthy duration of between 50 and 99 years, are concentrating within the customary land domain and often fail to adequately respect existing tenure regimes (see, for example, Habib-Mintz 2010; Nhantumbo and Salomão 2010; Andrew and van Vlaenderen 2011; Baxter 2011a, 2011b; Deng 2011; German *et al.* 2011a; Rahmato 2011). In practice, this implies that affected persons are seldom consulted, requested to provide consent, or adequately compensated for their exclusion from critical livelihood resources. Despite a scarcity of rigorous empirical research, loss of access to housing, farmland, and common property resources such as water, pasture, and (non-timber) forest products is argued to produce a host of adverse local impacts related to, for example, rising food and income insecurity, reduced capacity to cope with shocks, widening of pre-existing inequalities, increasing pressure on community resources, and social conflicts (Chachage 2010; Baxter 2011a; Deininger 2011; Locher 2011; Oxfam 2011; Tsikata and Yaro 2011; Balachandran *et al.* 2012; Vāth 2012; Shete 2013). The most vulnerable population groups, such as migrant groups and women, tend to be disproportionately impacted (Baxter 2011b; Daley 2011; Koopman and Mar Faye 2012; Piacenza 2012).

The environmental sustainability of agricultural investment, within the developing world in particular, is also widely questioned; historically, the expansion of plantation agriculture has been a leading driver of deforestation and environmental degradation (Morton *et al.* 2006; Koh and Wilcove 2008; Rudel *et al.* 2009; Gibbs *et al.* 2010; Schoneveld 2010). In sub-Saharan Africa, early evidence is suggesting that many new agricultural investments are located within areas of high ecological significance, such as wetland areas, dry and tropical forests, and wildlife-abundant savannah landscapes (Gordon-Maclean *et al.* 2009; Nhantumbo and Salomão 2010; Rhamato 2011; Nguiffo and Schwartz 2012; The Rainforest Foundation 2013).

Despite these negative externalities, many host country governments and multilateral institutions argue that these investments have the capacity to positively contribute to a range of macro-economic and poverty indices. To begin with, since most economies in sub-Saharan Africa are both net food and net energy importers (section 2.5.3 will further elaborate on this), private capital formation within those sectors could bolster domestic output of imported food crops and develop import-substituting alternative energy markets - thereby promoting domestic food and energy sovereignty (GTZ 2009; Mann and Smaller 2010; Cotula 2012). This could contribute to the current account balance, foreign exchange earnings, and the external debt position of host countries and reduce the risk of economic contractions resulting from global commodity price hikes (Schoneveld 2010). Moreover, in the

context of longstanding neglect of Africa's agricultural sector, as evidenced by the declining public and aid spending on the sector (Fan and Saurkar 2006; Akroyd and Smith 2007), farmland investments are also viewed as a means to contribute to its productivity and competitiveness, while alleviating some of the public spending burden (Poulton *et al.* 2008; von Braun and Meinzen-Dick 2009; World Bank 2011a; IMF 2012). For example, only four countries successfully met the target of enhancing agricultural spending to ten percent of budgetary expenditure by 2008 (Fan *et al.* 2009) - as enshrined in the African Union's 2003 Maputo Declaration. Many African countries are now seeking private sector funds to close this gap (Toulmin *et al.* 2011).

Besides the macro-economic contributions, host country governments also tend to argue that agricultural investments could serve to alleviate rural poverty by promoting the uptake of modern farming practices, improving access to inputs, supporting smallholder integration into global value chains, and generating much-needed formal employment opportunities (World Bank 2008; Deininger 2011; IMF 2012; Lavers 2012). Studies from Mozambique and South Africa have also shown that access to rural waged labor, particularly on large farms, may positively contribute to female (economic) empowerment and benefit in particular the poorest, often landless, rural population (Sender 2002; Sender and Oya 2007; Cramer *et al.* 2008).

This pro-investment rhetoric is very much in line with the dominant discourse on global economic integration and market liberalization. Most prominent multilaterals have long been actively promoting foreign direct investments (FDI) as an economic development strategy and the importance of developing competitive regulatory environments conducive to investment (Asiedu 2004; Moss *et al.* 2004; Dupasquier and Osakwe 2005; Daniel 2011). This is reflected, for example, in the New Partnership for Africa's Development's (NEPAD) Framework Document, the OECD Initiative on Investment for Development, the UN Millennium Declaration, the UN Economic Commission for Africa's 2011 Economic Report on Africa, and the World Bank's 2008 Agriculture for Development report. Within this political-economic milieu, most African countries have since the 1990s started lifting capital controls, offering competitive fiscal incentives, and minimizing administrative bottlenecks through the establishment of 'one-stop investment centers' that aid investors in applying for the necessary permits and incentives, and often in acquiring land (Dufey *et al.* 2008; Cotula *et al.* 2009; Toulmin *et al.* 2011).

Many of these developmental assumptions have, however, been strongly disputed and challenged, not only by academia and civil society organizations, but also by prominent 'insiders', such as Jacques Diouf, the former director-general of the UN Food and Agriculture Organisation (FAO) (Blas 2008), José Graziano da Silva, the current director general of the FAO (da Silva 2012), and Olivier de Schutter, the UN Special Rapporteur on the Right to Food (de Schutter 2009, 2011a). Critiques, often directed at the World Bank, largely point at the lack of empirical evidence underlying these assumptions and how this is merely justification for what consti-

tutes a socially and environmentally detrimental form of extractive agriculture geared towards the overconsumption of global centers of accumulation (Oya 2009; Li 2011; de Schutter 2011a; McMichael 2012; White *et al.* 2012; Borras *et al.* 2013; German *et al.* 2013). In academia, such dynamics are popularly conceptualized through the lens of (Marxist) agrarian political economy. In such works, control over land and resources is seen as being established through processes of primitive accumulation (or what Harvey (2003) refers to as 'accumulation by dispossession'), enclosure, and (re)territorialization (some examples include Borras and Franco 2010a; Peluso and Lund 2011; Alden Wily 2012b; Makki 2012; Martiniello 2012; White *et al.* 2012; Carmody 2013; Sassen 2013; Wolford *et al.* 2013).

1.3 Positioning governance

Research to date has highlighted how in the absence of effective governance mechanisms to regulate investments, negative social and environmental externalities tend to arise - to a point where these typically outweigh potential benefits and investments become altogether undesirable (Cotula *et al.* 2009; Deininger 2011; German *et al.* 2013). As discussed at the start of the preceding section, this is particularly problematic in many African countries due the plurality of tenure systems. Albeit with significant intra-regional variations, governance deficiencies in the most general sense continues to underpin poverty and poor economic performance on much of the sub-continent, as reflected by the comparatively low scores of many countries on global governance indicators related to, for example, human rights, accountability, political stability, regulatory quality, rule of law, and corruption (see, for example, the World Bank's Worldwide Governance Indicators (WGI) or Mo Ibrahim Foundation's Ibrahim's Index of African Governance (IIAG)). Scholarly literature on the African state has typically sought explanation in historicity (notably colonialism), societal embeddedness, symbolic representation of statehood, and institutional legitimacy (Englebert 2000; Lund 2006; Haggmann and Péclard 2010). Therefore, in the absence of regional and international regulatory frameworks, the investment governance burden falls largely on host country governments that are typically ill-equipped to adequately regulate such socially and environmentally complex investments. With most governments also eager to attract investments in the sector and often competing with other countries for favor, besides capacity, there may also be a lack of political will to impose excessively stringent conditions on investment. Particularly within insufficiently embedded and legitimate regimes, pro-investment policies combined with lack of downwards accountability could be especially threatening to land users without secure user claims. Moreover, developmental objectives may trump the imperative for environmental conservation. Such obstacles raise numerous challenges for investment sustainability.

In spite of its practical relevance, this area of inquiry, as it relates to large-scale agricultural investment, remains grossly under-researched. A substantial body of research has examined the theoretical/conceptual framing (e.g. Peluso and Lund 2011; Borras and Franco 2012; White *et al.* 2012; Margulis and Porter 2013), the macro-level trends (e.g. World Bank 2011a; Anseeuw *et al.* 2012a; Cotula 2012), the legalistic dimensions (e.g. Cotula 2011; Alden Wily 2011, 2012a), and the impacts (e.g. Gordon-Maclean *et al.* 2009; Chachage 2010; Nhantumbo and Salomão 2010; Baxter 2011a; Oxfam 2011; Locher 2011; Våth 2012; Shete 2013). More recently, issues of governance are starting to be examined, though still offers only limited fresh empirical evidence. This predominantly involves general theoretical discussions on the complexity of global governance or specific discussions on the merits of different governance instruments, especially third party certification schemes, responsible finance initiatives, and trade standards (see, for example, Heri *et al.* 2011; Pacheco *et al.* 2011; German and Schoneveld 2012; and the contributions to the 2013 special issue in the journal *Globalizations* entitled *Land Grabbing and Global Governance*). Host country governance issues are in contrast sparsely researched.

Much of the governance debate in recent years has centered on the virtues of the 'code of conduct' - or the voluntary ethical principles that companies and host governments can use to guide their (governance) practices. Codes of conduct relating to agricultural investment have been proposed, which include the Principles on Responsible Agricultural Investment (PRAI), formulated by a consortium of the World Bank, UNCTAD, FAO, and IFAP, and the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (see Annex A5 for an overview). These initiatives have been strongly criticized for their underlying assumption that so-called 'win-win' outcomes are realizable; critics instead argue that such initiatives facilitate 'land grabbing' and merely serve to greenwash unsustainable corporate practices (Lund-Thomsen 2008; Borras and Franco 2010b; Li 2011; de Schutter 2011a; McMichael 2012).

Borras *et al.* (2013) places actors engaged in this debate in one of three boxes: those that (1) regulate to facilitate, (2) regulate to mitigate negative impacts and maximize opportunities, and (3) regulate to stop and roll back land deals. The first seeks to govern investments in such a way as to advance first and foremost the interests of investors; the World Bank is placed here. The second includes those that subscribe to the 'win-win' scenarios; for example, those that endorse codes of conduct. The third, which includes in particular scholars within the agrarian studies discipline, dismisses large-scale agricultural investment outright for failing to be sufficiently pro-poor and instead opt for campaigns against land grabbing, the corporate food regime, and capitalism, more generally. This type of framing highlights the highly politicized and polarizing atmosphere that surrounds the governance debate. As a consequence, much-needed governance discussions tend to be over-

shadowed by (scholarly) preoccupation with theoretical conceptualization and paradigmatic questions, often without seriously engaging with empirical evidence.

This research seeks to address some of these important gaps and unite what has to date been relatively disjointed and narrow areas of analysis. Within a topic that has already been aptly conceptualized, it asks practical questions and aims to provide empirically-grounded answers. The point of departure is that investment impacts, be it positive or negative, should be viewed in the context of the processes that (re)produce them; only in this way can we meaningfully discuss governance options and development pathways. This requires a thorough understanding of the factors that *shape* outcomes. A range of topics and their interplay then demand examination, including, for example, the legal and policy frameworks, institutional structures, implementation and enforcement, (traditional) hierarchies, local capacities to claim legal rights, patterns of interaction between stakeholders, diversities of interests, and local social, economic, and environmental impacts. An incomplete picture would emerge from analyzing such topics in isolation.

The ultimate aim of this study is to deepen our understanding of the conditions under which large-scale agricultural investments can be sustainable, and the extent to which such conditions are practically attainable. 'Sustainability' in this context is understood as the reconciliation of environmental conservation, social equity, and economic objectives in a manner that respects basic human rights. Adherence to the right to self-determination, as enshrined in multilateral treaties such as the International Covenant on Civil and Political Rights and the Declaration on the Rights of Indigenous People, is especially applicable. From this perspective, it is considered the obligation of the state to protect the population from being deprived of their access to productive resources. This would ensure that the resources of the rural poor are not exploited for the purpose of servicing extra-territorial scarcities and become new sources of global capitalist accumulation.

1.4 Research design

1.4.1 Research questions

On the basis of the previously outlined research needs and the research aim, the overarching research question is: *Under what conditions can large-scale farmland investments contribute to sustainable and equitable development?*

In order to provide answer to this, three sets of research questions are proposed. The *first set of questions* is intended to contextualize this research, while filling an important knowledge gap. In order to adequately position the country case studies and deepen our understanding of the variations in the characteristics and magnitude of large-scale farmland investments between the different countries in sub-Saharan Africa, the following questions are posed:

- (1) What are the geographic patterns of large-scale farmland investments within sub-Saharan Africa?
- (2) What are the sectoral patterns of large-scale farmland investments within sub-Saharan Africa?
- (3) What insights do these macro-level trends offer into the potential risks and opportunities of large-scale farmland investments?

The *second set of questions* provides guidance to the four country case studies that are the object of this study's primary research activities. With the objective to identify the different outcome determinants within a given context, the following research questions are put forth:

- (4) What are the (potential) local social, economic, and environmental impacts of investment?
- (5) How effectively do existing governance instruments and mechanisms safeguard against the (potential) costs and capture the (potential) gains of investment?
- (6) To what extent can deficiencies be attributed to the content of the law or to implementation and enforcement?
- (7) How can implementation gaps be explained?
- (8) What structural social and economic factors outside formal governance structures also have bearing on outcomes?

The *third set of questions* address the structural factors that inhibit the realization of sustainable farmland investment. They examine, by means of a comparative assessment of findings, similarities and differences between the case study countries by providing insights into the following:

- (9) What similarities and differences in relation to outcomes can be observed between the case study countries?
- (10) What structural factors contribute to these outcomes?
- (11) What are the implications of findings for the governance of large-scale farmland investments and sustainable development in the case study countries and sub-Saharan Africa, more generally?

1.4.2 A multi-disciplinary, multi-scalar, and multi-stakeholder approach

Approaching these research questions with a single conceptual/theoretic lens would not do justice to the various disciplinary fields that are able to offer valuable perspectives on the topic. While this study is therefore purposely not married to a specific conceptual/theoretical orientation, it does borrow heavily from a wide range of disciplines. It is inspired in particular by various streams of political economy and ecology. For example, this research looks beyond legal management and operational rights that form the basis for property relations (see Schlager and

Ostrom 1992) to broader notions of access and power. Following Ribot and Peluso (2003), "access is the ability to benefit from things - including material objects, persons, institutions, and symbols" (p. 153). Since 'ability' is akin to power, by focusing on struggles over access attention is brought to a much wider range of social relations, including, but not limited to, property, which constitutes merely legitimate social relations (see also Sikor and Lund 2009). Since access and power are not static qualities, they have to be viewed as processes that involve constant negotiation and legitimization.

The Institutional Analysis and Development (IAD) framework, as described by Polski and Ostrom (1999), offers valuable analytical constructs for examining the socio-political processes by which access is acquired, maintained, controlled, and contested. The framework is a multitier conceptual tool designed for evaluating policy effectiveness and developing new policy interventions. In line with Ostrom (2005), the concept of 'action arenas' is particularly valuable in examining patterns of interactions that shape outcomes. The action arena encompasses the actors (e.g. the rural poor, government, and civil society organizations), the action resources these actors draw upon (e.g. information, time, and human, social, and financial capital), the formal and informal rules, and the action situation (e.g. the social space where actors interact). The focus here is on the patterns of interaction between actors and the outcomes that produces. This is helpful in understanding the local dynamics by which land is alienated and appropriated. Moreover, it can also be applied to the evaluation of processes of collective action - the action taken by a group of individuals to achieve a common interest (de Gregorio *et al.* 2008). This is relevant not only to understanding the conditions under which collective action produces intended results, but also to understanding why individuals fail to effectively organize (e.g. for the purpose of contesting rights infringements).

In analyzing the local socio-economic implications of changes in access regimes, this study draws heavily from concepts employed in livelihood studies. The sustainable rural livelihoods framework in particular is a valuable tool for analyzing livelihood issues. This involves evaluating how, within a given context, livelihood resources (e.g. social, human, physical, financial, and natural capitals) are utilized through specific livelihood strategies (e.g. agricultural intensification, migration, and diversification) to achieve particular outcomes (see Chambers and Conway 1992; Scoones 1998). In the context of this research topic, this framework is used to identify how loss of livelihood resources translates into outcomes (e.g. reduction in outputs, loss of wellbeing and capabilities, rising susceptibility to shocks). One's ability to regain access to these resources and employ specific livelihood strategies aimed at overcoming risks and capitalizing on opportunities are thus important areas of inquiry.

Geography and land change science, in particular, has to date played only a marginal role in the contemporary land acquisition debate (Messerli *et al.* 2013). Considering its relevance to both sustainability and livelihood questions, this research also seeks to identify the drivers and nature of land use change processes

within a project's landscape. Drawing on spatially explicit data, this involves assessing the type of landscapes in which projects are being developed, the type of land use changes that are occurring (e.g. from subsistence food crops to biofuel feedstocks or from forestry to tree crops), and the indirect effects of land use change on other land uses (e.g. displaced households encroaching onto forests in search of new farmland) (see Turner *et al.* 2007 for a general discussion on the relevance of land change science to sustainability research).

Since large-scale farmland investments are concerned with processes playing out at the global level, the national level, and the local level, this research also takes a multi-scalar and multi-stakeholder approach. In particular, it considers how priorities and discourse at the level of the central government translate into policies and practices. The interactions between central government and lower tiers of government and the manner in which these are formed by internal hierarchies and prevailing power and accountability structures are, in turn, important in shaping governance processes at the meso- and micro-level. Furthermore, the nature of relations between local government, investors, customary elites, and different community groups has significant bearing on how well different, and sometimes conflicting, interests are reconciled and accommodated. Moreover, civil society organizations and the media can provide an important counterbalance to societal power differentials. Hence, an analysis of the dynamics between stakeholders across scales provides valuable insights into an array of institutional processes.

1.4.3 Methodology

Country selection

When I first started conducting research on large-scale farmland investments in September of 2008, few academics and only a handful of civil society organizations were tuned into the topic. The hyped notion of 'land grabbing' as we know it today was yet to emerge and no comprehensive empirical evidence was available as to major target countries. Under a project funded by the European Commission, entitled *Bioenergy, sustainability and trade-offs: Can we avoid deforestation, while promoting bioenergy?*, led by the Center for International Forestry Research (CIFOR), I was responsible for conducting two country studies in sub-Saharan Africa on the impacts and governance of biofuel expansion. At that time, the emerging trend was for private sector investments in the cultivation of the hardy, drought-resistant, biofuel feedstock *Jatropha Curcas L.* (jatropha) - arguably the crop where it all started. I selected Ghana and Zambia for the simple fact that on the basis of desk research and interacting with civil society organizations these appeared to be some of the major investment destinations and, in contrast to other major recipients (e.g. Madagascar, Mozambique, and Tanzania), were yet to be researched.

Only when in the course of 2010 an opportunity arose for me to become a PhD candidate at the Utrecht University starting in 2012, did more rigorous country selection criteria become a consideration. At the end of 2011, while still employed by CIFOR, my next field research on this topic took me to Ethiopia. I selected Ethiopia for a number of reasons. Firstly, it was, like Ghana and Zambia, a major investment destination. Secondly, rather than the European biofuel investors that comprised the vast majority of investment inflows in Ghana and Zambia, Ethiopia was an important destination for Southern food crop investors. Thirdly, and most importantly, Ghana and Zambia are by African standards relatively democratic and liberal states. The Ethiopian regime, on the other hand, has authoritarian tendencies, with significantly greater interference of the state in the domestic economy. Moreover, land use rights are secured only through individual land certificates, with customary land management institutions or common property resources, in contrast to Ghana and Zambia, not recognized by law.

My fourth and final case study country, Nigeria, I selected due to the lack of relevant research that has been conducted here and its dynamic and often tumultuous governance context. I was presented with an interesting opportunity to conduct politically sensitive in a country where safety concerns present major practical obstacles for a foreign researcher. In order for my case study countries to represent to some credible degree the vast diversity of contexts within sub-Saharan Africa, Nigeria was also an interesting addition. Although Nigeria returned to civilian rule in 1999 following decades of military administration, the state continues to exhibit authoritarian tendencies. Moreover, like Ethiopia, all land is vested in the state and many customary claims to land and institutions are not recognized by statutory law. However, where Ethiopia has a strong developmental state with a clear economic development strategy, Nigeria, on the other hand, has the characteristics of Africa's many resource-rich 'failed states', where oil politics and (neo)patrimonial accumulation have resulted in rampant corruption, economic mismanagement, and a poorly embedded state.

The four case studies thus offer a diverse cross-section of sub-Saharan Africa and exhibit important defining characteristics of many other African countries. Recognizing that innumerable variables can be used to characterize country context, a number of variables are especially pertinent to a study on governance. For example, on the Democracy Index from the Economist Intelligence Unit (2012), Ghana and Zambia are some of the most democratic countries in Africa, surpasses only be countries such as Mauritius, South Africa, and Botswana. Nigeria, on the other hand, falls somewhere in the middle and is labeled as a 'hybrid regime', while Ethiopia, as discussed previously, is labeled as an 'authoritarian regime'. Most countries within Central Africa do have more repressive states. The IAG (2012) indicator on respect for human rights shows a similar distribution. Similar patterns can also be observed when considering the security of property rights. According to the Institutional Profiles Database (IPB) of the Centre d'Etudes Prospectives et d'Informations Internationales (CEPII) (2009), property rights in

Ghana are considered some of the most secure in Africa, while in Ethiopia these are considered some of the most insecure - with Nigeria and Zambia somewhere in the middle. On the IIAG quality of economic management indicator, however, Ethiopia ranks alongside Ghana and Zambia as high performers, while Nigeria is ranked somewhere within the lowest quartile. In terms of openness to foreign capital, according to the IPD, Ghana, Nigeria, and Zambia score, like most other African countries, quite highly, with Ethiopia considered the most closed economy in the region. However, Nigeria ranks alongside Ethiopia as one of the most difficult countries to establish a new business, with Ghana considered as one of the easiest (CEPII 2009).

These examples illustrate that, on the basis of a variety of governance continuums, the governance context within the case study countries is relatively diverse, suggesting that findings may well be representative for many other African countries. Notable exceptions would be countries where land redistribution programs and restrictive legislation on large land ownership act as deterrents for large-scale farmland investments (e.g. Namibia, South Africa, and Zimbabwe) and countries with authoritarian regimes that exhibit weak economic management capacities (unlike Ethiopia that ranks highly on the latter dimension), such as a number of Francophone countries (e.g. Chad, the Central African Republic, Cote d'Ivoire, Democratic Republic of the Congo, and Guinea).

Site selection

Selection of projects to research was based largely on the status of project development; this to ensure that land development activities was sufficiently underway to enable some form of impact assessment. Data was collected from central and regional governments to determine the areas with the highest concentration of investment. This served to narrow the geographic focus and ensure that findings optimally represent domestic investment trends. Subsequent field visits provided information as to project status and helped to guide site selection.

Due to Ethiopia high ecological and social diversity, selected sites were distributed across different eco-regions, including humid, tropical rainforests, temperate highlands, and arid shrublands. A total of ten projects were evaluated across the Gambella, Oromiya, and Southern Nations, Nationalities, and Peoples' Region. These regions comprise the vast majority of large-scale farmland investments in Ethiopia; thus, findings are considered to be highly representative for Ethiopia as a whole. Dominant local production systems include agro-pastoralism, shifting cultivation, sedentary farming, and hunting and gathering.

In Ghana, research activities focused on the forest-savanna transition zone, an agro-ecological zone located between the humid tropical areas in southern Ghana and the dry savannas in the north. A total of nine projects were evaluated across the Ashanti and the Brong Ahafo region. Although approximately 65 percent of investors are located within this zone, as a result of comparatively low population pres-

tures and comparatively high suitability of land, processes in southern Ghana may differ as a result of higher population densities and more market-oriented tenure regimes. Although a small proportion of the population practices agro-pastoralism, much of the population is engaged in shifting cultivation, supplemented with hunting and gathering.

In Nigeria, research activities focused on the tropical rainforest area of the southeast, which forms part of the Congolian forest belt. A total of 14 projects were evaluated across Cross River State. The majority of investment projects in Nigeria are located within such forested, and sometimes, wetland ecosystems (e.g. Kwara and Taraba State); predominantly due to 'availability' of land. However, due to relatively high regional economic autonomy afforded by Nigeria's system of federalism, despite commonalities in legal and institutional frameworks and 'culture' of the public administration, (quality of) investment governance may differ between states. In Cross River State, shifting cultivation is widely practiced, with some sedentary farming being practiced in more populous areas. Communities residing within the rainforest margins have a comparatively high dependency on forest products.

In Zambia, research activities focused on the central-northern dry forest areas that forms part of the Central Zambezian Miombo woodlands that covers the majority of the country. A total of five projects were researched across the Central, Copperbelt, and Northern Region - most of which significantly larger in extent than the projects in the other countries. With almost 90 percent of the area acquired for large-scale farmland investment located within these regions, findings are assumed to be highly representative of domestic trends. Most communities practice a combination of sedentary farming and shifting cultivation, supplemented with hunting and gathering. More details on the case study sites can be found in the individual chapters.

Research activities

The first set of activities involved semi-structured key informant interviews, secondary data collection, and review of legal and policy documentation within country or regional capitals. Interviews with government officials from a wide range of administrative and sectoral agencies offered insights into legal and institutional structures, implementation and enforcement obstacles, and the state discourse and perspective on large-scale farmland investments. This was supplemented with interviews with civil society organizations involved in (aspects of) the topic. These stakeholders often facilitated access to publically unavailable information, such as data on investments, Environmental and Social Impact Assessments (ESIA), feasibility studies, investment contracts, and surveys plans.

Similar key informant interviews were subsequently held with government and civil society organization at the district and regional level. While the engagement of investors was always sought, approximately 40 percent of investors de-

clined to contribute to the research. Though reasons were often not given, fear of bad press appeared to be an important determinant. Fortunately, government stakeholder rarely declined to be interviewed and often appeared uninhibited in offering critical insights - even in the more tightly controlled Ethiopia.

At the site level, traditional authorities at affected communities, typically consisting of local chiefs, were by and large the first point of contact. As important enablers of land alienation, these traditional authorities were an important object of analysis, offering valuable insights into the motives of the customary elite and the specifics of the 'negotiation encounter'. Their endorsement was also essential for any further direct engagement with the general population of affected communities. Excepting one Paramount Chief in Nigeria, none of the traditional authorities opposed research activities.

Within affected communities, focus group discussions were held with affected households. Affected households were seen as those households whose access to land and its resources has been denied as a direct result of investment. Where possible, relatively homogenous groups (e.g. men, women, and migrants) of between ten and fifteen individuals were formed and, with support from local translators, questioned on a range of topics. This included, but was not limited to, land alienation processes and level of community engagement, social structures, type of land use appropriated, effect of land loss, livelihood portfolios, livelihood adaptation strategies, processes of collective action, benefit capture, and project expectations. Participatory ranking exercises were employed to evaluate the relative magnitude and importance of different impacts and expectations. Focus group discussions were also held with project employees to evaluate the contribution of employment to livelihood, changes in livelihood portfolios, employment conditions, and expectations. While other local stakeholder groups, such as, for example, outgrowers or tenant farmers, were also sought out, despite plans, none of the projects had initiated any such schemes. Similarly, while sought out, very few small businesses were established to capitalize on new market opportunities and in-migration.

Although household surveys were conducted in Ghana to determine the magnitude of local impacts, in the other case study countries this approach was not followed. This was partly a time/cost against value trade-off. Since many projects are at very early stages of development, negative impacts, on, for example, food and income security, could be especially severe. Over time, as households adapt their livelihood portfolios to new realities, many households may find new ways to ameliorate land loss. Conversely, the impacts of environmental degradation, such as pollution and changes to the water table, may worsen over time. Therefore, a study centered on impacts is likely to produce findings that capture one specific point in time and may not accurately reflect long-term realities. Based largely on my experiences in Ghana, the most valuable information at this early stage comes from the processes by which land is acquired and the manner in which communities interface with and shape these processes. From the perspective taken in this study, where protection of the right to self-determination is considered a defining charac-

teristic of sustainable farmland investment, loss of access to productive resources is also treated as an outcome in itself, especially since this restricts, what Amartya Sen refers to as, the 'capacity to choose'. Therefore, in order to adequately evaluate the diversity of pathways that produce such losses, the choice was made to sacrifice large numbers of household surveys at a smaller number of projects for a larger number of projects that focuses in particular on generating richer qualitative data on local social, political, and economic dynamics. Specific methods employed in the four case study countries can be found in the individual chapters.

1.5 Outline

Chapter 2 addresses the first set of research questions. By means of a quantitative assessment, the chapter evaluates the geographic and sectoral patterns of investment in sub-Saharan Africa. It uses this data to examine the potential positive and negative impacts of investment; focusing on potential land use competition it could generate, the effects on customary land rights, and the contribution to domestic market needs. It expands on, updates, and merges two previously published works:

Schoneveld, G.C. 2010. *Potential land-use competition from first generation biofuel expansion in developing countries*. CIFOR Occasional Paper 58. Center for International Forestry Research, Bogor, Indonesia.

Schoneveld, G.C. 2011. *The anatomy of large-scale farmland acquisitions in sub-Saharan Africa*. CIFOR Working paper 85. Center for International Forestry Research, Bogor, Indonesia.

Chapter 3 to 7 address the second set of research questions. Each chapter is devoted to analyzing outcome determinants in one of the case study countries. Chapter 3 focuses on Ethiopia; Chapter 4 and 5 on Ghana - the first chapter focuses on the impacts and the second on governance; Chapter 6 on Nigeria; and Chapter 7 on Zambia. The Ghana and Zambia chapters have been published in academic journals, while the more recently submitted works on Ethiopia and Nigeria are still in press. An abridged version of the Ethiopia paper has been published as a book chapter.

Schoneveld, G.C., German, L.A., and Nukator, E.D. 2011. Land-based investments for rural development? A grounded analysis of the local impacts of biofuel feedstock plantations in Ghana. *Ecology and Society*, 16(4): 10.

German, L.A., and Schoneveld, G.C. 2012. Biofuels in Sub-Saharan Africa: Review of the early legal and institutional framework for biofuel investments in Zambia. *Review of Policy Research*, 29(4): 467-491.

Schoneveld, G.C., and Shete, M. 2013. Modernizing the periphery: Citizenship and Ethiopia's new agricultural investment policies. In: Kaag, M. and Zoomers, E.B. *Land Grabbing: Beyond the Hype*. Zed Books, London, UK.

Schoneveld, G.C., and German, L.A. 2013. Translating legal rights into tenure security: Lessons from the new commercial pressures on land in Ghana. *Journal of Development Studies*.

Schoneveld, G.C. (in press). Politics of the forest frontier: Negotiating between conservation, development, and indigenous rights in Nigeria.

Schoneveld, G.C., and Shete, M. (in press). Investment-driven rural development in Ethiopia: Local conflicts and governance issues.

The concluding chapter, Chapter 8, addresses the third set of research questions. It compares and contrasts the situations in the four countries and identifies a number of structural factors that explain outcomes. It concludes with a reflection on the implications of findings for the governance of large-scale agricultural investment, specifically, and development discourse, more generally.

Drivers of Investment

The Geographic and Sectoral Patterns of Large-Scale Farmland Acquisitions in Sub-Saharan Africa

2.1 Introduction

The increasing commercial interest in farmland, particularly for the purpose of plantation agriculture, has become the subject of much debate in the public and political arena. Since 2005, rapidly changing global market conditions have encouraged various actors to seek access to large areas of fertile agricultural land for the cultivation of food crops and biofuel feedstocks. One of the key drivers has arguably been the increasing volatility and inflationary pressures on prices in the food and energy sectors – with the World Food Price Index more than doubling and the Oil Price Index almost trebling between 2005 and 2011 (see Annex A1). Another major driver is the increasing incorporation of biofuels into the energy mix, which, largely in response to the introduction of consumption mandates in industrialised countries and partly due to record oil prices, increased from 35 billion to 129 billion litres per year between 2005 and 2011 (EIA 2012; OECD-FAO 2012).

This has created a situation where countries with limited resources to ensure self-sufficiency (due to constraints in the availability of oil, water and agricultural land, for instance), but with sufficient capital, are increasingly seeking to secure supplies beyond national boundaries (von Braun and Meinzen-Dick 2009; de Schutter 2011a). This strategy is in part an attempt to reduce their exposure to global commodity price shocks. As the geographies of supply and demand become more distinct, the private sector is increasingly positioning itself to capitalise on the trade opportunities this creates (e.g. by shifting to upstream value chain activities

overseas). This is reflected in the increasing financialisation of agricultural commodity markets, as illustrated by the rapidly increasing number of outstanding derivative contracts on agricultural commodities (CFTC 2011; Knoepfel 2011) and the growth in specialised agricultural (land) investment funds (GRAIN 2009; Merian Research/CRBM 2010).

Much of the rush for farmland is concentrated in sub-Saharan Africa. The World Bank (2011a), for example, claims that during the period 2008–2009 alone 70 percent of the 56.6 million ha acquired globally is located in Africa. This demand is estimated to be equivalent to more than 20 years of agricultural land expansion in Africa (Deininger 2011). New data from the land deal dataset, the Land Matrix, suggests that these figures are lower, though still significant, at 47.7 percent of the 42.1 million ha of concluded land deals worldwide (ILC 2013). This disproportionate interest in Africa's farmland can be ascribed primarily to its comparative advantages for crop production: the abundance of agro-ecologically suitable and 'available' land and the low cost of land and labour (Fischer *et al.* 2009; Schoneveld 2010).

While these large-scale agricultural investments could, in theory, make important contributions to Africa's macroeconomic and poverty indices (Poulton *et al.* 2008; Cotula *et al.* 2009; World Bank 2011a), the rise in large-scale farmland acquisitions in Africa is increasingly being perceived by many non-governmental organizations as a 'neo-colonial land grab' that is threatening to deprive the rural poor of vital livelihood resources (Hall 2011). Since most land in rural Africa is governed by systems of collective ownership under customary, rather than statutory, law these concerns are certainly warranted. Despite efforts to extend legal recognition to customary rights in many parts of Africa, customary claims are rarely afforded the same legal protection as formal property rights and, therefore, remain susceptible to involuntary expropriation (Alden Wily 2011).

Despite the popular attention the issue has generated, surprisingly little empirical and non-speculative evidence is available as to the magnitude and distribution of farmland acquisitions in sub-Saharan Africa. This paper contributes to the development of a more evidence-based debate through a systematic categorisation of projects larger than 2,000 ha on the basis of source reliability. It shows how the perceived long-term demand for biofuels in the EU and food insecurity in the Middle East and South Asia are the primary drivers of these farmland acquisitions. The paper illustrates that in West Africa the threat that these acquisitions compete with socio-economically valuable land uses is particularly high.

Section 1 of this paper highlights some of the key challenges in quantifying the magnitude of farmland acquisitions in sub-Saharan Africa. Section 2 then discusses the methodological approach of the analysis. Section 3 presents the study's key findings and identifies the magnitude and the main geographic and sectoral patterns of farmland acquisitions. Finally, Section 4 reflects on the potential costs and benefits of farmland investment. Here, findings are used to illustrate the po-

tential land use competition acquisitions threaten to engender, the implications for customary rights, and the alignment of investments with domestic market needs.

2.2 Challenges in quantifying large-scale farmland acquisitions

To date, limited accurate data has been available as to the magnitude of farmland acquisitions across sub-Saharan Africa. This has made it difficult to accurately gauge the severity and distribution of the potential social and environmental impacts. While previous efforts to quantify the magnitude of farmland acquisitions have offered some valuable insights, they have often suffered from methodological shortcomings, typically being based on unverifiable accounts or incorporating speculative reports.

One of the main challenges in collecting reliable data is that comprehensive and disaggregated data on large-scale farmland acquisitions is not made publically available by most governments in sub-Saharan Africa. While the political sensitivity of these land acquisitions often restricts the level of public access to this data, in most cases data is not consolidated and maintained in a central location – implying that the government itself is often unaware of its precise scope and scale. Frequently, the ministries that allocate land titles to investors have highly antiquated, non-computerised land registry systems, which complicates the tracing and consolidation of individual entries. In some cases this is further complicated when land administration functions are decentralised (e.g. in the Democratic Republic of the Congo (DRC), Ghana and Nigeria), which often implies that centralised records are either nonexistent or incomplete. Various other sectoral agencies (e.g. for agriculture, environment or investment) often maintain some records, though the completeness of their data will often depend on the level of direct interaction with investors. However, due to the lack of data coordination between agencies and the limited amount of information collected from investors, basic investor details are typically absent (e.g. the nature of investment, implementation status and nationality).

Given these challenges in accessing data directly from government, most information is obtained from media reports. The data presented by the World Bank (2011a), for example, was based exclusively on the media reports posted on the GRAIN blog (<http://farmlandgrab.org>). However, when scrutinising blog entries for the period used by the World Bank, numerous reports of multi-million hectare mega-deals can be found that never materialised or have turned out to be much smaller in extent than initially claimed (see Table 2.1 for some examples of such deals). Mega-deals of this sort have frequently been incorrectly cited as fact in other research reports, such as von Braun and Meinzen-Dick (2009) and Friis and Reenberg (2010), and are readily embraced by the media to illustrate the severity of the 'African land grab'. Using much of the same data sources and in the absence of a proper verification system, the Land Matrix, launched in April 2012 and re-

launched in June 2013, by the International Land Coalition (ILC) and partners, suffers from similar deficiencies¹. Considering the tendency of the media to over-inflate and misrepresent the status and size of some of these investments, caution should be used when basing analyses on such sources without proper triangulation. Unfortunately, numerous academics have used this data for their analyses and to draw strong conclusions, without adequately questioning the data's integrity (such as Deininger 2011; Anseeuw *et al.* 2012a; Sassen 2013; and Rulli *et al.* 2013 in the esteemed Proceedings of the National Academy of the Sciences (PNAS)).

Table 2.1: Examples of 'failed' mega-deals

Investor	Recipient country	Area claimed by the media	Reality
Agri SA/ Congo Agriculture (South Africa)	The Republic of the Congo	10.0 million ha (Reuters 2009a)	The contract signed in March 2011 by Congo Agriculture, an Agri SA affiliated company, covered 80,000 ha. The original Reuters (2009a) report appears to have misquoted an Agri SA representative, who was ostensibly referring to the Republic of the Congo's land availability.
ZTE (China)	The Democratic Republic of the Congo	2.8 million ha (Associated Press 2008)	According to the concession contract signed between ZTE and the Ministry of Agriculture, 100,000 ha were allocated (Government of the Democratic Republic of the Congo 2007). The information source for the Associated Press (2008) report was not specified.
Wuhan Kaidi (China)	Zambia	2.0 million ha (Reuters 2009b)	Three leasehold titles were obtained covering 79,300 ha. While the company sought to acquire much larger areas of land, most chieftaincies refused to alienate land to the project (German <i>et al.</i> 2011a).
Daewoo Logistics (South Korea)	Madagascar	1.3 million ha (Reuters 2008a)	While negotiations were well advanced, these came to an abrupt end when the standing government was ousted in 2009 – according to some observers, the imminent land deal contributed to this (Ullenberg 2009).

Another methodological challenge relates to how different sectors should be treated in an aggregated analysis of this sort, particularly when the analysis is based around area figures. For example, as discussed by Zoomers (2010), commercial pressures on land are also prevalent in the mining, tourism and conservation sectors. Since the underlying drivers and the innate environmental and developmental impacts of large-scale land acquisitions are highly specific to different sectors and business models, comparing these on the basis of area figures, as is done, for example, by the Land Matrix, does not enable us to draw meaningful conclusions (see Box 2.1 for a more detailed discussion). For that reason, this analysis focuses exclusively on large-scale land acquisitions in plantation agriculture and plantation forestry, which are similar in their developmental impacts.

Box 2.1: Comparing different types of large-scale land acquisitions

Besides plantation agriculture and forestry, large-scale land acquisitions are prevalent in a number of different sectors, such as real estate, infrastructure, industry, conservation, logging and mineral exploitation. Since the amount and type of land sought and the manner in which that land is to be used differs in accordance with the intended purpose, it is difficult to generalise as to the inherent opportunities and risks of land-based investments.

For example, in cases of land allocated for spatially expansive activities, such as mineral prospecting or industrial logging, the extent of their impact on land use and rights of access tends to be more limited than plantation production systems. In industrial logging concessions in Africa, concessionaires typically only have the right to harvest timber (selectively) and are often subject to a harvesting quota (e.g. allowable annual cut). Unlike plantations, where in most cases, though not all, the entire bundle of customary rights is affected, in logging concessions this is usually limited to timber withdrawal rights (Karsenty 2011). On the other hand, since the area under commercial logging concessions is manifold larger than that under plantation production systems, their impact, while less intensive, may certainly be more extensive. For example, in Central Africa 30 - 40 percent of remaining forest is under concession, with numerous individual companies holding rights to areas covering several millions of hectares (Karsenty 2007; Clark *et al.* 2009).

In the case of mineral prospecting, concessionaires only have the right to prospect for certain minerals, typically affecting only a fraction of the concession area. For economic reasons, trenching and exploratory drilling activities typically take place on small and carefully selected areas, usually identified through geological surveys. In mineral rich countries, large areas are typically allocated for this purpose. In Zambia, for example, the government allocated 23.4 million ha for prospecting during 2005 - 2010, equivalent to almost one-third the country's total surface area (Government of Zambia 2010a). Hence, for logging and mineral prospecting concessions the intensity of land use change tends to be less severe than plantation production systems, since competition with other land uses is more limited and many customary access rights are preserved. In the case of the second and fourth largest investment recipients of the Land Matrix, Papua New Guinea and the DRC, more than three-quarters of the area acquired constitutes logging concessions. The inclusion of these logging concessions, which are, somewhat inconsistently, omitted for other major logging destinations in Central Africa and Southeast Asia, creates a highly skewed, overstated, and poorly comparable picture of the scale, distribution, and implications of large-scale land acquisitions.

Similarly, land privately acquired for conservation (e.g. for the purpose of ecotourism and carbon finance) is unlikely to entail environmentally detrimental land use changes and is more likely to have had some form of protected status prior to acquisition (Carter *et al.* 2008), thus reducing, though certainly not eliminating, the risk of conflict with customary land uses. In the Land Matrix's largest investment recipient, South Sudan, a 2.28 million ha management contract for a national park is equivalent to more than half the total area 'acquired' in the country.

For many types of investment pertinent to the land grab debate, such as mineral extraction, real estate, industrial development, and much of the tourism sector (with the exception of private conservation areas), the average allocated area of land tends to be a fraction of that for large-scale plantations. However, that does not imply that the impact of these types of investments is more limited. For example, while the degree of direct land use change and impact on land use rights may be more confined for such investments, indirect impacts may be more profound as a result of high levels of in-migration, economic spill-overs, increasing competition for land, and pollution. Area data for such sectors is, therefore, not likely to be a useful indicator of impact, especially when applied for purposes of cross-sectoral comparison or aggregation.

2.3 Methodology

2.3.1 Land acquisition analysis

The analysis of the geographic and sectoral patterns of large-scale farmland acquisitions is based on a dataset of projects developed from October 2008 to December 2012². The analysis includes only those projects from the forestry and agricultural sector that engage in plantation production models. It excludes agricultural and forestry investments adopting smallholder-oriented business models (e.g. tenant farming or out-grower schemes), industrial logging concessions, livestock, and investments in other land-intensive/extensive sectors. The projects incorporated into the analysis involve the transfer of use or ownership rights over contiguous areas of land larger than 2,000 ha in all countries in sub-Saharan Africa³. Only land transfer agreements that were entered into after January 2005 are included. This date was taken as the cut-off date due to the significant change in global market conditions for relevant commodities since that time (see Annex A1).

In recognition of the methodological challenges discussed in Section 1, collected data was divided into three quality categories. In this manner, the use of speculative and unverifiable data is minimised and a more accurate picture of the nature and magnitude of large-scale farmland acquisitions can be derived. The three categories are as follows:

- *Category 1*: Data in this category represents data with the highest level of accuracy and is derived exclusively from the following data sources:
 - leasehold or land sale contracts;
 - environmental impact assessments and associated documents;
 - government databases and registries, maintained by, for example, land, investment or agricultural ministries;
 - official government communications (e.g. parliamentary meetings, press releases, presentations);
 - official company communications (e.g. annual reports, press releases, corporate presentations);
 - financial databases (e.g. home country corporate registries, Bloomberg, Thomson Reuters);
 - personal communications with key public and private sector actors;
 - in-country research by CIFOR and its country partners.

Data from these sources is only included when the land transfer agreement is legally enforceable and it is explicitly indicated that the agreement has been finalised. This category also includes conditional land lease agreements. This relates specifically to contractualized agreements that land of pre-specified extent is to be allocated once performance requirements are met. Data from other re-

search papers is included only when data is obtained from Category 1 sources and each entry is properly referenced.

- *Category 2:* Data in this category represents the lowest level of data accuracy that is included in the analysis. It includes secondary data sources that do not explicitly specify data origin, such as some media reports and research publications. Data from these sources is only included when the following three conditions are met: (i) there are no conflicting reports or reasons to doubt data validity, (ii) it is expressly indicated that a land agreement has been finalised, and (iii) supplementary information on investor operations is available in the form of corporate websites, entries into company registries, or the allocation of investment licenses.
- *Category 3:* Data that does not fall into the above two categories is omitted from this analysis. Land agreements that are not legally enforceable (e.g. memoranda of understanding and good-faith agreements), that are in the process of being negotiated, and land areas based on projected expansion plans are, thereby, excluded.

Table 2.2: Distribution of data by type of data source

Type of data source	Area (in ha)	Number of projects
Company sources	6,143,743	135
Contracts	4,458,306	58
ESIA/PIN documents	1,574,499	39
Field research activities	867,369	19
Government sources	4,335,245	145
Media reports	1,010,667	35
Other research	3,361,262	95

While some companies included in this analysis have since had their rights to land revoked, gone bankrupt, or have permanently ceased operations, data from these projects has been incorporated, since the land rarely reverts back to its previous ownership status. Typically, projects are either acquired by other operators, the land is subleased, reallocated by the government for other commercial purposes, or is permanently alienated from the customary domain (e.g. by having been reclassified as state land).

Although this study seeks to overcome some of the key methodological challenges in quantifying large-scale farmland acquisitions, it recognises that methodological limitations remain. For example, it may under-represent domestic projects. These may be less 'publically visible' and less likely to be documented by the public administration, as they are often less closely monitored than foreign investments. Additionally, investments in some countries may not be captured as well as in oth-

ers; due to decentralised information management, controls on public access to information, or weaker regulatory oversight and/or administrative capacity.

2.3.2 Land use competition analysis

Section 2.5.1 assesses the potential area of land available for plantation agriculture. In this assessment, land availability was calculated by subtracting land classified as protected, forested and under cultivation and land with a population density of more than 20 persons per square kilometre from the total agro-ecologically suitable land. Land considered agro-ecologically suitable were considered those suitable when moderate to very high yields are attainable (Suitability Index (SI) > 25) under high inputs and under both rain-fed and irrigated conditions (derived from IIASA 2012). Forested land is all land with a forest cover of more than 15 percent and agricultural land includes both permanently cultivated and mosaic farmland (both derived from ESA 2011). Protected areas include all areas, including non-IUCN recognized areas, where agricultural activities are restricted (derived from UNEP 2012). Data on population densities is also based on IIASA (2012). The land use analysis was performed using ArcGIS software.

2.4 Farmland acquisition trends

2.4.1 Geographic patterns of investment

A total of 526 projects larger than 2,000 ha were identified across 36 countries in sub-Saharan Africa, covering an area of 21,806,312 ha (Table 2.3)⁴. This is equivalent to about 9.98 percent of the annual area harvested in sub-Saharan Africa (calculated from FAO 2012a). 18,544,745 ha fulfil the Category 1 requirements (of which 926,868 being conditional) and 3,261,567 ha the Category 2 requirements. The median project size is 13,000 ha and the mean project size 40,775 ha. The largest 10 percent accounted for 49.1 percent of the total area acquired, with 53 projects having gained access to areas in excess of 100,000 ha.

Table 2.3: Large-scale farmland acquisitions in numbers

Variable	Area (in ha)	Number of projects
Total area acquired	21,806,312	526
Category 1 data (total)	18,544,745	453
Category 1 data (conditional)	926,868	10
Category 2	3,261,567	73
Mean	40,775	-
Median	13,000	-

Investment destinations

As is illustrated by Figure 2.1, the areas of land acquired vary significantly between countries. The six countries (Ethiopia, Ghana, Madagascar, Mozambique, South Sudan, and Zambia) where more than 1.5 million ha have been acquired (for both category 1 and 2 data) constitute 51.8 percent of the total area acquired. On the basis of category 1 land acquisitions, excluding conditional allocations, the largest area of land is acquired in Zambia, while when aggregating all data categories Ethiopia is found to be the largest recipient, both in terms of area acquired and in terms of number of investments (see also Annex A2 for a tabulated overview).

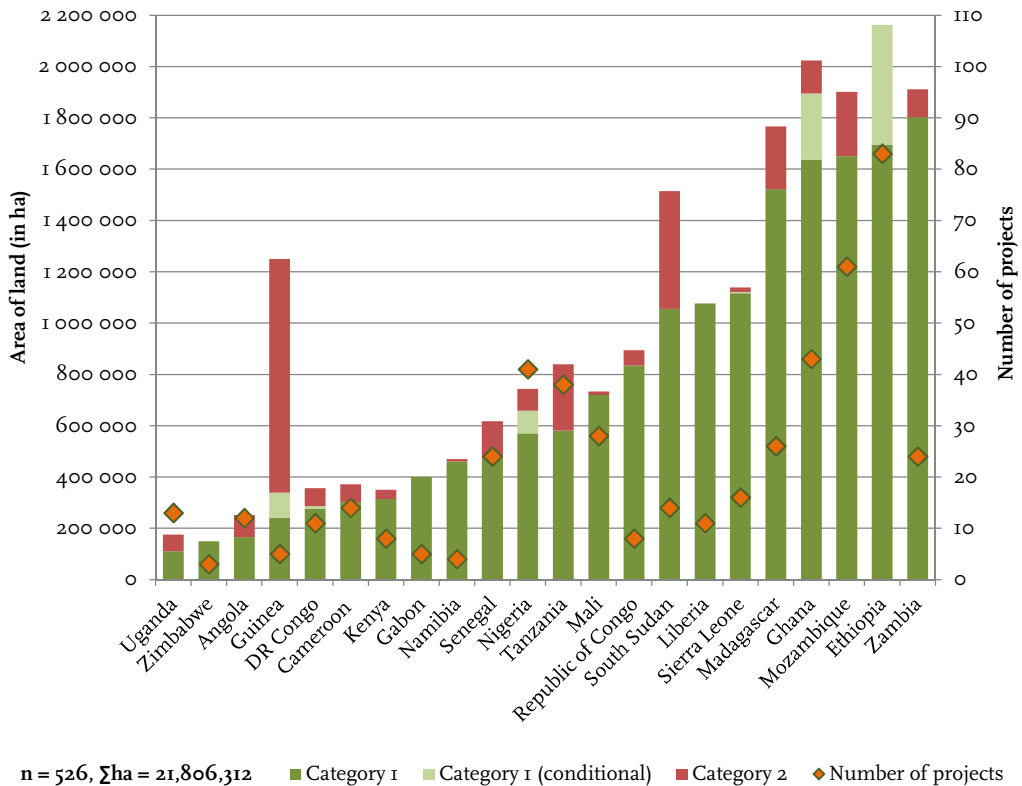


Figure 2.1: Destination of investments, by total land area acquired

While a correlation might be expected between the area of land acquired and the area of available agro-ecologically suitable land, no statistical relationship is discernible (Table 2.4). For example, relatively small countries with a scarcity of suitable land (e.g. Ghana, Sierra Leone, and Liberia) have become key recipients of farmland investments, while other countries with abundant reserves of suitable and available land (e.g. Angola and the DRC) have not become important investment targets. Additionally, there is no statistically significant correlation with qual-

ity of governance, as illustrated by the magnitude of investments in politically unstable countries, such as Ethiopia, Madagascar, and Nigeria. Although it could logically be assumed that some investors would see economic opportunity in the exploitation of governance deficiencies, no inverse relationship is apparent between investment intensity and, for example, quality of natural resource governance, labour rights, and land tenure security. This contradicts findings from the World Bank (see Arezki *et al.* 2010; Deininger 2011), based entirely on media reports, that suggests investors specifically target countries with weak tenure regimes.

Moreover, country selection could be influenced by domestic market needs and opportunities. However, this does not appear to be an underlying determinant of investment, as is illustrated by the weak relationship with such indicators as agricultural trade balance, vulnerability to oil price shocks, and the Global Hunger Index⁵.

The only variable that correlates with investment intensity is the Doing Business ranking⁶. However, being significant only with a confidence interval of 90 percent, even this relationship is not sufficiently robust to derive at definitive conclusions. Clearly, generalisations and statistical tests of this sort do not do justice to the complex interplay of unique factors that shape a country's attractiveness as a farmland investment destination. Ultimately, investments are driven by a host of insufficiently quantifiable variables at the level of the individual investors, such as, for example, historical, cultural, and political relations between host and home country, access to local social and business networks, regulatory provisions conducive to particular investment activities, market orientation, and crop-specific conditions.

Table 2.4: Selected explanatory variables for investment

Variable	Correlation coefficient	Significance
Availability of suitable land	0.254	0.325
Land tenure	-0.092	0.66
Political stability	0.066	0.753
Public Security	0.133	0.517
Respect for laws	0.143	0.486
Natural resource governance	0.123	0.548
Doing Business ranking	0.354	0.089*
Non-national land ownership	0.105	0.609
Worker rights	0.034	0.868
Global Hunger Index	0.24	0.247
Net agricultural trade	-0.11	0.673
Vulnerability to oil price shocks	0.242	0.267

*Significant at the $p = 0.1$ level

Sources: CEPII 2009; IFC 2012; EIA 2012; IFPRI 2012; own computations.

Investment origin

With regards to investor origin, few lead investors were found to be of domestic origin. Of the 486 projects for which investor origin could be established, only 95 projects (covering 2,968,862 ha or 13.8 percent of the total area acquired) had a local operator leading the development.

With 50 projects covering 2,483,151 ha, the United Kingdom was found to be the largest investor, followed by the United States, India and Norway (Figure 2.2 and Annex A2). From a regional perspective, investments from Europe dominate, accounting for 175 projects covering 8,735,468 ha (40.8 percent of the total area acquired)⁷. This is followed by Asia with 85 projects covering 4,356,785 ha (18.0 percent of the total area acquired). While Asian investors play an important role, China is not found to be a leading investor in plantation agriculture in Africa, in contrast to how the media is inclined to portray it (see, for example, AFP 2011; Economist 2011; New Scientist 2011; Reuters 2011a). Similarly, unlike popular perception, the role of Gulf States to date has also been limited. Although Brazil is engaged in a number of projects, South America as a region, endowed with relatively abundant agro-ecologically suitable land, is also a comparatively marginal investor; this too applies to Australasia⁸.

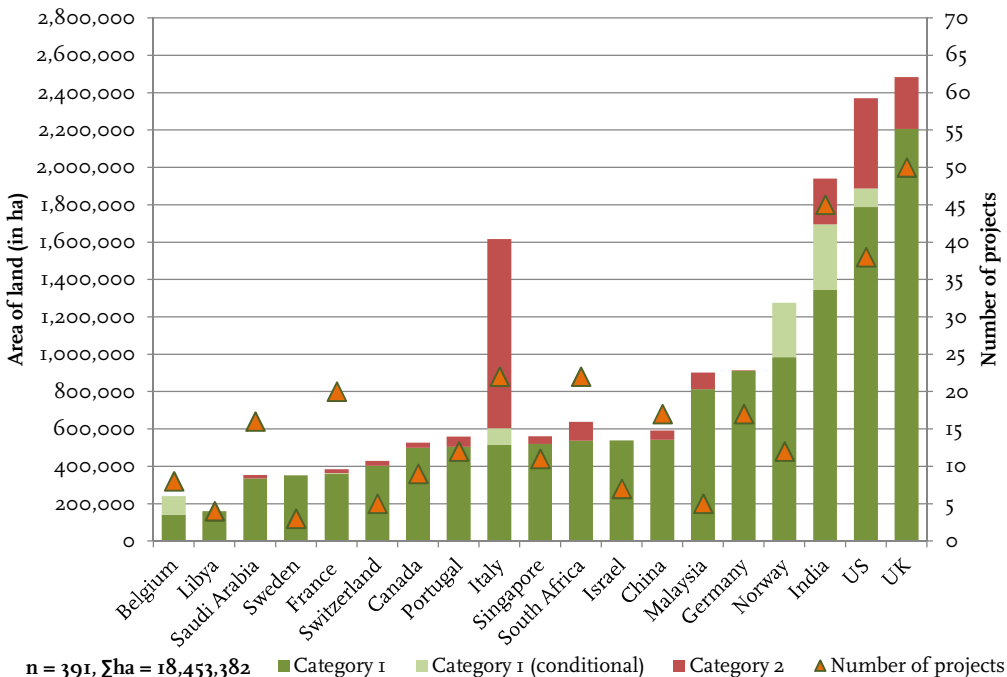


Figure 2.2: Origin of non-domestic investments, by total land area acquired

Note: When projects are registered in offshore financial centres despite being headquartered elsewhere, the latter is considered to be the origin of investment. Furthermore, where projects have been originated in the form of a partnership or joint venture agreement, only the origin of the investor with the majority share is included.

2.4.2 Sectoral trends of investment

From the 526 projects, 496 projects specified their sectoral focus. Of these projects, 205 projects acquired land with plans to cultivate crops for the purpose of eventually producing biofuels. These projects account for 10,775,277 ha, equivalent to approximately 54.6 percent of the total area of land acquired in sub-Saharan Africa (Table 2.5). While certain biofuel projects, particularly the larger projects cultivating multi-use crops, target both food and biofuel end-markets, the vast majority of biofuel-related projects (166 projects, covering 7,672,225 ha) were conceived to exclusively service the biofuel sector. 210 projects (covering 6,213,324 ha) target exclusively the food end-market and 36 projects (covering 1,906,479 ha) the wood products end-market (e.g. timber, pulp and paper). Very few projects targeted the fibre sector (e.g. textiles) or 'other' sectors, such as latex, spice, feed and pharmaceutical, collectively accounting for 39 projects (covering 879,528 ha).

Table 2.5: Primary type of end-market and regional origin

Region	Sectoral contribution, as proportion of total (regional) investment						Prop. total area acquired (xha = 21,401,934)	Prop. number of projects (n=494)
	Biofuel	Fiber	Food	Food & Fuel*	Wood products	Other		
Europe	53.84%	0.12%	13.66%	13.78%	17.53%	1.07%	40.81%	36.23%
Asia	15.93%	2.05%	52.96%	24.68%	0.19%	4.19%	20.36%	18.02%
Domestic	35.21%	4.08%	37.99%	4.36%	5.81%	12.56%	13.78%	19.03%
North America	29.46%	0.00%	35.18%	23.80%	10.40%	1.16%	13.55%	9.92%
Middle East	53.39%	0.58%	23.05%	8.75%	4.46%	9.76%	4.89%	6.07%
Intra-regional	39.76%	0.00%	46.95%	9.02%	4.27%	0.00%	3.75%	7.29%
North Africa	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	1.62%	1.62%
South America	96.10%	0.00%	3.90%	0.00%	0.00%	0.00%	0.69%	1.42%
Australasia	8.09%	0.00%	91.91%	0.00%	0.00%	0.00%	0.55%	0.40%
Prop. total area acquired (xha = 19,775,277)	38.65%	0.92%	31.43%	15.94%	9.81%	3.24%		
Prop. total number of projects (n=496)	33.47%	4.44%	42.34%	7.86%	7.26%	4.64%		

* Integrated food and fuel projects are projects that in addition to cultivating crops as biofuel feedstocks, target food end-markets as a secondary distribution outlet; typically the case for large sugarcane and oil palm projects.

Northern investments in biofuels driven by home market blending mandates

The leading strategic driver of large-scale farmland acquisitions in sub-Saharan Africa appears to be the perceived opportunities in the biofuel sector. The majority of projects in the sector were attracted by the purported economic potential of the oil-seed bearing shrub *Jatropha Curcas L.* (*jatropha*) (Figure 2.3). Particularly during

2007–2008, jatropha was much touted due to its high ecological adaptability and its perceived potential to generate high yields under low management conditions. This was despite it being a largely undomesticated crop for which little agronomic experience has been gained in cultivating it on an industrial scale. Nevertheless, Goldman Sachs promoted it as being the cheapest feedstock for commercial biofuel production (Wall Street Journal 2007).

A total of 97 projects set out to cultivate jatropha, collectively acquiring 5,175,075 ha (constituting 48.0 percent of the land acquired by biofuel-related projects). Despite the initial hype, investors rarely succeeded in achieving anticipated yields, which ultimately resulted in most projects going bankrupt, temporarily suspending operations, downscaling, or shifting to the cultivation of more conventional crops. At least 11 projects, covering an area of 1,002,694 ha, were confirmed to have completely ceased operations⁹. The fact that most jatropha investors are poorly capitalised start-up companies may also have contributed to jatropha's poor performance. Even for other feedstocks, few biofuel projects are led by established players in energy or agribusiness, illustrating the critical enabling role of private equity and venture capital in propelling Africa's biofuel sector¹⁰.

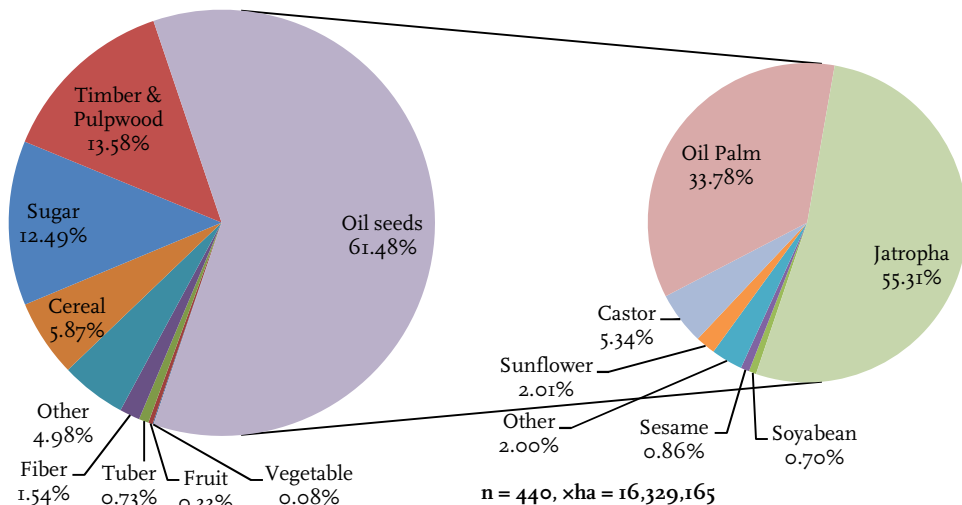


Figure 2.3: Primary crop type cultivated, as proportion of total land area acquired

Note: Projects that plan to cultivate a number of different crops are only included in these figures when they specify that they are primarily targeting the cultivation of one crop. Many large projects that cultivate a wide range of different crops are excluded since disaggregated area figures were rarely provided.

*Other crops include tea, coffee, cocoa, and rubber.

Other key feedstocks for biofuel projects in sub-Saharan Africa include oil palm, sugarcane, cassava, and an array of oil-seed bearing crops such as castor, sunflower and pongamia (*milletia pinnata*). Land has been acquired for biofuel projects in 28 countries, with the largest areas of land acquired located in Ghana (24 projects, 1,406,343 ha) and Madagascar (20 projects, 1,343,700 ha). Although it

hosts a smaller average farm size, Mozambique boasts the largest number of projects (31 projects, 666,513 ha).

The primary underlying driver for these biofuel investments appears to be the opportunities in key export markets, notably North America and the EU. In 2020, these two regions are anticipated to account for 67 percent of global biofuel consumption and 81 percent of imported biofuels (derived from FAPRI 2011; OECD-FAO 2011). Driven primarily by blending mandates, in the medium term these markets are anticipated to become the largest net importers of biofuels in the world (Schoneveld 2010); an outlook that biofuels investors are seeking to capitalize on. This is also reflected in the fact that the three countries anticipated to become the largest net importers of biofuels in the EU by 2020, the UK, Germany, and Italy, are also the most active EU biofuel investors in sub-Saharan Africa, both in terms of area acquired and number of projects (with a combined total of 51 projects covering 3,681,029 ha)^{11 12}. With biofuel projects accounting for 83.9 percent of these investors' combined acquired area and 58.8 percent of their projects, the opportunities in these markets are their most important driver of investment.

Of the 205 biofuel-related projects, 109 were being led by investors from North America and the EU, covering an area of 6,989,232ha, equating to 35.9 percent of the entire area acquired and 23.8 percent of all projects. These figures illustrate the comparatively significant role of the North American and EU biofuel demand (linked to domestic blending mandates) in driving large-scale farmland acquisitions in sub-Saharan Africa.

Southeast Asia land constraints revives interest in the African oil palm mega-estate

Another notable development is the rapid rise of large-scale oil palm projects. Oil palm is the most productive oilseed crop, and investment prospects have been particularly favourable since 2009 due to high global prices and rapidly growing demand from emerging economies. Mostly since 2009, 65 projects have acquired 3,488,127 ha for oil palm cultivation across sub-Saharan Africa. With suitable land comparatively abundant and cheap, oil palm investors are increasingly seeking to gain access to land in the tropical rainforest areas of sub-Saharan Africa, particularly in Congo basin countries and the coastal areas of West Africa. More than half the acquired area is located in three countries: Liberia (948,749ha), Sierra Leone (511,045 ha), and the Republic of the Congo (640,000 ha). Large-scale oil palm cultivation is also destined to expand considerably in Cameroon: in addition to the 146,416 ha that has already been acquired for oil palm cultivation since 2005, at least five investors are currently in the process of acquiring in excess of 600,000 ha (Financial Times 2011; Reuters 2011c; Hoyle and Levang 2012; Personal communication, Sime Darby, 2011).

Although this recent trend is in part driven by biofuel investments from North America and the EU, more recently it is especially the major Southeast Asian oil palm conglomerates/agribusinesses, such as Bakrie Sumatera (Indonesia), Olam

(Singapore), Sime Darby (Malaysia) and Wilmar (Singapore) that have started actively expanding their land banks in Africa. Of farmland acquisitions larger than 300,000 ha, 4 out of 11 are being developed by Southeast Asia linked oil palm companies (Table 2.6). With well-established networks in the food and pharmaceutical industry, such companies have made only limited efforts to diversify into biofuel production. Arguably, this limited interest in oil palm-based biodiesel production is also due to the reluctance of their home governments to enforce biodiesel blending mandates, the comparatively high global price of crude palm oil over recent years relative to crude oil prices, and the imposition of regulatory obstacles in accessing the EU biofuel market (Schoneveld *et al.* 2010)¹³. In the near future, capacity expansion within the oil palm sector will therefore be driven primarily by rising household consumption for cooking oils in India and China (linked to increasing purchasing power). According to FAPRI (2011) data, for example, between 2012 and 2020, 56.9 percent of international growth in palm oil trade is anticipated to be attributable to these two markets.

As suitable land in the largest oil palm growing countries (Indonesia and Malaysia) becomes more scarce and more expensive (even more so with the implementation of Indonesia's deforestation moratorium), these companies are increasingly encouraged to expand their geographic coverage¹⁴. According to a senior representative from Sime Darby, an added advantage of operating from sub-Saharan Africa is the physical proximity to European and North American markets and the ability to circumvent the prohibitively high duties that apply to crude palm oil exports from Malaysia and Indonesia.

Southern food insecurity encourages investments in food crop production

Compared to biofuel investments, investments in crop production for the food market were observed to be less significant. Besides the expansion of oil palm plantations by Asian companies, the most significant number of investments has targeted sugarcane and rice production. Sugarcane (mostly for producing crystallised sugar and ethanol for beverages) accounts for 46 food projects (covering 836,712 ha), and rice production for 38 projects (covering 763,565 ha). Although some of the larger multi-crop estates cultivate non-rice staples (such as wheat, maize and tubers), the number of investments that primarily target those crops is negligible (only 37 projects, covering 246,112 ha).

While European projects dominated in the biofuel sector, they play a comparatively minor role in the food sector. Investors of southern origin account for 74.2 percent of the area acquired for food crop production. Countries with high domestic pressures on suitable lands have been particularly active in acquiring African farmland for food crop cultivation, typically supported by home-country incentives for outward investment. For example, investments from India, Malaysia, China, and Saudi Arabia account for 60.1 percent of the area acquired by southern food investors. Large Indian conglomerates in particular, such as Karuturi Global, Neha

International, Apeejay Surrendra Group, Shapoorji Pallonji, and the Siva Group, are rapidly expanding their land banks in Africa. As a result of high population pressures, comparatively high land prices, regulatory obstacles and growing water shortages it is becoming prohibitively difficult to gain access to large contiguous areas of land domestically (see Rowden (2011) and NewsClick (2011) for a discussion). Similarly, well-capitalised Arab investment companies such as Citadel Capital (Egypt), the MIDROC Group (Saudi Arabia), and Foras Investment (Saudi Arabia), from countries facing similar domestic land constraints, are increasingly expanding their landholdings in Africa for food crop cultivation.

Faced by growing barriers to accessing farmland domestically, white commercial farmers from South Africa are also actively negotiating access to farmland beyond national boundaries, predominantly through the commercial farmer organisation Agri SA. Land has already been allocated to its members in the Republic of the Congo, a framework agreement has been signed in Mozambique, and negotiations are ongoing in Ghana, South Sudan, and Zambia (Agri SA 2011).

Although a number of major investments in food production can be found in countries such as Ghana, Mozambique, Nigeria, South Sudan, and Zambia, the most significant number were documented in Ethiopia. A total of 43 exclusively food-oriented projects, covering 1,365,872 ha, have acquired land in Ethiopia. Although this can be partly attributed to the active role of the Ethiopian government in attracting investments in food crop production and discouraging biofuel investments by restricting these to marginal lands, the country's increasingly close economic and diplomatic ties to India is certainly a contributing factor, with Indian investors within the sector accounting for 55.6 percent of the total area acquired for food crop cultivation¹⁵.

Expanding geographic coverage of established Nordic wood exporters

In contrast to plantation agriculture, plantation forestry has not been a major driver of farmland acquisitions, with 42 projects covering an area of 2,217,513 ha. Most of these forestry projects target the timber and pulp and paper end-markets, with 6 projects targeting the biofuel market (largely for electricity generation or briquette production). The most frequently cultivated tree species are, in descending order, eucalyptus, pine, acacia and teak.

Of these 42 projects, 31 are led by investors from North America and the EU, covering 1,979,813 ha (89.3 percent of the total area acquired for plantation forestry). Companies from Nordic countries with a long history of plantation forestry (notably for export markets) are especially active in the sector, with projects from Denmark, Norway, and Sweden responsible for the acquisition of 1,104,301 ha. Some of the largest projects are being developed by African Plantations for Sustainable Development (Norway), the Global Solidarity Forest Fund (Sweden) and Green Resources (Norway).

While forestry projects were documented across 16 countries, the largest areas of land acquired for plantation forestry are located in Mozambique, particularly the Niassa Province, where 6 projects have collectively gained access to 961,413 ha (equivalent to 53.3 percent of the total area acquired in Mozambique). The Malonda Foundation, a local non-profit organisation promoting investments in Niassa Province, has been particularly instrumental in facilitating these investments (Åkesson *et al.* 2009)¹⁶.

Table 2.6: Profiles of farmland acquisitions in Africa larger than 300,000 ha

Details	Company overview
<p><i>Name:</i> Farm Block Development (FBD) Programme <i>Origin:</i> Zambia <i>Investor country:</i> Zambia <i>Area of land:</i> 892,000 ha</p>	<p>The FBD program was conceived as part of Zambia's new strategic thrust to promote commercial farming, following the adoption of the National Agricultural Policy in 2004. For this purpose, the government acquired, through voluntary transactions, 892,000 ha across its 9 provinces, with each farm block covering 45,000–147,750 ha. Each block is partitioned into different estates, with one 'anchor estate' (about 10,000 ha), a number of 'commercial estates' (about 2,000–4,000 ha), and a few hundred 'satellite farms' (20–1,000 ha). In each farm block, the government will provide basic infrastructure (e.g. roads, dams, electricity). Progress has been slow, with only one farm block actively seeking investors.</p> <p><i>Sources:</i> Government of Zambia 2005; Government of Zambia 2009; Personal communications, Ministry of Agriculture, 2011; Personal communication, ZDA, 2011.</p>
<p><i>Name:</i> Nile Trading & Development (NTD) <i>Origin:</i> US <i>Investor country:</i> South Sudan <i>Area of land:</i> 600,000 ha</p>	<p>NTD is an affiliate of the Texas-based holding company Kinyeti Development, founded by a former US ambassador. In 2008, NTD entered into a 49-year lease agreement with the Mukaya Payam Cooperative (a territorial subdivision of South Sudan) for 600,000 ha of 'forested land' (extendable to 1 million ha). As per the agreement, NTD is permitted, amongst others, to harvest all trees without limitation, cultivate oil palm and jatropha, engage in the exploration and extraction of any minerals, and sublease any area of the land. Planned activities though appear to be focused on biofuel development. From 2012 onwards, 40 percent of profits are to be shared with the cooperative.</p> <p><i>Sources:</i> Government of South Sudan 2008; Deng 2011; Kinyeti 2011.</p>
<p><i>Name:</i> Whitestone (SL) Limited <i>Origin:</i> UK <i>Investor country:</i> Sierra Leone <i>Area of land:</i> 535,165 ha</p>	<p>In 2010, Whitestone managed to obtain 13 leasehold titles from local chiefs, ranging from 4,046 ha to 113,000 ha in the Bombali and Koinadugu Districts of Northern Sierra Leone for large-scale agricultural development. The company is not planning to develop the land themselves, but rather is looking to sub-lease the land to other agricultural investors.</p> <p><i>Sources:</i> Rural Modernity 2012; Whitestone 2012</p>
<p><i>Name:</i> Ferrostaal AG <i>Origin:</i> Germany <i>Investor country:</i> Zambia <i>Area of land:</i> 510,183 ha</p>	<p>In 2009, Ferrostaal signed a memorandum of understanding with the Zambia Development Agency (ZDA) to develop jatropha plantations and a biodiesel refinery. In 2010, the ZDA provided Ferrostaal with 11 leasehold agreements for a combined area of 510,183 ha in Mpika District, Northern Region – though only 303,749 ha appear to have been surveyed. In 2011, Ferrostaal started conducting jatropha trials through its South African implementation partner, Deulco, but ostensibly has since abandoned any expansion plans.</p> <p><i>Sources:</i> Government of Zambia 2010b; Personal communications, District Council of Mpika, 2010; Personal communication, ZDA, 2011.</p>
<p><i>Name:</i> Atama Plantation SARL <i>Origin:</i> Malaysia <i>Investor country:</i> The Republic of the Congo <i>Area of land:</i> 470,000 ha</p>	<p>In 2010, the Malaysian company Atama Plantations signed a leasehold contract covering 470,000 ha, for the development of oil palm and rubber plantations in the departments of Cuvette and Sangha in northern Congo, following a trip by Congolese officials to Malaysia. In 2012, the Malaysian oil and gas company Wah Seong Corp acquired a 51% share in the company through its subsidiary Agro Industries Pte.</p> <p><i>Sources:</i> Daily Motion 2010; IOI Group 2010; Wah Seong 2012.</p>

<p><i>Name:</i> Hunter Resources <i>Origin:</i> UK <i>Investor country:</i> Madagascar <i>Area of land:</i> 452,500 ha</p>	<p>Hunter Resources (formerly known as GEM BioFuels) was incorporated in 2004 in the Isle of Man, and has been listed on the AIM stock exchange since 2007. The company has entered into 50-year lease agreements with 18 local communities in southwest Madagascar for the exclusive right to establish jatropha plantations over 452,500 ha. With approximately 55,737 ha under cultivation by the end of 2010, it has the largest known area planted with jatropha in Africa. The company has a 10-year off take agreement with Australia's Natural Fuel Limited (NFL) to supply 55 percent of its crude jatropha oil to NFL's biodiesel facility in Singapore. However, the company claims that due to lack of resources, the jatropha yields have disappointed.</p>
<p><i>Sources:</i> NFL 2008; Ullenberg 2009; GEM Biofuels 2010.</p>	
<p><i>Name:</i> Golden Veroleum Liberia (GVL) <i>Origin:</i> Unclear <i>Investor country:</i> Liberia <i>Area of land:</i> 350,000 ha</p>	<p>In 2010, GVL acquired 350,000 ha on a 65-year lease in the Southeast of Liberia. The company's origin is unclear; GVL is registered in Switzerland; its sole shareholder the Verdant Fund LP is registered in New York; the Fund's leading investor Golden-Agri Resources (GAR) is listed in Singapore; and its Executive Directors originate from Finland, South Africa, and Indonesia. The company is planning to invest US\$ 1.6 billion over 25 years in the development of 220,000 ha of palm oil plantations and a 40,000 ha outgrower scheme. Due to Liberia's strategic location, GVL plans to service primarily the EU and North American markets.</p>
<p><i>Sources:</i> Government of Liberia 2010; Hardman 2011</p>	
<p><i>Name:</i> Sime Darby <i>Origin:</i> Malaysia <i>Investor country:</i> Liberia <i>Area of land:</i> 311,187 ha</p>	<p>One of Malaysia's largest conglomerates, Sime Darby, signed a concession agreement with the Government of Liberia in 2009 for the development of oil palm and rubber plantations. The agreement involves the allocation of 4 concessions, covering 311,187 ha, for a period of 63 years. On this land, 220,000 ha are to be developed into Sime Darby managed estates and 44,000 ha into an outgrower scheme. 120,000 ha was previously exploited for rubber by Kumpulan Guthrie Berhad, before it was abandoned in 2001 as a result of the civil war. Sime Darby plans to invest US\$ 3.1 billion in the first 15 years.</p>
<p><i>Sources:</i> Government of Liberia 2009; Financial Times 2011; Personal Communications, Sime Darby, 2011.</p>	
<p><i>Name:</i> ScanFarm AS <i>Origin:</i> Norway <i>Investor country:</i> Ghana <i>Area of land:</i> 303,750 ha</p>	<p>ScanFarm AS, formerly known as ScanFuel AS, started jatropha cultivation in the Ashanti region of Ghana in 2008. The Norwegian biofuel start-up indicated that it had signed a 50-year agreement with the Agogo Traditional Council for access to 303,750 ha. This area appears to comprise part of the Kogyae Nature Reserve and conflicts with other concessions, raising question as to how well the land has been demarcated. To date, ScanFarm has only obtained an Environmental Permit for a 20,452 ha 'pilot plot'. Due to disappointing jatropha yields and a change in strategic direction, the company turned to maize and soya cultivation in 2010, having approximately 1500 ha under cultivation in early 2012.</p>
<p><i>Sources:</i> Government of Ghana 2008; Reuters 2008b; Personal communication, Ghana Investment Promotion Commission, 2009; Personal communication, ScanFarm, 2009.</p>	
<p><i>Name:</i> Olam Palm Gabon <i>Origin:</i> Singapore/Gabon <i>Investor country:</i> Gabon <i>Area of land:</i> 300,000 ha</p>	<p>Olam Palm Gabon is a joint venture established in 2010 between the Singapore-based commodity trader Olam International (70 percent) and the Government of Gabon (30 percent). As part of the agreement, the government provided a land bank of 300,000 ha. For Phase 1, to be completed in 2016, the government awarded three 50-year leasehold agreements for an area totalling 51,920 ha in Gabon's forest zone. With most of this area considered to be of high conservation value, only 8,334 ha is suitable for oil palm cultivation according to Roundtable on Sustainable Palm Oil (RSPO) requirements. Olam also recently acquired a 300,000 ha logging concession and is developing a special economic zone.</p>
<p><i>Sources:</i> Wilmar 2007; Olam 2010; RSPO 2011.</p>	

2.5 Potential implications for host countries

2.5.1 Threat of land use competition

Analysis of the competing uses of agro-ecologically suitable land offer valuable insights into the relative productivity of the different crops in agricultural/densely populated and forested areas. Suitability assessments provide an indication of where different crops can be cultivated, generally based solely on agronomic potential (maximum obtainable crop and biomass yields based on climate, soil and terrain conditions)¹⁷. Land availability, on the other hand, goes beyond agronomic considerations to other aspects of feasibility, such as competing land uses and land cover. Therefore, contrasting suitability with availability enables us to more accurately assess the relative risk of land use change in the absence of mechanisms to effectively regulate land conversion to plantation agricultural and forestry. Unrestrained land use change could lead to a loss of biodiversity and forest cover, in turn detracting from the potential contribution of, for example, biofuels to improving the carbon balance. Furthermore, the displacement of important extant livelihood activities, particularly subsistence farming, could increase food and income insecurity.

Figure 2.4 and 2.5 show the areas of suitable land that overlap with agricultural and/or densely populated land and with forests for the four most prominent investment crops. For these crops, between 75.0 percent (jatropha) and 91.1 percent (oil palm) of suitable land are under competing uses. As can be observed from the figures, oil palm and sugarcane threaten to conflict primarily with forested land and jatropha with agricultural land. When considering the total area of land suitable for agriculture in sub-Saharan Africa, 74.8 percent is found to be under competing uses, particularly agriculture. While much more land is theoretically available than has been acquired, the data does illustrate the high risk of land use competition without adequate land use planning.

To date, only Ethiopia and Mozambique have made nation-wide efforts to spatially plan and coordinate land allocations; though both suffer from severe limitations, such as lack of participation of local stakeholders, low resolution of land use maps, and limited ground truthing (Schoneveld and Shete, forthcoming; Schut *et al.* 2010). With field-based country case studies indicating that in almost all sub-Saharan African countries few effective procedures and regulations are currently in place to adequately account for competing land uses (see, for example, German *et al.* 2011a; Habib-Mintz 2010; Nhantumbo and Salomão 2010; Schoneveld and Shete, forthcoming) and with most suitable land being unavailable, a large proportion of farmland investments risk bringing about detrimental socio-economic and environmental effects.

As can be discerned from Table 2.7, however, the threat that current farmland acquisitions compete with other land uses does, however, vary greatly between countries. This is found to be particularly the case in densely populated coastal

countries in West Africa, such as Ghana, Liberia, Nigeria, and Sierra Leone. In Liberia and Sierra Leone, where, respectively, only 7.2 percent and 6.1 percent of suitable land is potentially available, more land has been acquired for agricultural investment since 2005 than the total area of land potentially available. In these countries land acquisitions are threatening to conflict particularly with subsistence agriculture (see Figure 2.6 for a suitability overlap map and Annex A3 for crop specific overlap maps). In the Congo Basin, particularly in Gabon and Republic of Congo, it is particularly rainforest that is threatening to be converted, with 93.2 percent and 85.6 percent of suitable land classified as forests.

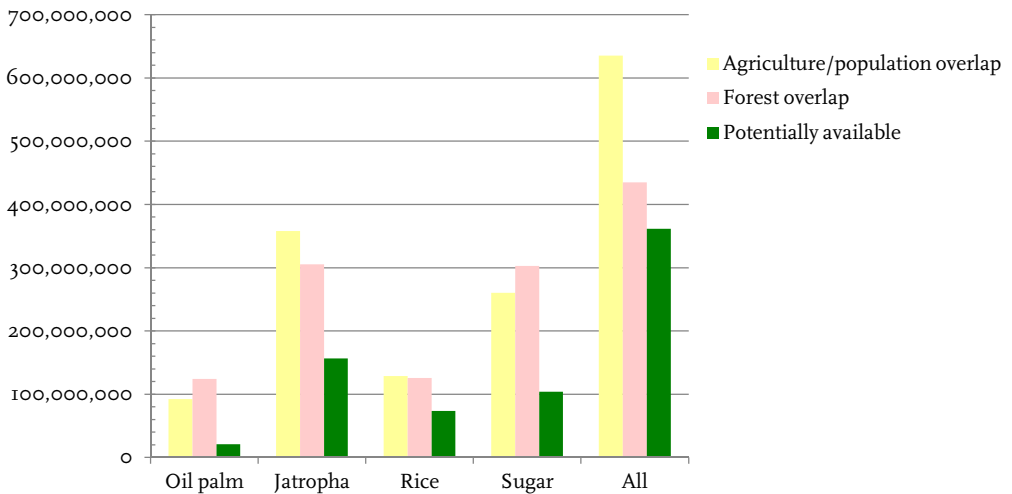


Figure 2.4: Area of suitable land under competing uses (in ha)

Source: Own computations

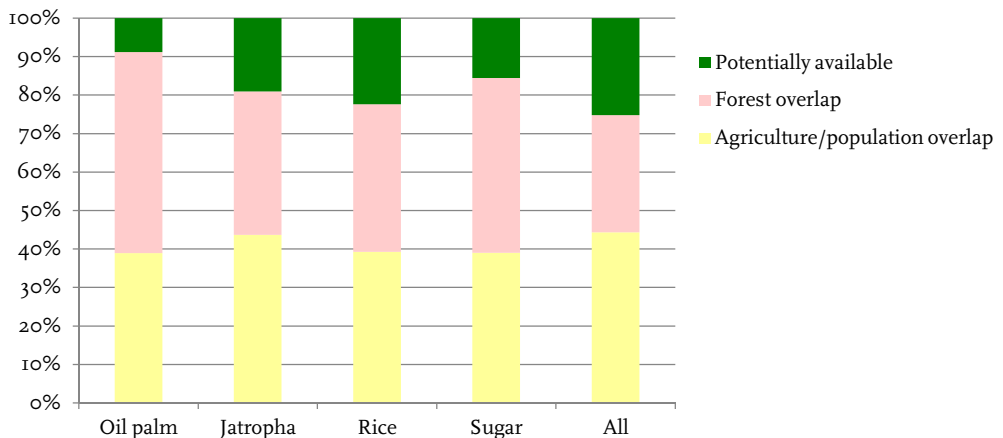


Figure 2.5: Proportion of suitable land under competing uses

Source: Own computations

In other major investment destinations, such as Madagascar and South Sudan, the proportion of the total suitable and available land acquired is significantly smaller than most other countries due to the abundance of potentially available and suitable land. This though does not imply that impacts are necessarily less severe, particularly in the absence of regulations to guide land allocations and for the tendency of the most strategically located suitable lands to already be under cultivation.

Table 2.7: Land acquisitions and land availability in key investment destinations

Country	Total area potentially available (in ha)	Land acquired, as % of available land	
		Category 1 data	All data categories
Sierra Leone	389,450	287.85%	292.47%
Liberia	700,650	153.56%	153.56%
Ghana	2,076,400	91.28%	97.47%
Nigeria	769,850	85.49%	96.53%
Ethiopia	7,750,050	27.89%	27.89%
Senegal	3,209,150	14.72%	19.24%
Gabon	2,456,600	16.28%	16.28%
Mozambique	12,456,300	13.25%	15.26%
Republic of the Congo	6,816,200	12.23%	13.11%
Zambia	15,699,950	11.48%	12.17%
Tanzania	7,144,900	8.13%	11.74%
Mali	10,630,850	6.77%	6.90%
Cameroon	5,510,050	5.47%	6.74%
South Sudan	22,860,000	4.61%	6.63%
Madagascar	28,216,300	5.41%	6.26%
Kenya	17,302,100	1.81%	2.03%
DR Congo	17,810,350	1.61%	2.00%

Source: Own computations

Although the threat of land use competition would likely be less significant when existing plantations are acquired, the data suggests that the vast majority of projects are Greenfield developments. For only 53 projects (covering 1,687,713 ha: 7.7 percent of the total area acquired) was there evidence that parts of the acquired lands were previously used for large-scale plantations. Such projects typically involve abandoned estates in post-conflict countries: projects in Liberia and the DRC account for 53.3 percent of the total area of land acquired that was previously used for similar purposes. However, with most estates in these countries long abandoned by civil war, these have often been heavily encroached upon.

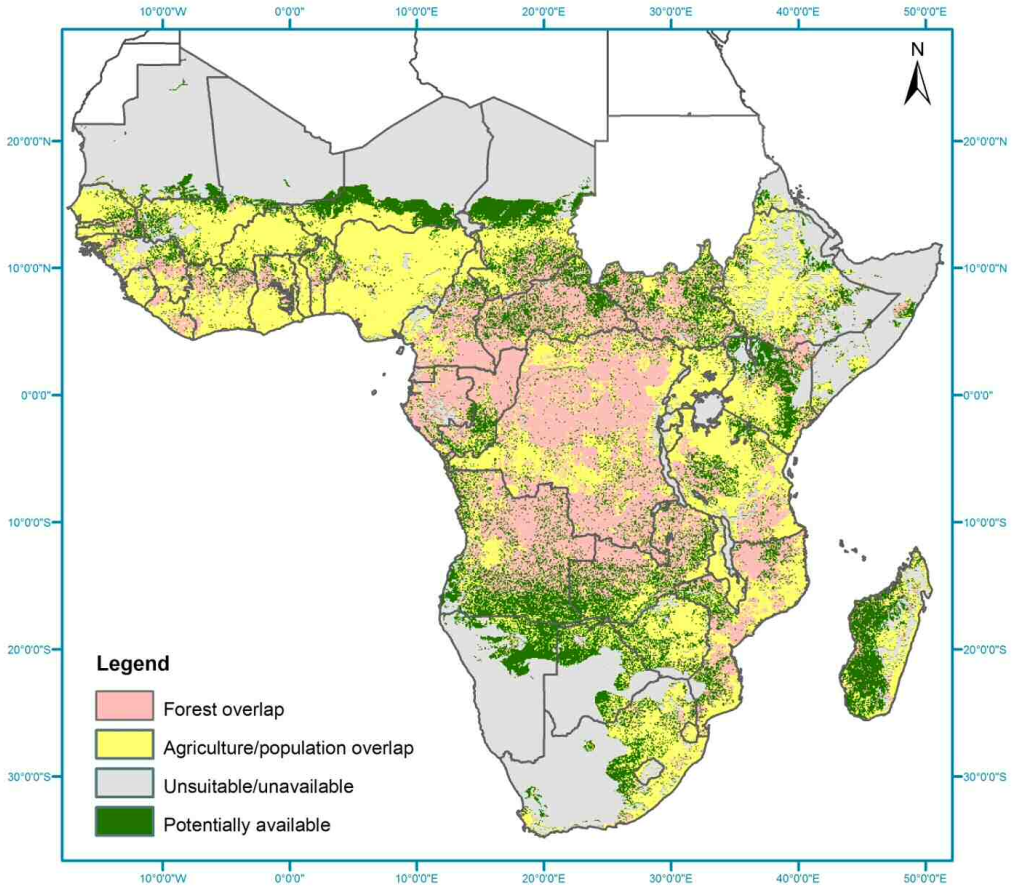


Figure 2.6: Map of suitability overlaps

Source: Own representation, based on ESA (2011), IIASA (2012)

2.5.2 Accommodation of customary land rights

Insights into potential impacts can also be gained from assessing the terms of land acquisition. None of the acquisitions entail the outright purchase of land, and, therefore, the acquisition of a freehold title. In most countries in sub-Saharan Africa, the sale of land is forbidden, particularly large areas of agricultural land to foreign entities. Hence, almost all the rights to the land are obtained through a leasehold title. Considering that approximately 77 percent of land in sub-Saharan Africa falls within the customary domain (Alden Wily 2011), presumably most of the leased land was previously under some sort of system of customary tenure. Country-level research has indicated this to be so in the vast majority of cases (see, for example, Habib-Mintz 2010; Nhamumbo and Salomão 2010; Andrew and van Vlaenderen 2011; Baxter 2011a; Deng 2011; German *et al.* 2011a; Rahmato 2011;

Schoneveld *et al.* 2011; Schoneveld and Shete, forthcoming). Much of the remaining land typically falls within the domain of the state, mostly consisting of protected areas.

The legal status of systems of customary tenure differs greatly between countries. Some countries, such as Ghana, Mozambique and Zambia, explicitly recognise customary rights, while other countries, such as Ethiopia, Mauritania and Rwanda do not afford customary rights any legal protection. Despite these differences, even in countries where customary rights are protected by law, this rarely translates into full tenure security. As the country case studies illustrate, due to various governance shortcomings, customary land users are seldom consulted or requested to acquiesce to land alienations, often resulting in the forced expropriation of vital livelihood resources without redress.

Box 2.2: Is 'available' land really available?

Land classified as 'available' is typically considered to be 'marginal', 'degraded', 'idle', 'abandoned', 'unproductive' or 'unutilised'. This raises two concerns. The first is that the poor definition of concepts leaves them open to abuse by decision makers or companies pressured to identify suitable areas for development. The second concern is that these concepts are relative to one's perspective. Lands that might be considered 'marginal', 'degraded' or 'unproductive' by one person or use might be considered productive for other purposes—such as the provision of fuelwood, non-timber forest products or grazing in secondary forests or shrubland. Land considered 'idle', 'abandoned' or 'underutilised' by government agencies accustomed to viewing landscapes in terms of their permanent features and documented ownership might be actively used by shifting agriculturalists and pastoralists (Cotula *et al.* 2008; Sugrue 2008), provide essential subsistence or 'safety net' functions to women and the poor (Rajagopal and Zilberman 2007; Rossi and Lambrou 2008) or be under complex customary systems of land use that are difficult to 'read' by outsiders.

The land uses described here are often not accurately captured in land use classifications either. For instance, the FAO classification system (FAO 2010), on which the 'agricultural land' classification used in this section is based, does not consider land to be under agricultural use when it is left fallow for more than 5 years. However, in many systems of shifting cultivation, cropping cycles can be considerably longer. Consequently, land might be considered available whilst being an integral part of a farming system. Furthermore, land that formerly had anthropogenic land uses, but does not any longer, might be considered available despite long-term processes of natural regeneration taking place. Although the range of environmental services offered by this land might be negligible at a particular point in time, these may over time eventually exceed those offered by large-scale monoculture if left undisturbed. As one report puts it: 'The evidence suggests that there really are very few genuinely "marginal" lands, or at least none that conform to the abandoned, empty and useless land of our imagination' (Anonymous 2008, p. 1). Clearer definitions of concepts are therefore required 'to avoid allocation of lands on which local user groups depend for livelihoods' (Cotula *et al.* 2008, p. 3).

In most countries, leaseholds are allocated for periods of 25–99 years, often with options to renew (Table 2.8). In some countries, such as Tanzania and Zambia, all customary rights to land are indefinitely extinguished once a leasehold title is allocated, implying that the land can never revert back to its previous status (German *et al.* 2011a). Even when it can, the duration of a typical title often spans generations, implying that most customary land users will lose their legal access to

Table 2.8: Customary rights and terms of alienation

Country	Legal status of customary land rights	Consultations and compensation	Typical leasehold duration	Typical annual cost of leasehold
Ethiopia	All land is owned by the state, which holds the sole right to allocate land. Customary land rights are not recognized. In four of the nine regions individual farmers have been granted land certificates.	No consultations are required. Compensation only for land certificate holders.	25–50 years, conditional on performance	Fixed rates set by individual regional government: as of 2010, rent on new leases is typically US\$ 4.12–9.19 per ha*. Rents are paid to the government.
Ghana	Customary land rights are legally recognized. Traditional authorities have the right to alienate land.	No consultations are required. Compensation is only required when acquired by the state.	50 years for foreign investors; 99 years for domestic investors	Fully negotiable with traditional authorities. Rents are divided between government (60%) and the community (40%).
Mali	Customary user rights are recognized, though these only translate into ownership rights when formally titled. With the state owning all untitled land, it is therefore free to allocate these.	No consultations are required. Compensation is only payable to title holders.	30 years (ordinary lease) or 50 years (long-term lease)	No fixed rates. Leaseholds for commercial agriculture are typically free of charge. When rents are payable, these are paid to the government.
Mozambique	Customary land rights are legally recognized. The 'community' holds the right to alienate land.	Community consultations are required. Compensation is to be paid to land users.	2–5 year conditional performance-based lease, then 50 year lease	Fixed rates set by government: US\$ 0.60 per ha. Rent is paid to the government.
Nigeria	All land is vested in the state government. Customary user claims are though recognized by statutory law. Communities do not have the right to alienate land, only the government.	No consultations are required. Compensation is payable only for 'unexhausted improvements'	99 years	Differs by state. Typically, rural land for commercial purpose requires the payment of between US\$ 1–4 per ha to the state.
Tanzania	Customary land rights are legally recognized. Village-level institutions have the right to alienate land.	The village assembly is to be consulted. Compensation is payable to all persons that have long-standing interest in the land.	Up to 99 years; bio-fuel investments up to 25 years	Fixed rate set by government: US\$ 0.27 per ha*. Rent is paid to the government.
Zambia	Customary land rights are legally recognized. Traditional authorities have the right to alienate land upon ministerial approval.	No consultations are required. Compensation is only required when land is acquired by the state.	99 years. In practice, leaseholds are first held in trust for 2–5 years to prevent speculation	Fixed rate set by government: US\$ 0.99 per ha*. Rent is paid to the government.

* Converted from local currencies to US\$ at January 1, 2012 exchange rates.

Source: Baxter 2011a, 2011b; German *et al.* 2011a; World Bank 2011a; Alden Wily 2012b; individual country legislation.

land resources for their remaining lifetime. Moreover, in the advent that projects fail, titles are normally reallocated for other commercial purposes, as can be observed in cases of project failure in Ethiopia and Mozambique. Thus, even in countries that place strict performance conditions on investors, Ethiopia and Liberia being notable examples, once land is alienated it is often permanently removed from the customary domain. This, consequently, leads to increasing long-term concentration of land resources with commercial and state actors.

Considering the meagre land rental rates in most sub-Saharan countries (ranging from nil to US\$ 20 per ha), which are typically appropriated by the state, the direct, long-term, economic returns from alienation are limited (both at a local or national level). Rather, host country governments tend to argue that local returns from alienation will accrue from *inter alia* employment generation, technological spill-overs, and infrastructural development. However, a growing body of evidence is giving reason to question how equitably and effectively such benefits are being captured locally; therefore, calling on the importance of better qualifying such underlying assumptions.

2.5.3 Alignment with domestic market needs

The anticipated growth in global biofuel consumption has been a major conduit for farmland investments. With most biofuel investors primarily targeting export markets, in the absence of dedicated policies to curb exportation and promote domestic uptake, biofuel investments are unlikely to make significant contributions to domestic energy security. With sub-Saharan Africa being the most vulnerable region in the world to oil price shocks (with the value of oil imports equivalent to 5.5 percent of GDP, in contrast to a global average of 2.8 percent), important opportunities to enhance energy sovereignty are threatening to be missed (Schoneveld 2010). High exposure to global oil price fluctuations can have several consequences, such as a reduction in foreign exchange reserves, decrease in national output or increase in external debt.

As can be observed from Table 2.9, few countries in sub-Saharan Africa have implemented biofuel blending mandates; in most countries legal provisions to that effect are entirely absent or based solely on non-regulated targets. Blending is currently being undertaken only in Ethiopia, Kenya, and Malawi, which only in Malawi has been rolled out country-wide. In Mozambique, blending mandates will come into force in 2012; although a pricing structure is yet to be defined. Experience to date has, however, shown that even in mandated markets, significant public investments, in for, example, mass storage and blending facilities and periodic subsidies to offset price differentials, are required to consistently meet blending targets (Jumbe *et al.* 2009; Schoneveld *et al.* 2010). In Zimbabwe, for example, the government recently stopped blending ethanol over price conflicts with its lead supplier.

Table 2.9: Potential contribution of biofuel projects to energy security

Country	Value of net oil imports, as % of GDP	Blending mandates (targets in brackets)	Biodiesel prod. potential, as % of total petro-diesel consumption ^b	Ethanol prod. potential, as % of total gasoline consumption ^b
Angola	0	None	13.33%	29.00%
Ethiopia	4.9%	E10 in Addis Ababa	37.27%	27.06%
Ghana	9.2%	(E10/B10)	66.53%	12.85%
Kenya	7.6%	E10 in Kisumu	18.46%	24.99%
Liberia	16.5%	None	105.24%	0.00%
Madagascar	6.9%	None	606.67%	369.02%
Malawi	5.9%	E10	6.90%	0.00%
Mali	1.9%	None	933.78%	80.48%
Mozambique	5.1%	E10/B5 by 2015	98.88%	465.14%
Nigeria	0	(E10)	67.33%	2.17%
Senegal	9.6%	None	30.92%	0.00%
Sierra Leone	14.5%	None	163.74%	43.66%
Tanzania	5.1%	None	68.00%	80.31%
Zambia	3.6%	(E10/B5)	1273.31%	67.10%
Zimbabwe	n/a	(E10)	0.00%	275.12%

^b Calorific differences between petroleum products and biofuel products are accounted for using the conversion factors adopted from USDA FAS (2009): 1,000 litres of ethanol = 0.507 toe; 1,000 litres of biodiesel = 0.788 toe. Yield of biofuel per hectare used in the calculations is conservatively estimated at: jatropha = 1,000 l/ha; oil palm = 4,000 l/ha; castor = 800 l/ha; sunflower = 800 l/ha; cassava = 2,000 l/ha; sweet sorghum = 5,000 l/ha (assuming 2 harvests per year); pongamia = 1,800 l/ha; rapeseed = 1,100 l/ha; croton megalocarpus = 1,500 l/ha

Sources: 'Value of net oil imports, as % of GDP' derived from EIA 2012, World Bank 2012; 'Blending mandates' derived from individual country laws and policies; 'Ethanol and biodiesel production potential' derived from own data, UN 2012

Since most countries in the region have yet to implement blending mandates and considering the limited capacity to enforce these, in the medium term domestically produced biofuels will largely be destined for export markets. This tendency will be reinforced by the global price differentials created by market distortions in the mandated EU and US markets. Land use change to biofuel feedstock cultivation is, therefore, largely a product of global markets, not domestic demand. This is illustrated by the fact that only a fraction of the acquired land would be required to meet hypothetical 10 percent blending mandates (typically the maximum blend before vehicles need to be modified). For example, in Mozambique, Tanzania, Zambia, respectively, a 4,058 ha, 9,293 ha, and 6,899 ha sugarcane plantation would meet all domestic demand for a 10% ethanol blend (E10) (derived from EIA 2012). In these countries, this demand could even be met by converting molasses, a by-product from sugar production, from existing plantations (Schoneveld 2010). In particularly energy insecure countries such as Liberia and Sierra Leone, where large investments in oil palm plantations have been observed, a 10 percent bio-

diesel blend (B10) would require only 984 ha and 2,442 ha of oil palm (derived from EIA 2012)¹⁸. Considering that in most countries that have attracted biofuel investments, the hypothetical production capacity of these investments exceeds a typical E10/B10 blending mandate by multiple factors (Table 2.9), highlights the importance of developing domestic capacities to effectively capitalize on this production potential.

While the macroeconomic contribution of biofuel projects is mostly limited to enhancing foreign exchange earnings, greater societal benefits could arguably be derived from the food projects¹⁹. Not only could these contribute to local food availability, but, like biofuels, could reduce national exposure to food price shocks by reducing dependency on imports. For net food buying households, which in many African countries is the majority of the rural population, food price fluctuations can severely undermine household capacity to meet basic needs (Aksoy and Dikmelik 2008; FAO *et al.* 2008). Most households are susceptible in particular to changes in the price for cereal, which typically constitute between 40 to 60 percent of total calorific intake (FAO 2012b). However, sub-Saharan Africa is only able to meet 77 percent of cereal demand through domestic production, with the remainder sourced from external markets (Table 2.10). While most countries are net cereal importers, countries such as Angola, DRC, and Mozambique, which are particularly dependent on imported cereals and have a high hunger index, are especially vulnerable to cereal price shocks.

Table 2.10: Potential contribution of cereal projects to food security

Country	Global Hunger Index	Total domestic cereal production, as % of total consumption	Area of cereal investment, as % of total area harvested
Angola	24.2	42.13%	2.30%
Burkina Faso	17.2	77.12%	0.08%
Cameroon	17.7	67.42%	4.54%
DRC	39.0	53.09%	1.01%
Ethiopia	28.7	88.21%	0.66%
Ghana	8.7	63.25%	2.58%
Liberia	21.5	32.53%	6.06%
Madagascar	22.5	80.79%	0.29%
Mali	19.7	108.51%	4.07%
Mauritania	12.7	26.37%	17.53%
Mozambique	22.7	55.68%	0.99%
Nigeria	15.5	84.88%	1.19%
Sierra Leone	25.2	94.60%	0.83%
Tanzania	20.5	89.11%	3.19%
Zambia	24.0	82.03%	4.46%
<i>Sub-Saharan Africa</i>		77.13%	1.10%

Source: 'Global Hunger Index' from IFPRI 2012; 'Total domestic cereal production' derived from FAO 2012a; 'Area of cereal investment' derived from own data, FAO 2012a.

However, as discussed in the preceding section, few investments explicitly target this sector. As can be observed from Table 2.10, the hypothetical cereal production capacity of investments to date is in most countries equivalent to a fraction of total area under cereal production. Therefore, it is unlikely that these investments will make structural contributions to national cereal self-sufficiency. Moreover, since many projects are led by investors from countries that too are food insecure, an imperative to export is likely. For example, the cereal investments in Mauritania (equivalent to a comparatively sizeable 17 percent of area harvested) all originate from Saudi Arabia, while in Liberia these originate from Libya. This, however, does not imply that all cereals will necessarily be exported; Ethiopia and Tanzania, for example, periodically put in place temporary cereal export bans to manage price fluctuations.

Palm oil and sugar, on the other hand, are less likely to be destined for extra-regional markets. Since few African countries are completely self-sufficient in these products and domestic prices often exceed international market prices, many investors are targeting domestic and regional markets. However, whether these products are domestic priorities, in terms of nutritional value, is questionable. In this regard, it is disconcerting to observe the comparative scarcity of projects that can make meaningful contributions to Africa's food security.

In sum, due to market composition (few domestic investors), market orientation (oriented towards export markets), and type of product (dominance of biofuels) these farmland investments are unlikely to make significant contributions to domestic market needs.

2.6 Conclusion

This research has helped highlight some of the key trends associated with large-scale farmland acquisitions in sub-Saharan Africa. It has shown the distribution of farmland acquisitions to be widespread across sub-Saharan Africa, albeit with comparatively high concentrations in certain countries. Since 2005, the largest areas of land were found to have been acquired in Ethiopia, Ghana, Madagascar, Mozambique, South Sudan, and Zambia, collectively accounting for more than half the total area acquired. With comparatively limited areas of land that can be considered suitable and available, the magnitude of farmland acquisitions may have particularly dire social and environmental implications in a number of West African countries, such as Ghana, Nigeria, Liberia and Sierra Leone.

Findings suggest that these farmland acquisitions are primarily initiated by private, foreign companies, with a comparatively minor role played by domestic investors. In relation to investor origin, a similarly high geographic concentration can be observed, with companies from India, Norway, the UK and the US responsible for acquiring the largest areas of land. From a regional perspective, projects

led by Europe-based companies account for just under half the total area acquired by foreign projects, followed by companies originating from Asia.

One of the most significant drivers of large-scale farmland acquisitions in sub-Saharan Africa is undoubtedly the perceived long-term demand for biofuels in large mandate-driven markets of particularly the EU. Biofuel-related projects are responsible for almost two-thirds of the total area acquired across sub-Saharan Africa. However, with investor interest in the biofuel sector showing signs of abating from the early 2010s, a rise in food-related projects can be observed. Although northern investors, particularly those from the US, are responsible for a number of these projects, they originate principally from the South, notably from Asia and the Arab world. These projects stem predominantly from countries that are confronted by growing domestic barriers to expansion and, in certain cases, rapidly rising exposure to food price shocks and food insecurity.

Though it is of interest to note these distinctive geographic patterns in capital flows for the different sectors, the underlying factors driving farmland investments into sub-Saharan Africa are essentially the same: growing domestic resource scarcity in the face of rising consumption and declining self-sufficiency for agricultural products. In the context of an ongoing quest for alternative sources of energy, growing populations, changing patterns of consumption, and climate change, this recent spatial reconfiguration of agricultural production systems is by no means transient.

While this potentially places many sub-Saharan African countries in an economically advantageous position, it is questionable whether these global market opportunities have been effectively exploited by host country governments. If anything, ineffective domestic governance of land-based investments means the resources these countries could exploit to the benefit of their own populations are at risk of becoming new enclosures of foreign capital accumulation aligned primarily to global rather than local market needs. Such processes tend to take place at the expense of socially and environmentally valuable land uses and on terms that do not reflect the land's true economic potential. As sub-Saharan Africa increasingly internalises the costs of global resource scarcity while its gains are exported, it once again gives reason to consider the distributional effects of globalisation and the relevance of market governance.

Given the geopolitical nature of the phenomenon, greater accountability should not only be expected of host country governments, but also of the market and consumer countries themselves. This could be realised through initiatives to legislate sustainability requirements in consumer markets, the development of more stringent due diligence standards by financial institutions, greater transparency by private equity and venture capital funds, dedicated voluntary certification systems, and multilateral and bilateral technical support to the development of host country governance systems – guided by some of the 'best practice principles' currently under development.

Notes

- 1 See Brautigam (2012), *Rural Modernity* (2012a), and Woertz (2013) for a more elaborate discussion on some of the methodological shortcomings of the Land Matrix. Although the Land Matrix claims that its data has been verified through use of multiple data sources, in practice, a speculative media report that is cited in another source is considered as two separate sources and becomes 'verified'. Lack of consideration for source origin implies that methodological challenges are not overcome.
- 2 The type of data maintained in the project dataset include, though is not limited to: investor(s) name(s); country of investment; country of origin of 'lead investor'; mode of market entry; location; area of land transferred; type of land acquired; nature of land transfer agreement; area of land developed; date of transfer; crops and/or tree species cultivated; target market; and category of data quality, amongst others.
- 3 Following the definition of large-scale land acquisitions used by Rahmato (2011).
- 4 For the purpose of this analysis, a legal entity constitutes a project. Therefore, should one company be developing numerous plantations, each with different legal partners, then each plantation is considered a separate project. By this definition, therefore, if the same legal entity, with the same partners, is developing numerous plantations, then these plantations are all considered to be part of a single project.
- 5 The Global Hunger Index is a function of undernourishment in the population, child mortality rates, and prevalence of underweight children. Values above 10 are considered serious, above 20 alarming, and above 30 extremely alarming.
- 6 This is based on an International Finance Corporation dataset ranking economies on their ease of doing business, which includes such variables as contract enforcement, investment protection, tax payments, and ease of establishment.
- 7 For the purpose of this analysis, 'Europe' constitutes the 27 countries of the European Union (EU) plus Norway and Switzerland.
- 8 Though currently limited, agricultural investments from Brazil are expected to grow in the near future, particularly into Mozambique. In the context of the tripartite agreement with Brazil and Japan for the Pro-savanna project, which seeks to develop the northern Mozambican Nacala corridor into a Cerrado-like agribusiness hub, an estimated 700,000 ha is planned for development into commercial farmland (AIM 2012; Malonda Foundation 2012).
- 9 Notable failures include Bioshape (Netherlands), Energem (UK), ESV (UK), and, as of August 2011, the much acclaimed Sun Biofuels (UK). In five cases, however, the land in question was confirmed to have been reallocated to other investors.

- 10 The only well-established companies active in the African biofuel sector are Api Nova Energia (Italy), ENI (Italy), Ferrostaal (Germany), Fri-el Green (Italy), Galp Energia (Portugal), Nuove Iniziative Industriali (Italy), Odebrecht (Brazil), SEKAB (Sweden), Tata Chemicals (India) and Wuhan Kaidi (China).
- 11 According to their National Renewable Energy Action Plans (NREAP), the UK, Germany, and Italy expect that total imports will constitute 88 percent, 59 percent and 39 percent of their total biofuel consumption by 2020, respectively. The UK is anticipated to become the EU's largest biofuel importer by 2020, expected to account for 34 percent of EU biofuel imports (derived from Atanasiu 2010).
- 12 This includes 710,000 ha that Italy's Nuove Iniziative Industriali claims to have leased in Guinea. This could be the largest private investment in Africa, larger than the 21 other Italian investments combined. This significantly skews the data for both Guinea and Italy. While the company has confirmed this lease on its website (Nuove Iniziative Industriali 2012) and repeatedly in the Italian media, in direct communications with the author it was unwilling to confirm this - hence is considered a category 2 entry.
- 13 When the EU Renewable Energy Directive came into force in 2011, for consumed biofuels to count towards 2020 incorporation targets, various environmental sustainability conditions are required to be met. The minimum greenhouse gas savings of 35 percent exceeds the default values for palm oil-based biodiesel, which has currently been set at 19 percent.
- 14 The typical rental rate in Indonesia and Malaysia is US\$ 200–400 per ha (Olam 2010; World Bank 2011); while in Africa, oil palm companies are leasing land for rates typically less than US\$ 5 per ha (see Section 2.4 for a discussion).
- 15 Of the 45 projects led by Indian investors in sub-Saharan Africa, 17 are located in Ethiopia.
- 16 The Malonda Foundation is a private sector development program jointly funded by the Government of Sweden and the Government of Mozambique.
- 17 The 'agro-ecological zones methodology' used by IIASA/FAO, for example, uses a standardized framework for the characterization of 'climate, soil and terrain conditions' relevant to agricultural production. Crop modeling and environmental matching procedures are used to identify crop specific limitations of prevailing climate, soil and terrain resources, under assumed levels of inputs and management conditions.
- 18 This calculation assumes 4,000 l of biodiesel is produced per hectare of oil palm. Calorific differences between biodiesel and petro-diesel are accounted for.
- 19 However, most countries permit the full repatriation of profits, which could threaten to offset the contribution of foreign exchange earnings from biofuel exportation to the current account balance.

THREE

Investment-Driven Rural Development in Ethiopia

Local Conflicts and Governance Issues

3.1 Introduction

As part of a broader thrust towards global economic integration and market liberalization, the promotion of foreign direct investments (FDI), and the private sector more generally, have become integral to the economic development strategies of many African countries (Moss *et al.* 2004; Dupasquier and Osakwe 2005). While partly a product of Structural Adjustment Reforms of Bretton Woods institutions, FDI as a development pathway is increasingly being endorsed by other multilateral institutions such as the African Union, OECD, and the United Nations (UN)¹. Within this political-economic milieu, most African countries have since the 1990s sought to create regulatory environments conducive to private capital formation, by *inter alia* lifting capital controls, offering competitive fiscal incentives, and minimizing administrative bottlenecks (Asiedu 2004; Dufey *et al.* 2008; Cotula *et al.* 2009).

While investment flows to Africa's secondary and tertiary sectors remain comparatively insignificant (UNCTAD 2011; AfDB *et al.* 2011), the investment base within the primary sector is becoming increasingly diversified. Since the confluence of the food and energy price crises in the second half of the 2000s, investment capital is increasingly oriented towards the control of upstream agricultural activities (von Braun and Meinzen-Dick 2009; de Schutter 2011a). Endowed with abundant agro-ecologically suitable land, early evidence is suggesting that Africa is the largest recipient of these new capital flows (World Bank 2011a; Anseeuw *et al.*

2012a). Ethiopia, Ghana, Mozambique, and Zambia have become key destinations for agricultural investors in particular (Schoneveld 2011).

In the context of declining public spending on Africa's agricultural sector (Fan and Saukar 2006), host country governments have been eager to capitalize on these new agricultural FDI flows, with more African governments actively promoting foreign agricultural investments than in any other region of the world (UNCTAD 2009). This is reflecting an increasingly entrenched belief in the virtues of 'modernization' in relation to rural poverty alleviation - very much in consonance with prevailing donor discourse. In most African countries, this tends to be grounded, however, on relatively untested and unqualified assumptions that private agricultural investment will help integrate rural communities into global commodity markets, engender important occupational shifts, promote modern agricultural practice, and assuage the public burden of service delivery and infrastructure development (FDRE 2010a; IMF 2012). Moreover, research to date has highlighted rather than in the absence of effective governance mechanisms to regulate these investments, such investments may instead be in conflict with other socially, economically, and environmentally valuable land uses, which could in turn have implications for customary land rights, food and income security, and environment protection (World Bank 2011a; German *et al.* 2011a). These risks are especially pronounced in countries where rights over customary land and common pool resources are not legally protected (Alden Wily 2011).

In this paper we further explore this issue by tracing how investments are governed in Ethiopia during different phases of the investment process, from land identification to post-implementation monitoring. Within the different phases we examine how well local social, economic, and environmental interests are incorporated so as to draw insights into local land use conflicts and governance issues associated with sector expansion. Effective investment governance is particularly important in a country such as Ethiopia, where all land is vested in the state and land users are merely afforded usufruct rights. We will go on to argue that observed governance deficiencies are not a product of capacity constraints, but rather of a focused government strategy of addressing issues of productive and political integration.

We sketch the contours of our theoretical argument in the following section by conceptualizing Africa's pursuit of large rural interventions. The paper then proceeds to frame this topic by discussing the Ethiopian discourse, policies, and strategies on large-scale commercial agriculture. Following a brief overview of the study's methodological approach and its case studies, we present the results of the comparative analysis of ten case studies conducted in Ethiopia's Gambella, Oromiya, and Southern Nations, Nationalities and Peoples' regions. The paper concludes with a reflection on findings.

3.2 Background

3.2.1 The irresistibility of large-scale agricultural modernization schemes

There are few words more ubiquitous in African development discourse than the word 'modern'. It is frequently used in reference to intended outcomes for economic sectors, productive infrastructure, the public administration, tax systems, the health sector, and the rural population. In this way modernity can be read as a metaphorical end state characterized by science, rationalism, and economic progress (Arce and Long 2000; Gray 2003). Modernization can then be viewed as the process by which societal and economic transformations to that effect are realized². In this conceptualization, the traditional, typically portrayed as backwards, static, and fatalistic, is the antithesis of the modern (Lewis 1954a; Rostow 1960; Gerschenkron 1962). Therefore, in practice, the process of modernization tends to be associated with a transition from a traditional agrarian society to a modern society based on trade and industry (Charlton and Andras 2003).

This dualistic, teleological, and, arguably, Western notion of development has been widely critiqued (Gusfield 1967; Ingham 1993; Binns 2002). As a vestige of colonial politics and economics, its normative prescriptions have nevertheless remained highly influential in Africa's post-colonial polity. The pervasiveness of this discourse is best illustrated by the countless government-orchestrated large-scale agricultural development schemes that in various ways have sought to transform agrarian societies into the state's modernist vision. This took hold during the late colonial era when, for example, large mechanization schemes, such as the Tanganyika Groundnut Scheme, the Gonja Development Scheme in the Gold Coast, and that of Cameroon Development Corporation were established (Johnson and Ruttan 1994; Grischow 2001; Konings 2003). Frank Samuel, the managing director of the Groudnut Scheme, encapsulates the intervention logic of that time perfectly: "In addition to a scientifically balanced diet, the villagers will have progressively the benefit of trained medical services ... of education and welfare officers ... It is a vast field for experiment, but the goal before us is the creation of a settled self-contained community producing its own leaders and providing a basis for education in agricultural methods and civic responsibility" (Samuel 1947, p.139). Under this pretext of agricultural modernization, many large-scale settlement/tenant farming schemes were also developed, such as Office du Niger in French Sudan, Gezira in Anglo-Egyptian Sudan, and the Mokwa Agricultural Project in Nigeria (Gaitskell 1952; Baldwin 1957).

Despite political changes following decolonialization, developmentalism continued to define African statehood well into the 1980s (Mamdani 1996; Young 2004). With the virtues of state-led development and modernization thoroughly entrenched among the political and intellectual elite, large new experiments in social engineering were commissioned, often with continued endorsement from Western technical advisors (Chambers 1969; Eicher and Baker 1982; Bonneuil

2000). These initially comprised large state farming schemes in, for example, Ethiopia, Ghana, Nigeria, and Sierra Leone (Udo 1970; Hill 1977), followed by the socialist-inspired villagization and collectivization schemes, such as the infamous *Ujamaa* program in Tanzania and the Lower Shire Valley project in Malawi (Scott 1998)³. The latter schemes typically sought to consolidate scattered populations, often involving the sedenterization of pastoralists, into centralized (grid-)planned settlements (Lorgen 2000; Schneider 2007). A number of large-scale mechanization schemes were also conceived with support from multilaterals and foreign governments, involving, for example, the World Bank in Sudan, the Canadian International Development Agency in Tanzania and the Commonwealth Development Corporation in numerous, particularly Anglophone, countries (Tyler 2011; Byerlee 2013).

Although innumerable 'high modernist' schemes of this sort were tried and tested throughout much of the 20th century, rarely, if ever, did they achieve their intended objectives⁴. The rich body of literature exploring these failings paints a remarkably consistent picture (Lewis 1954b; Baldwin 1957; Chambers 1969; Hill 1977; Hogendorn and Scott 1981; Leo 1981; Young 1988; Johnson and Ruttan 1994; Scott 1998; Bonneuil 2000; Tyler 2011; Byerlee 2013). Oft-cited causes of failure include excessive reliance on inappropriate agricultural techniques (notably mechanization), high risk associated with introducing new crops, low yields, poor planning, corruption, labor shortages, and local resistance to participation. More fundamentally, since most schemes involved coerced resettlement, loss of access to land resource, and excessive day-to-day control in the case settlement schemes, indigenous knowledge and practices were often actively suppressed. With environmental oversimplification, the local capacity to innovate and cope with stresses was as a result often undermined; in many cases resulting in extended land conflicts.

With many African economies being subjected to structural adjustment reforms in the 1980s, statist economic policies were soon abandoned and remnant agricultural projects privatized (Young 2004). While public spending on the sector subsequently declined, reforms did give rise to a more 'process' and 'actor-oriented' discourse towards agricultural development, along with greater decentralization promulgating greater alignment between indigenous and science-based practice (Ellis and Biggs 2001; Wiggins *et al.* 2010). Despite these discursive shifts and the well documented evidence of failure of most large-scale agricultural projects in Africa (Deininger and Byerlee 2012), it is curious to observe, however, that most African governments are actively embracing these new agricultural investments.

The policy rationale supporting these investments closely mirrors the discourse for many of the post-colonial schemes, notably in relation to their potential to contribute to long held and ostensibly unchanged 'rural modernization' objectives (see, for example, Baxter 2011a; German *et al.* 2011a; Habib-Mintz 2010; Schoneveld *et al.* 2011). Not only do host governments actively seek to encourage investment through the liberalization of the agricultural investment regime and the provision of various support services, but more recently also through the develop-

ment of so-called spatial development initiatives or agro-hubs, which aim to attract commercial investors into strategic areas through the provision also of infrastructure and, in some cases, subsidized access to inputs⁵.

Conceptually, this penchant for large-scale agricultural interventions can be attributed to, what Scott (1998) describes as, the need to transform society into a more legible and administratively convenient format; in other words, to make society more amenable to state intervention. As in early European statecraft, schemes of social simplification, standardization, and control have helped to enhance state capacity by, for example, improving the effectiveness of systems of taxation, conscription, and reducing political resistance (see also Hill 1977; Foucault 1979; Bonneuil 2000). This facilitates multitudes of interventions, from healthcare delivery and famine relief to political surveillance (Scott 1998). The capacity to influence and exert power over society is, in turn, strengthened as citizens become increasingly dependent on the services of the state and communal social and economic structures are eroded (*ibid*). Considering Africa's dependency on agriculture, its high ethnic heterogeneity, low rural population densities and comparatively weak market articulation, it is unsurprising that agricultural modernization schemes that consolidate rural communities into the state space, by for example becoming engaged in waged employment or incorporated into well-defined value chains, continue to have such political traction.

3.2.2 Agricultural investments in Ethiopia

A country endowed with vast reserves of fertile agricultural land and water resources, Ethiopia has become one of the top five destinations for commercial agriculture investment in sub-Saharan Africa (Schoneveld 2011). Between 1992 and 2010, 2.46 million ha of land have been allocated for private commercial agricultural investments in Ethiopia - 64.9 percent of these projects were registered in the period 2007-2009 (Shete and Schoneveld, forthcoming). 64.5 percent of the area acquired is located in just three of Ethiopia's nine regions, namely Benshangul Gumuz, Gambella, and Southern Nations, Nationalities and Peoples' Region (SNNPR) (*ibid*). These are all peripheral low altitude regions considered to be particularly suitable for large-scale commercial agriculture for their agro-ecological suitability and comparatively low population densities. Marketed as a *terra nullius*, recent land identification and investment promotion activities by the government have accordingly prioritized these 'emergent' regions (FDRE 2011a).

In the 2010 iteration of Ethiopia's five-year Growth and Transformation Plan (GTP), the government has made the promotion of large-scale commercial agriculture one of its core strategic objectives (p. 8), thereby building on earlier commitments made under its predecessor, the 2005 Plan for Accelerated and Sustained Development to End Poverty (PASDEP). Although agricultural policies since the early 1990s placed a strong emphasis on smallholder productivity and domestic

linkages, due to the limited successes of these strategies the government is increasingly focusing on more trade-oriented commercial agriculture as the impetus for agricultural industrialization (Lavers 2012). This is premised on the assumption that such developments will contribute both to macro-economic and rural development objectives. Macro-economically, the government seeks to increase foreign exchange earnings, enhance food and energy security, generate fiscal revenues, and provide inputs for import substituting industries (FDRE 2007a; FDRE 2010a; FDRE 2010b). Locally, large commercial farms are assumed to contribute to poverty alleviation through technology transfers, off-farm employment, new market outlets for smallholders, opportunities for the uptake of high-value cash crops, and investments in social and physical infrastructure (FDRE 2010a; Kebede 2011; FDRE 2011a; Lavers 2012). It is the widely held assumption within different tiers of government that the adoption of contract farming models and modern farming techniques will elevate subsistence farmers into a commercial farming class and that waged plantation employment will incite a shift from a subsistence to a cash-based economy (Shete and Schoneveld, forthcoming).

To facilitate the government's policy shift, the Ministry of Agriculture and Rural Development (MoARD) has established a one stop investment center in 2010, the Agricultural Investment Support Directorate (AISD). The AISD is responsible for all matters pertaining to agricultural investment, including land identification and allocation, investment promotion, monitoring and evaluation, management of spillovers, and the environmental and social impact assessment (ESIA) process. Formerly, these functions were taken on by regional and district government, the Ethiopian Investment Agency (EIA) and the Environmental Protection Agency (EPA)⁶. While the ruling Ethiopian Peoples Democratic Revolutionary Front, who took over from the military Derg regime in 1991, made great strides in devolving responsibilities to local government - for example, by the establishment of a three-tiered local administration - large-scale agricultural development initiatives are, however, increasingly originating from and controlled by the federal government⁷. To streamline land allocations, the AISD Land Identification Group has established a land bank, which by late 2011 included 3.99 million ha of land across five regions, equivalent to approximately 84 percent of agro-ecologically suitable and potentially available land (FDRE 2011b)⁸.

Besides the new agricultural investment initiatives, the federal government is also promoting the development of large-scale sugarcane farms in a bid to transform Ethiopia into a net exporter of sugar. For this purpose the government has reestablished the parastatal Sugar Corporation in 2010, which was dismantled in 1992 following the fall of the Derg regime. By the end of the GTP period, the Sugar Corporation is anticipated to have invested US\$ 4.6 billion into the construction of ten sugar factories and to have increased Ethiopia's output more than sevenfold (Africa Report 2011)⁹.

3.3 Methodology

Ten sites were selected for field research across three eco-regions: three in the montane highlands of Oromiya, four in the semi-arid lowlands of SNNPR, and three in the humid tropical lowlands of Gambella. A diversity of eco-regions was selected so as to adequately capture ecological and socio-economic variations. SNNPR and Gambella were of particular interest due to the high density of agricultural investments. Project selection within each region was based on extent of land developed in order to be able to capture project impacts.

In assessing the manner in which local social, economic, and environmental considerations are incorporated into investment governance, four key sequential phases of the investment governance process were analyzed. These are (1) land identification and allocation, (2) pre-implementation incorporation and accommodation of land users, (3) impact mitigation and community development, and (4) dispute resolution (see Table 3.1 for a description of each phase).

Table 3.1: Overview of the investment governance process

Phase	Description
1. Land identification and allocation	Mechanisms by which suitable and/or available land for particular types of uses is identified and allocated for investment. It is concerned primarily with how competing land uses (e.g. land of high conservation value, agricultural land, and common pool resources) are accounted for and prioritized.
2. Pre-implementation incorporation and accommodation of land users	Mechanisms through which land users are informed, consulted or given decision authority over land transfer and its terms. Such processes reduce the risk of project opposition and ensures project development is voluntary and in the interest of the local population. It also helps to proactively identify conflicts so as to put in place appropriate mitigation mechanisms.
3. Impact mitigation and community development	Once a project has commenced development, mechanisms to mitigate (potential) impacts and maximize (potential) benefits will ensure a project optimally contributes to local socio-economic development and corrective action is taken when unforeseen or unintended impacts arise. Continuous monitoring of projects is especially important in this regard.
4. Dispute resolution	Mechanisms by which aggrieved persons are able to seek recourse is integral to ensuring companies are held accountable for their activities. Adequate representation in case of disputes is essential when those persons lack the (legal) capacity to claim their rights.

Between September to December 2011 and in August 2012 and January 2013, we engaged three main stakeholder groups (the government, the private sector, and local land users) with the purpose of examining how these groups interact during this process to identify and address investment-related risks and opportunities. A total of 43 semi-structured interviews were held with government representatives from different levels of government (federal, regional, and district level). These interviews covered sectoral agencies responsible for investment promotion, land ad-

ministration, and environmental protection and various administrative entities. Since a number of investors were unwilling to engage researchers on this topic, representatives from only seven out of the ten investments were interviewed.

In each site, at least three focus group discussions were held; two with project affected households (e.g. those that lost access to livelihood resources as a direct result of land conversion) from at least two different communities and one with local plantation workers. Due to security reasons and the inaccessibility of selected research sites, focus group discussions were only held with one community per investment in SNNPR. A total of 28 focus group discussions, covering 25 communities, were held. The focus group discussions followed a predefined format for establishing the characteristics of local livelihood systems, the nature and magnitude of impacts, processes of collective action, and personal perceptions. While it is recognized that the focus groups may not have been representative of all community groups, we sought to minimize biases by including a balanced number of men and women and ensuring community leaders were engaged separately and absent from discussions.

To establish the scale and spatial distribution of investor land allocations and to assess the potential magnitude of land use conflicts, each site was mapped using a Global Positioning System (GPS). MoARD and local revenue offices provided concession maps and coordinates. Land use classifications were subsequently derived from analysis with ArcGIS software using a combination of recent ASTER LIA and Landsat-TM based satellite images.

3.4 Overview of case studies

Of the ten case study projects, seven are located in the Ethiopian lowlands (Gambella and SNNPR) and three in the highlands (Oromiya) (Figure 3.1)¹⁰. The Ethiopian highlands, a large contiguous mountain range covering 45 percent of Ethiopia land area, is one of the most densely populated agricultural areas in Africa, supporting more than 90 percent of Ethiopia's population and accounting for almost 95 percent of the area under cultivation (Zeleeke 2003). While the typical population density in the highlands ranges from 200 to 400 persons/km², the population density in Ethiopia's sparsely populated lowlands rarely exceeds 25 persons/km² (FDRE 2008). As a result of distinctive variances in ecology, ethnicity and degree of articulation to the public administration, profound differences in rural production and livelihood systems can be observed between the lowlands and highlands. The highlands, for example, are characterized by comparatively intensive smallholder mixed farming systems, with crop production and livestock integrated into the same management unit (Bishaw 2001). In the lowlands, on the other hand, more extensive forms of production are practiced, typically comprising of (semi-nomadic) pastoralism and opportunistic flood retreat cultivation (Tolera and Abebe 2007). As a result of high spatial and temporal variability in rainfall distribu-

tion in the lowlands, these areas are particularly susceptible to drought and, therefore, food insecurity (Pantuliano and Wekesa 2008). Although the government has made various attempts to promote highland to lowland migration in the 1980s to reduce inter-regional disparities and alleviate pressure on highland resources, harsh natural conditions, poor infrastructure, and the prevalence of vector-borne diseases have inhibited such population movements (World Bank 2004; Hammond 2008).

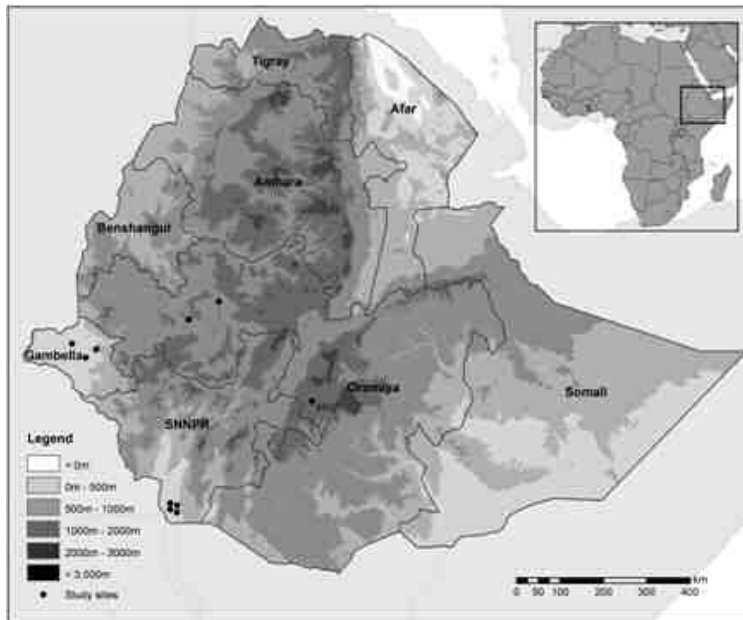


Figure 3.1: Topographical map of Ethiopia

Source: Authors' representation

In Oromiya, recent investments have tended to focus on comparatively sparsely populated areas of the Bale and Hararghe Zones, former state-owned farms, and flood plains (FDRE 2011b). One of the case studies, Serofta Modern Farming, is located in an area of the Arsi Zone that since the 1970s has been dominated by six large state-owned wheat farms (see Table 3.2 for an overview of case studies). Under a recent government initiative to privatize these farms, the government of Djibouti acquired two of the farms for the production of wheat for Djibouti consumption¹¹. The other two case studies, Pakistan's Al-Habasha Sugar Mills (HSM) and India's Karuturi, are both located within major river basins, which due to its vertisol soils and extensive waterlogging are without significant land investment unsuitable for permanent cultivation. These areas are generally sparsely vegetated and swampy. As in much of Oromiya, a large proportion of the population in these three sites are sedentary subsistence farmers, many of whom possessing land certificates over permanently cultivated land. In the mid 2000s, almost 95 percent

of rural households in Oromiya received land certificates that provide lifelong usufruct rights (though not the right to sell or mortgage land) (Crewett and Korf 2008).

Table 3.2: Overview of case study investments

Company Name	Date of acquisition	Origin	Location (district, region)	Area acquired (in ha)	Area developed (in ha)	Lease payment (in ETB/ha) ^a	Contract duration (years)	Type of crop
Karuturi Oromiya	2008	India	Bako, Oromiya	11,700	2,379	135	30	Maize
Al-Habasha Sugar Mills (HSM)	2007	Pakistan	Arjo and Bedele, Oromiya	28,000 (+15,000 conditional)	3,081	20	45	Sugar-cane
Serofta Modern Farming	2008	Djibouti	Dodola, Oromiya	4,883	4,829	958.2	45	Wheat, potato
Saudi Star ^b	2009, re-signed in 2010	Saudi Arabia/Ethiopia	Abobo, Gambella	10,000	9,394	30	50	Rice
Basen Agriculture	2005	Ethiopia	Abobo, Gambella	10,000	4,212	30	Unknown	Cotton, Mango
Karuturi Gambella	2008, re-signed in 2010	India	Itang, Jikawo, Mekuety, and Abobo, Gambella	100,000 (+200,000 conditional)	9,217	20	50	Maize, sugar-cane, oil palm, cotton
Fri-el Green	2006	Italy	Dassanech and Ngangatom, SNNPR	30,000	500 ^d	49	25	Oil palm
Sugar Corporation	2011	Ethiopia	Dassanech, Hamer and Ngangatom, SNNPR	Estimated at 110,000 - 150,000 ^e	735	Unknown	Unknown	Sugar-cane
Lucci Agriculture	2010	Diaspora	Dassanech, SNNPR	4,003	420 ^d	158	25	Cotton
Tsegaye Demoz	2010	Ethiopia	Dassanech, SNNPR	1,000	330 ^d	158	25	Cotton

^a On February 27, 2013, one US Dollar was equivalent to 18.4 Ethiopian Birr (ETB).

^b After the completion of the research, Saudi Star purchased the 4,000 ha state-owned Abobo State Cotton Farm, increasing its landholdings in Gambella to 14,000 ha

^d These figures are based on MoARD monitoring reports from November 2011. All other figures are based on remote sensing analysis (January 2012).

^e Data could not be validated by government sources. The estimated area planned for development is based on the road networks constructed between June-December 2011 (derived from field measurements and Aster LiA imagery).

The three case studies in Gambella are spread across five of Gambella's thirteen districts. Gambella's largest investment project, developed by Karuturi, stretches across four districts south of Gambella's largest river, the Baro. The concession extends across high forest, savannah, and wetland biomes (Figure 3.2). The two other projects, the Ethiopian-owned Basen Agriculture and Saudi Star, owned by the Saudi Midroc Group, are located in the densely forested Abobo district. Most investments in Abobo are located in proximity to the Alwero dam, which was constructed with Russian support in the late 1980s. The vast majority of the population residing in the district belongs to the relatively sedentary Anuak tribe, with a small enclave of highland settlers. The savannah landscape towards the West of the Karuturi concession are dominated by various agro-pastoralist Nuer tribes; a Nilotic group which also populates large parts of neighboring South Sudan.

The case studies in SNNPR focused on the arid, sparsely vegetated lowland areas of the South Omo zone (Figure 3.3). A UNESCO World Heritage site, the area is one of the most traditional and ethnically diverse areas in Africa. Our four case study sites are located in the most southerly districts of Dassanech and Ngangatom, bordering Kenya and South Sudan. These districts, where more than 80 percent of South Omo's agricultural investments are located, are inhabited by the Dassanech and Ngangatom tribes, which both practice agro-pastoralism and are concentrated around the area largest river, the Omo. Due to the areas high rainfall variability, agricultural investors, many of whom requiring irrigation, are also located around the river's banks. With the exception of the Italian renewable energy company, Fri-el Green, which cultivates oil palm, all private investors in the study area were cultivating cotton. Lucci and Tsegay Demoz are both of Ethiopian origin. Expansion plans by the parastatal Sugar Corporation have also targeted this region. As a remote and poorly accessible region, many projects have, however, faced significant upstart difficulties as illustrated by the comparatively small areas of land that are under development (Table 3.2)¹².

3.5 Results

3.5.1 Land identification and allocation

Land allocated for investment was identified through a number of different avenues. In the case of Fri-el Green, Saudi Star, Karuturi Oromiya, and Serofta Modern Farming, feasibility studies for the development of the sites were all conducted in the 1970s and 1980s under the Derg regime. The land allocated to Fri-el Green was identified for cotton cultivation under the Ethio-Korean Obad Project (a joint venture between the government of Ethiopia and North Korea) in 1986; the Saudi Star concession was surveyed by the Russian government for irrigation in 1988; the Bako floodplains, now the Karuturi Oromiya site, was identified by the Ethiopian Electric Power Corporation in 1984 as a suitable reservoir area for a hydroelectric

dam; and the Serofta Modern Farming concession was part of the state farming operation Bale Agricultural Development between 1977 and 2008. After the fall of the Derg in 1991, having cultivated 4,000 ha with cotton, the Ethio-Korean Obad project was abandoned and plans to develop the irrigation and the Bako dam projects were shelved; only Bale Agricultural Development remained operational. The feasibility studies for these three failed projects were, however, not updated to reflect changes in land use and demographic composition before allocation for investment.

The lands for the six other projects were all identified by the incumbent government specifically for large-scale agricultural development. The land for the sugar projects of HSM and the Sugar Corporation were identified by the Ministry of Water and Energy (MoWE), who conducted detailed feasibility studies into the potential for irrigated sugar development for both sites as part of the government strategy to expand its sugar industry. The land for Karuturi and Basen in Gambella were initially identified by the Gambella regional government, prior to the establishment of the AISD. The land for Tsegaye Demoz and Lucci in SNNPR were identified by the AISD and came directly from its land bank. The Karuturi Gambella and Saudi Star concessions, were, however, reallocated by the AISD; in case of the former, boundaries were adjusted due to the scale and potential environmental implications of the concession¹³. Although the AISD was not responsible for a number of land allocations, it has taken over the governance of all the projects in 2010, except for the Sugar Corporation and HSM.

While regional governments tend to allocate land without any thorough surveying and in the absence of a formal protocol, on paper, the AISD Land Identification Group has put in place more rigorous land identification procedures. According to the Group, all land identified for its land bank is first mapped through remote sensing analysis, after which on-the-ground GPS samples are taken and various governmental entities are consulted, including, for example, the MoWE for irrigation potential and district, zonal, and regional government for potential land use conflicts.

Although the AISD and regional governments claim that suitable land will only be allocated for investment if these are free from human settlement, forest, and wildlife, to date these criteria have rarely been met (see Table 3.3 for an overview of *ex ante* land uses). For example, in the densely forested Gambella region, the majority of the area allocated comprises high tropical forests. Moreover, all three concessions are located within the Gambella National Park. The western parts of the Karuturi concession is the destination of the second largest mammal migration in Africa, which takes place annually between South Sudan and the Baro River. Moreover, the Duma Swamp, a wetland of particular importance to fish and wildlife, is located within the Karuturi concession and downstream from the Alwero Dam, which is the primary source of water for the Saudi Star concession¹⁴. Similarly, the HSM concession covers large parts of the Didessa Wildlife Sanctuary, an important birdlife habitat, and the area under development by the Sugar Corporation com-

prises much of the Murelle Controlled Hunting Area, an area frequented by large mammals.

Table 3.3: *Ex ante* land use *within* concession

Company Name	Total area (in ha)	Forest ^β (in ha)	Shrubland/ Grassland (in ha)	Permanent agriculture (in ha)	Human settlements (in HH)	Key human activities
Karuturi Oromiya	11,700	0	11,424	276	1,522	Cattle, teff, and niger seed
Al-Habasha Sugar Mills (HSM) ^α	28,000	324	24,702	2,974	438	Sorghum and sesame
Serofita Modern Farming	4,883	19	35	4,829	0	Cattle
Saudi Star	10,000	6,448	3,552	0	45	Cattle, forestry, and maize
Basen Agriculture	10,000	6,351	1,778	1,871	383	Maize, sorghum, and sesame
Karuturi Gambella	100,000	79,578	21,432	0	498	Cattle, forestry, maize, and sorghum
Fri-el Green	30,000	1,462	28,538	0	100	Cattle and sorghum
Sugar Corporation	110,000 ^δ	1,249	108,751	0	1,400	Cattle and sorghum
Lucci Agriculture	4,003	28	3,985	0	300	Cattle, sorghum, and tobacco
Tsegaye Demoz	1,000	8	992	0	70	Cattle, sorghum, and tobacco

^β Forested land is land with more than 15 percent canopy cover of trees higher than 5 meters.

^δ Since the precise concession boundary could not be established, the lower area estimate is used for these calculations.

Source: Author's calculations, based on:

Land use data derived from analysis of Landsat-TM and Aster LIA based images (various dates) through supervised Maximum Likelihood Classification, with training samples based on field measurements and GeoEye (various dates).

Human settlement data derived from 2007 Population Census combined with primary research data. Data for SNNPR projects based on number of settlements identified through GeoEye (2010); average settlement size is conservatively estimated at 50 households, based on a typical district settlement size of between 40 to 70 households.

While environmental considerations clearly do not figure prominently in land identification efforts, more heed tends to be given to socio-economic factors. As can be observed from Figures 3.2 and 3.3, land is generally allocated away from human settlements; in SNNPR, for example, a distance of at least 500 meters is maintained from the densely populated river banks and in Gambella the most populous districts, Lare and Jikawo, are not actively targeted for agricultural investment⁵. Despite concerted efforts to reduce human settlement conflicts, in some of the case studies, particularly those allocated prior to the establishment of the AISD and its land bank, do comprise densely settled land. For this reason the leasehold certificates for Karuturi Oromiya and Basen are yet to be allocated; their land has to date

not been formally demarcated and boundaries are currently based on the site plans from their leasehold contracts. According to their respective district governments, the re-demarcations, which will be undertaken by the AISD, will ultimately differ from the site plans to prevent human displacement.

In the case of the Sugar Corporation and HSM, however, due to the national strategic importance of these projects, various government agencies claim that some degree of displacement is warranted. In both cases, the government has made inventories of human settlement and drew up resettlement plans. Since these projects do not account to the AISD like the other projects, but rather directly to the Prime Minister's Office, different procedures are in place.

Despite efforts to minimize direct displacement, at none of the sites can it be said that at allocation these were free from human activity. At almost all projects the land was used as pasture and for subsistence farming. In Gambella, forested areas were also actively used by local communities for the harvesting of non-timber forest products (NTFP). At HSM and Basen, some areas of permanently cultivated land can also be observed, though at Basen these areas will be accounted for in the final demarcation and at HSM these are accounted for in the resettlement plan.

The prioritization of commercial agriculture over the environment and land extensive production systems is further reflected by the lax adherence to regulatory and institutional processes that may complicate such land conversions. This is particularly apparent by the limited respect for the environmental and social impact assessment (ESIA) process as a tool for land identification. In Gambella, the AISD (2013), for example, conceded that only 24 percent of investors has prepared an ESIA document despite the Proclamation 299/2002 legislating that land cannot be developed without the prior approval by the EPA of the ESIA. However, even when an ESIA is prepared (typically only by foreign investors), activities on the land do tend to commence before submission of the ESIA or even the allocation of the leasehold certificate. For example, Saudi Star started developing its land in mid 2009, while the leasehold certificate was only allocated in December 2010 and the ESIA document submitted in May 2011 - in an ideal situation the chronological sequence would be the reverse¹⁶. Thus, while the ESIA process is meant to serve as an instrument that identifies the potential socio-economic and environmental impacts to *inform* land allocations, by being conducted after the land is allocated and developed it has become a mere technicality.

With the AISD now managing the entire ESIA process, as opposed to the EPA which has the legal mandate to do so, and also assuming all investment promotion and monitoring responsibilities, significant conflicts of interest arise. Moreover, with the ESIA process lacking transparency, it is neither a tool for promoting accountability. For example, none of the regional and district governments interviewed, even agencies directly accountable to MoARD and the EPA, provided input into the ESIA process or were provided with copies of the final ESIA report. In Gambella, for example, the Land Administration and Environmental Protection Agency, responsible for land use planning in the region, sought access to copies of

the ESIA reports for use in updating the 1999 Gambella Land Use Plan and performing environmental audits, but was refused a copy by the AISD. Similar requests by EWCA and various district governments were also unsuccessful. Although Proclamation 295/2002 requires that such documents be made public, the AISD argued that it would be inappropriate to share such documents even within government since they contain "sensitive corporate information", indicating that it may also be looking to avoid undue scrutiny.

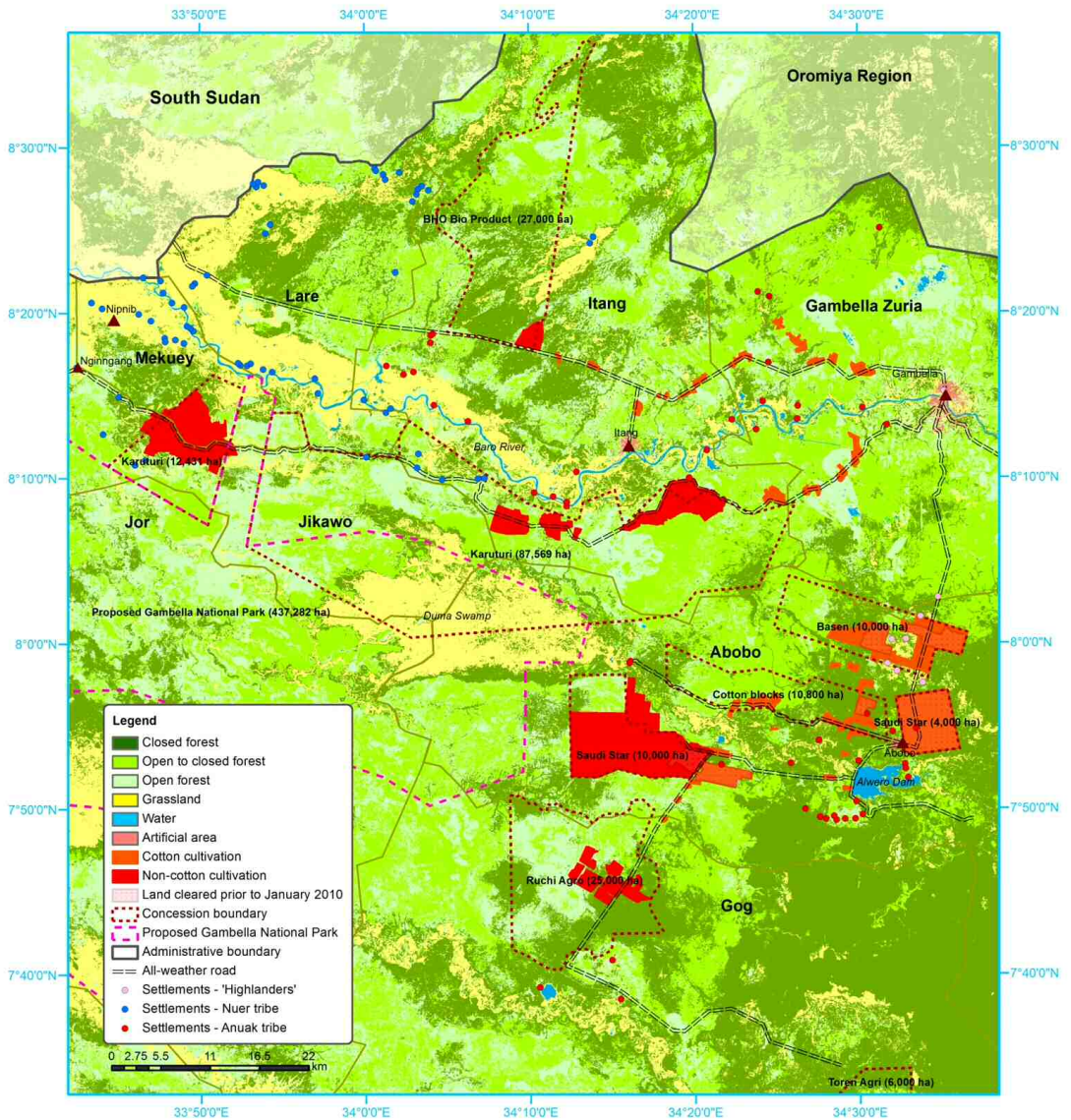
In September 2011, the AISD continued to further centralize investment-related activities by completely removing any right to allocate investment land from the regional governments in Afar, Benshangul Gumuz, Gambella, and Somali. According to the AISD, these regional governments were not sufficiently capable of managing investments as a result of poor coordination in land allocations, rampant corruption, and limited monitoring and enforcement capacity. This has created a situation where regional government, despite in theory having substantial powers under Ethiopia's federal system, having little actual control over how it (spatially) plans developments. This is evident in the fact that in SNNPR and Gambella local government had no knowledge of the location of land in the Land Bank; raising very real questions over how participatory land identification efforts are. The only observed case where regional or district government was able to exert influence over land allocations was when EWCA in Gambella, as part of a participatory Gambella National Park re-demarcation process, pressured the AISD to change the Karuturi boundaries to allow for a six kilometer wide wildlife migration corridor¹⁷.

3.5.2 Pre-implementation incorporation and accommodation of land users

Land rights are increasingly being secured in the lowlands in the context of the so-called villagization program¹⁸. The villagization program, initiated by the Ministry of Federal Affairs in 2010, aims to resettle 1.45 million people in Ethiopia's lowland areas into new villages by the end of 2015 (HRW 2012). The objective is to consolidate scattered (agro-)pastoralists into larger, more equipped, villages in order to reduce food insecurity and improve the efficiency and effectiveness of modern services delivery (Teklemariam 2011). However, since land for investment was identified prior to the execution of the program, none of the case study communities had formal user claims over allocated land. Consequently, the Ethiopian law does not offer lowland communities any protection from expropriation or provide for any mechanisms to elicit community consent or provide compensation¹⁹.

From the seven sampled lowland concessions, there were no forms of consultation or compensation at six of the concessions - this includes a 45 household community within the Saudi Star concession and a 70 household community within the Tsegaye Demoz concession that were required to physically resettle. For all but one non-consulted communities, awareness of commercial development only came when land development activities commenced. In justifying lack of engage-

ment, a senior official in SNNPR noted "...pastoralists will resist new ways of life. Only by demonstrating the value of modern farming methods will they abandon their cattle and learn to become civilized".



Source: Author's mapping, based on:

- Land use classification and land cover change derived from analysis of Landsat-TM based images (various dates) through supervised Maximum Likelihood Classification, with training samples based on field measurements and GeoEye (various dates).
- Concession boundaries based on Agricultural Investment Provisional Land Certificates from MoARD (various dates), unpublished.
- Proposed Gambella National Park boundaries based on data from EWCA (2011), unpublished.

Figure 3.2: Commercial agriculture and landscape transformation in Gambella Region

The Sugar Corporation project was the only lowland project in the study where community consultations were observed. In 2010, the district government regis-

tered community assets; the communities were told for the purpose of resettlement for sugar development. Later, the district government initiated a sensitization campaign to inform communities of the nature and implications of the project. Communities were informed that compensation would be paid and they would be resettled in the to be refurbished 'Korea Camp'; the former housing estate of the Ethio-Korean Obad Project, in the main town of Omorate²⁰. Community engagements were reportedly more promotional than they were consultative, with emphasis largely on the benefits communities could expect to derive from project development, such as plantation employment and outgrower schemes. The comparatively accommodating stance of the Sugar Corporation towards local stakeholders, particularly in contrast to regional government and AISD allocations, should be viewed in the context of the government wider push towards rural modernization. A modern sugar industry is an integral component of the SNNPR rural development plan for South Omo. Both district and regional government, for example, stressed the importance of integrating the local agro-pastoralists into the sugar sector in order for villagization and sedenterization efforts to succeed. With a relatively small local labor pool and obstacles in sourcing labor from other regions due to the harsh conditions of lowland SNNPR, according to the Environmental Protection and Land Administration and Use Authority (EPLAUA), the agency responsible for planning villagization in SNNPR, a sedentary population is critical also to the sugar project.

In the highland sites, local populations were more directly incorporated into the pre-implementation phase than in most of the lowland sites. Serofta Modern Farming was an exception, since the allocated land was already used for plantation agriculture. At the Greenfield sites of HSM and Karuturi Oromiya, however, most surrounding communities were informed by local government of development plans prior to project commencement; though much like the Sugar Corporation engagements had a largely promotional objective. At Karuturi Oromiya, for example, communities were enticed by promises of well remunerated employment, new roads, access to electricity, and boreholes, while, at HSM, new clinics and schools and opportunities to become sugar outgrowers were promised. This served to raise community expectations and quell early resistance to the projects.

Although resettlements were planned for both projects, consultations to that effect were not observed, with most communities appearing uninformed of any such plans. At Karuturi Oromiya, three communities, consisting of more than 1,500 households, were initially slated for resettlement, though, according to the district government, when the costs of doing so became apparent these plans were shelved. While this has prevented loss of permanent, certified, farmland on the elevated periphery of the basin, human activities on the flood plain, consisting largely of shifting cultivation and grazing, were displaced by plantation development without any form of compensation. The land on the plains was not certified due to the environmental significance of black soil, swampy areas. Allocating this land for investment, it was noted by the district administrator, "is different, be-

cause that it is the government's policy direction". The disregard for land extensive activities even in the highlands shows that it is not necessarily a bias against the lowlands as a region, but rather a reflection of the government's stance on land extensive livelihood activities. The district investment office argued that new employment opportunities will enable people to intensify by investing in more productive cattle that can graze on their own farms.

While the district government inventoried all properties within the HSM concession in mid 2011, communities suspected, though were not informed of, its purpose. In contrast to Karuturi Oromiya, most of the affected communities did not possess land certificates for their permanent farmland. Since much of the population was settled in the area by the government in 2006, a year after land certificates were allocated in Oromiya, no such certificates were allocated. Nevertheless, monetary compensation and replacement farmland will be provided to all of the 438 households settled within the concession area²¹. Since the government is constructing a dam over the Didessa River in support of the project, its more direct involvement in the project has, arguably, prompted it to develop a more comprehensive resettlement and rehabilitation package, in similar vein to the Sugar Corporation; indicating also that reputational risk may too factor into how well land users are accommodated²². Also, the socio-economic footprint of the project is comparatively large, particularly considering that an additional 1,275 households are to be resettled from the 8,500 ha reservoir area (FDRE 2007b).

Despite differences in the level of community engagement between the ten sites, in none of the cases was there consultations genuinely aimed at elicited community consent or identifying potential impacts and concerns; rather, where consultations were held, they were merely informational. This lack of public input in the pre-implementation phase implies that local activities and concerns cannot adequately be accounted for when defining concession boundaries, selecting suitable investors, identifying appropriate forms of compensation, or formulating impact mitigation strategies.

3.5.3 Impact mitigation and community development

As discussed in the preceding sections, land allocated for agricultural investment conflicts with local livelihood activities in every case study. While most projects have only developed a small proportion of the allocated land in early 2012 (Table 3.2), early impacts of development were though observable. Although it must be recognized that costs tend to disproportionately outweigh benefits during the early phase of project development, a reflection of potential impacts and institutional responses do shed light on the nature of social and environmental transformation and the local capacity to capture gains from investment. This section highlights some of the conflicts between large-scale agricultural investments and local livelihood systems and the potential of such investments to contribute to local economic

development. The role of government institutions in mitigating these costs and maximizing these benefits is subsequently discussed.

Potential implications for local livelihood systems

Indigenous communities in SNNPR and Gambella all practice flood retreat-agriculture. Due to the annual flooding of major rivers, communities in both regions tend to cultivate away from the river banks as the rainy season approaches, referred to as 'wet season' plots, and on the river banks as the rains pass, referred to as 'dry season' plots. This allows households to harvest twice yearly. Since investment land is allocated away from river banks, dry season plots have generally been spared in both regions. However, wet season plots of at least seven communities surrounding Karuturi Gambella and all communities surrounding the SNNPR concessions are enclosed within concession boundaries (see, for example, Figure 3.3). In the case of Karuturi Gambella and Lucci, a number of communities had already lost access to these farmlands at the time of research. With distances to alternative wet season farmlands considered too great, households only cultivated their dry season plots, resulting in a substantial decrease in agricultural output. Although wet season yields are approximately 30-40 percent lower than dry season yields, they are considered most important since these are the primary food sources during, what is locally referred to as, the dry season "starvation months". A number of communities surrounding Karuturi Gambella applied for food aid to offset lost production, while some households affected by Lucci sold some of their cattle. At the Basen concession, where 383 households of highland settlers lost on average approximately 45 percent of their farmland, due to the inability to obtain new farmlands elsewhere (being enclosed by the concession - see Figure 3.2), required affected communities to also apply for food aid.

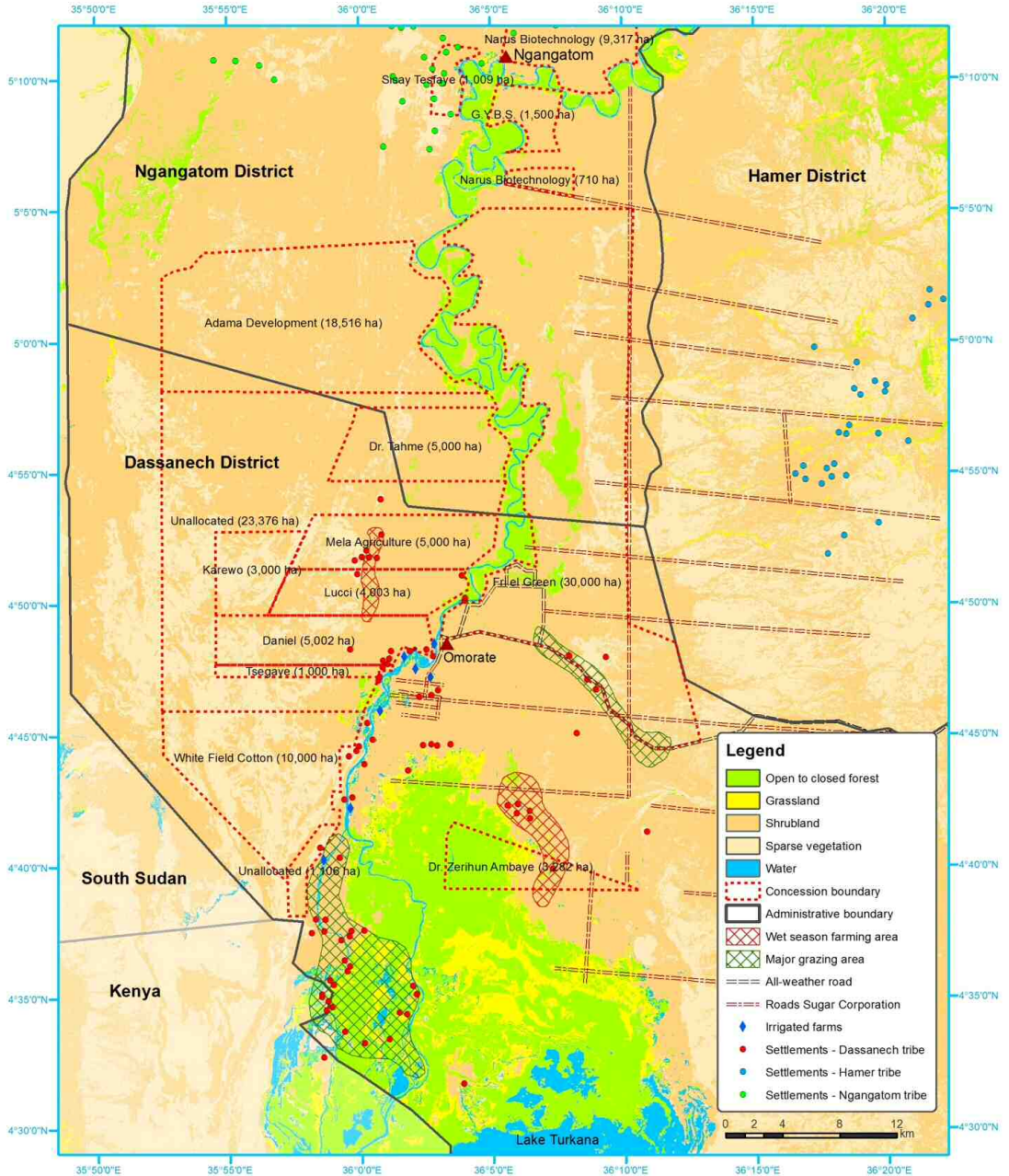
In addition to lost farmlands, large pastureland areas have also been appropriated in the lowlands. Impacts are already discernible in the case of the Nuer tribes in the western stretches of the Karuturi Gambella concession²³. As a result of the conversion of prime pastureland, a number of surrounding communities are now required to migrate further afield. Numerous households indicated that they were consequently forced to encroach onto the pastures of a nearby community, provoking conflict over pasture degradation. However, as a comparatively highly populated district, few other suitable pasture areas remain, thereby reducing mobility and thus capacity to maintain herd size. With the Nuer tribe split into numerous clans, such as the Thiang that reside in the Mekuey district and the Cieng Nyajani that reside in Jikawo district, communities found grazing their cattle in other districts are bound to face conflict and become increasingly susceptible to cattle raids from Sudanese tribes²⁴.

In the case of the Dassanech in SNNPR, youngsters keep the cattle for most of the year on the western side of the Turkana delta and move them north towards their permanent settlements during the wet season when the delta becomes unin-

dated (see Figure 3.3). Although the government is not planning to allocate the dry season pastures for investment, most wet season pastures have already been allocated. While the impact is yet to become apparent, as plantations expand, cattle will increasingly need to be migrated northwards into the pasture areas of the Ngangatom and Hamer tribe or southwards into Turkana territory. With rising gun ownership, competition over pasture, and reciprocal cattle raids, increasing rangeland fragmentation could serve to exacerbate underlying tensions should the Dassanech resist reducing their herd size²⁵. As both Dassanech and Nuer communities repeatedly emphasized, reducing the herd size is not considered an option, with cattle considered to be the most important economic and social asset.

Another important effect of loss of common pool resources on local livelihood activities is loss of access to non-timber forest products (NTFP). Particularly in the case of Basen and Saudi Star in Gambella, where large areas of forests have already been converted, for the forest-dependent Anuak tribe appropriated forestlands were important sources of nuts from the Shea tree (*Vitellaria paradoxa* C.F.), wild yam (*Dioscorea praehehensis*), fruits from the temple plant (*Crateva adansonii*), and forest honey²⁶. While NTFP harvesting is in particular an important consumption smoothing strategy, women also indicated that the loss of shea trees was of particular concern due to the important role of marketing shea butter in generating cash income. As plantations expand, the role of NTFPs will likely be further undermined, particularly for the community of Pokedi who is surrounded by concessions.

In the highland sites, the degree of impact on local livelihood systems is more variable. At Serofta Modern Farming, no land use change took place and at HSM the farmlands of all but 13 households had been spared at the time of research. Issues were limited to loss of access to subsidized inputs at Serofta Modern Farming and the effects of in-migration at HSM. At Karuturi Oromiya, on the other hand, where cattle rearing, like the Nuer and Dassanech, is the most important livelihood activity, impact on livelihood systems was more extensive. Since the concession covers the entire Bako plain and the plain is the only source of pastureland in the district, migration in search of pasture is not considered an option²⁷. The effects of the inevitable reduction in herd size are compounded by loss of farmland. In one community it was estimated that the majority of its 931 households are 'landless' (e.g. do not possess land certificates for land in the plain's elevated periphery) and, therefore, used to farm exclusively on the plains. With the majority of this farmland now converted, most landless households indicated to have either ceased farming completely or have entered into 50/50 sharecropping arrangements with certificate-holding households. This was the only case where communities actively sought out plantation employment to compensate for loss of farm- and pastureland.



Source: Author's mapping, based on:

- Land use classification and land cover change derived from analysis of Aster L1A and Landsat-TM based images (various dates) through supervised Maximum Likelihood Classification, with training samples based on field measurements and GeoEye (various dates).
- Concession boundaries based on Agricultural Investment Provisional Land Certificates from MoARD (various dates), unpublished.

Figure 3.3: Commercial agriculture and landscape transformation in SNNPR

Livelihood contributions

The most direct contribution of large-scale plantation agriculture to rural livelihoods is arguably through employment generation. The primary form of local employment is as so-called day wage laborers (Table 3.4). These are typically periodic employment opportunities during weeding and harvesting times, generally providing two to five months of employment per year. The number of full-time and contracted employees is comparatively small, typically allocated to security and technical personnel. Basen and HSM were found to be the two largest employers of the ten projects, employing in excess of 1,500 day wage laborers during the peak harvesting season, which for both projects is non-mechanized. With no legally defined minimum wage, daily wages of casual workers is, even by African standards, comparatively low, averaging approximately 25 to 30 ETB per day²⁸. However low, these wages are equivalent to almost double the 2010 national average GDP per capita of 12.9 ETB per day.

Despite these new income generating opportunities, at most sites local communities were not found to be actively participating in employment. This, however, cannot necessarily be attributed to employment discrimination, but non-participation was in many cases found to be a choice. In SNNPR, for example, the local communities surrounding the Lucci and Tsegaye cotton farms clearly took offence by not having been consulted and compensated by the projects and, accordingly, were unwilling to contribute to their development. At Karuturi Gambella hostile relations developed between some Nuer communities and the company over wage rates, which subsequently led to a similar refusal to contribute to the project. At Saudi Star, affected households were similarly unwilling to work for the company after a number of men were refused employment as guards. At Basen, local communities considered the primary employment opportunity of cotton picking to be excessively strenuous, an activity they were insufficiently qualified for. A survey conducted by the AISD (2013) of 80 farmers in the vicinity of investments in Gambella indicated that wage rates also contributed to non-participation; with only 3.8 percent of respondents indicating that the investors offered sufficiently attractive wage rates.

Where local communities do actively participate in employment, particularly at the highland projects and some communities at Karuturi Gambella, those employed are typically considered to be 'idle labor'. At most of the projects it was children, young adults, and women that were the primary employment beneficiaries. At one of the sites at Karuturi Gambella, employees estimated that in excess of half the 500 - 700 day wage laborers were children in the age range of 8 to 14²⁹. It was consistently argued by communities that day waged labor is too poorly remunerated and too physically demanding for household heads. With day wage labor considered to be a supplementary, rather than complementary, livelihood activity, households are unwilling to sacrifice the labor of those involved in cattle rearing and farming (for which the labor intensive months coincide with those for planta-

tion work). Particularly amongst the agro-pastoralists, men are also clearly reluctant to abandon activities from which they derive status and identity. Moreover, with the peak harvesting months typically coinciding with school holidays, most parents considered plantation employment to be an ideal opportunity for youngsters to generate cash income to purchase books, clothing, and food. Only at Karuturi Oromiya, where comparatively large numbers of households lost all access to farmland were, out of necessity, many adult males employed as day wage laborers. While adult males at most projects were more interested in better remunerated full time or contract employment, besides limited work as security guards, they often lack the necessary skills to fill more technical roles. Thus, the burden of supplementing lost production falls largely on the more vulnerable local groups. Since plantation employment is often physically demanding and potentially dangerous, such processes raise a number of distributional and ethical concerns³⁰.

Table 3.4: Employment data

Company Name	Expatriate staff	Contract staff	Day wage laborers	Typical wage (in ETB/day)
Karuturi Oromiya	22	50	200 - 500	12
Al-Habasha Sugar Mills (HSM)	300 - 400	0	300 - 2,000	15
Serofta Modern Farming	5	86	400 - 600	3 - 9
Saudi Star	9	154	200 - 400	25 - 35
Basen Agriculture	0	123	700 - 1,500	22 - 50
Karuturi Gambella	n/a	n/a	700 - 1,100	20 - 30
Fri-el Green	0	58	100 - 200	18 - 35
Sugar Corporation	n/a	n/a	n/a	n/a
Lucci Agriculture	0	12	60 - 100	36
Tsegaye Demoz	0	8	80 - 140	36

Source: Company interviews; AISD monitoring reports; employee interviews

With the limited interest in employment and the relatively small local labor pool, particularly in the lowlands, most companies bemoaned the difficulties in employing members of local communities. Accordingly, in areas where labor is scarce, a certain degree of wage inflation has taken place to encourage employment, illustrating some degree of responsiveness to local market conditions. Since establishment, daily wages at Lucci and Tsegaye have, for example, risen from 26 to 36 ETB, at Karuturi Gambella from 18 to 30 ETB, at Karuturi Oromiya from 7 to 12 ETB at Basen from 25 to 50 ETB³¹. With four other large cotton plantations in the surrounding area, in an increasingly competitive local labor market, Basen was forced to increase wages to prevent the best workers from seeking employment elsewhere. In the highland areas, where labor is comparatively abundant, wages are

considerably lower than in the lowland areas; with HSM, with 15 ETB per day, paying the highest wage.

Due to limited labor availability, six of the ten projects sourced seasonal laborers from the Wolaita Zone of SNNPR, which has long been regarded as one of the primary sources of plantation workers³². In 2011, both Basen and HSM sourced in excess of 1,000 workers from Wolaita. Companies argued that despite being unable to source the required numbers and the higher expense, they preferred these migrant workers over local workers due to their greater familiarity with plantation employment and, therefore, their higher productivity³³.

Despite being a new income generating opportunity, none of the interviewed communities felt that employment made any notable contribution to their livelihoods or compensated sufficiently for displaced livelihood activities. Rather, communities in the vicinity of Basen and HSM expressed grievance over the negative effects of in-migration. Particularly at HSM, residents complained of rising incidences of theft, sexual harassment (particularly from the expatriate workers), sanitary issues, and competition over water resources. At both projects, few spin-off benefits of in-migration were observed, with communities arguing that insufficient surplus is produced to capitalize on rising demand for food products. Besides a single coffee vendor, no small-scale businesses could be found in proximity of any of the projects.

While most companies pledged some form of support to social and physical infrastructure, at the time of research few initiatives to that effect have been initiated. Saudi Star was the only company to have made any active contribution to community development, having gifted 250 beehives to local communities and built a community center in Abobo town. While most government institutions contend that technology transfers and smallholder integration are important investment spillovers, such processes were not observed at any of the sites. This was even corroborated by the AISD study (2013) in Gambella, where only 1.3 percent of respondents confirmed to have benefitted from technology transfers (e.g. in the form of training, on-the-job knowledge generation, and access to inputs). In certain cases, company yields were found to be lower than those of nearby communities and in others communities were not familiar with the crop cultivated³⁴. Basen even expressed apprehension about the local population cultivating cotton since this, it argued, would encourage cotton theft. Arguably, at Serofta Modern Farming, with a loss of access to subsidized inputs, a loss of spillovers can be observed.

Role of government institutions in managing outcomes

In regards to impact mitigation, investors are foremost required to adhere to the stipulations of their land rental contracts, the Agricultural Investment and Land Lease Directive, and other pertinent legislation, such as the Labor Proclamation (No. 377/2003), the Water Resource Management Regulations (no. 115/2005), and the Environmental Pollution Control Proclamation (No. 300/2002). The Directive,

on which the contracts are based, require investors to "plant trees that are good for soil conservation", "ensure that proper technologies are used in order to prevent soil erosion", "protect religious, community owned and wetland areas" and "responsibly use chemicals" (Article 13). However, without further elaborating on or quantifying these requirements, these provisions leave significant latitude for interpretation. For example, what is meant by 'community owned' is not detailed in the Directive, but in practice refers only to certified land.

With the EPA acknowledging that it lacks both the capacity and actual authority to perform audits, in practice the only investment monitoring activities are coordinated by the AISD. Investors are monitored by the AISD twice yearly, involving a team that consists of AISD representatives and officials from district, zonal, and regional investment agencies. Investments are appraised on the basis of seven criteria: conformance to the land rental contract, labor conditions, labor quantity, use of machinery, contribution to community development, infrastructure development, and conservation practices. Based on monitoring reports for SNNPR and Gambella, the monitoring teams appear to be highly cognizant of the adverse impacts of agricultural investment. For example, it recognized the existence of settlements within some of the concessions and for the majority of projects acknowledged that labor conditions, environmental practices, and contributions to local development to be poor.

Despite this, companies are only reprimanded for failure to develop at the pace specified in their land rental contracts, not for other failings. For example, Basen, Karuturi, and Fri-el Green all received official warnings that failure to develop would lead to the termination of their leasehold certificates, which for Fri-el Green lead to the loss of half their concession area in late 2011. In Gambella, the government revoked the leases of 25 other companies in 2011 for not sufficiently developing their land. The investor-centric approach of these monitoring missions are also evidenced by the excessive emphasis in the monitoring reports on providing investors with more institutional support to expedite development, without suggesting any actions to manage the negative implications of such developments. In relation to labor conditions and technology transfers, the AISD argued that interventions would not be required since over time the market will correct any imbalances. Arguably, with the lack of involvement of other sectoral agencies, such as Labor Affairs, EPA, and EWCA, monitoring issues outside the mandate of the AISD and the investment agencies cannot be properly accounted for.

While the ESIA and the associated Environmental Management Plan (EMP) could in theory serve as important instruments to formulate context-specific impact mitigation strategies, considering the lack of pre-implementation community engagement it is questionable whether community concerns are appropriately accounted for in project planning and design. Moreover, with no reference made to the EMPs in the biannual monitoring missions, it is unlikely that these serve as actual performance benchmarks. Although the AISD has adopted the 'Social and Environmental Codes of Practice' for agricultural investment (FDRE 2011c), as the-

se codes of practice are voluntary it is unlikely that profound shifts in corporate responsibility can be anticipated³⁵.

In justifying the absence of direct remediating measures, various sectoral agencies within regional and federal government argued that concomitant rural interventions will address some of the early costs associated with land use competition. For example, the villagization program is over time expected to sedentarize agro-pastoralists and promote more land intensive livelihood activities that are spatially confined and controlled through individualized landholdings, as opposed to communal rangelands. It is therefore claimed that the current conflicts between agricultural investment and pastoralism and flood-retreat agriculture will be resolved over time.

In SNNPR, the government is also in the process of implementing a series of projects to further facilitate this shift. For example, in collaboration with the European Union it has distributed *boreda* cows to local agro-pastoralists. Since these cows are considered to be more productive than the local breed, it is expected that agro-pastoralists will be able to keep fewer heads of cattle and, therefore, refrain from migrating in search of pasture. However, interviewed households expressed little interest in moderating cattle numbers and complained that the *boreda* breed required excessive care due to their high susceptibility to disease as a result of their poor adaption to the area.

Another such initiative is the newly introduced small-scale irrigated farming scheme. To prevent wet season migrations, since 2009 a number of households from 'model communities' have been allocated 0.1 ha of irrigated land along the Omo River. These model communities are meant to showcase the value of irrigated farming to other communities and, thereby, entice others to adopt modern farming methods. However, while these model communities do actively farm these plots, most households indicated that they were unwilling to abandon their wet season farming plots since these are less labor demanding and to prevent the risk of crop failure from irrigation pumps being out of service, as has been known to happen in the past from fuel shortages.

3.5.4 Dispute resolution

Considering the nature and magnitude of landscape transformations and the limited preparedness of affected communities to adopt new systems of production or plantation employment, high levels of community discontent could be observed at most of the case study sites. With employment conditions disappointing and the lack of community development initiatives, most communities expressed discontent of the high opportunity costs associated with the loss of access to traditional livelihood resources.

This discontent was in many cases found to be exacerbated by the limited effort by companies to develop amiable community relations. This is evident not only

in the complete absence of formal community engagement mechanisms, but also in the frequency of company-community conflicts, which in many cases are comparatively petty and preventable. To many, such conflicts symbolize company disregard for local communities and have become important sources of distrust. While most conflicts resulted primarily in a deterioration of company-community relations, in a number of cases this resulted in violent escalations. At Karuturi Oromiya, Saudi Star, and HSM, expatriate staff have been assaulted, which in the latter two resulted in fatalities.

At four projects, affected communities indicated that when they approached the companies to discuss their concerns, they were referred to the government. As one company noted, "As the government allocates land to us and we pay rent and taxes, it is their responsibility to deal with community concerns". Since companies, in the absence of any contractual relations with communities, are accountable solely to the government and the government, through the leasehold contract, is obliged to ensure that "land is free of impediment", companies appear to have no far-reaching obligation or incentive to accommodate the needs of communities. In practice, however, such neglect could have implications for operational freedom, as is the case at Karuturi Oromiya, and the ability to source local laborers, as in the case of Tsegaye, Lucci, HSM, and Karuturi Gambella.

With deteriorating relations, most communities sought out the government to mediate conflicts. It is typically the *Kebele* Chairman that then acts as the representative in such matters³⁶. Within the case study sites, local sentiments towards the *Kebele* Chairman differed greatly. In the highlands, he was generally perceived to be an effective and embedded representative of the community, while in the lowlands, notably in SNNPR, he was viewed as a political appointee, aligned more to the government than his constituency. Notwithstanding these differences, 21 out of the 25 sampled communities (for all projects except the Sugar Corporation) sought the support of the Chairman in informing government of disputes. Their intervention was in most cases aimed at preventing further loss of farmland and pasture and encouraging companies to fulfill their developmental promises. However, there was no evidence of such interventions yielding any tangible results. At a number of the lowland projects it was claimed that the district and regional government often responded to complaints by reprimanding communities for "agitating the public" and for being "anti-development". Although disenchanting, all communities tended to surrender to this lack of support, with a significant show of deference to government authority.

Since few concrete benefits have to date accrued with lower level government, at many concessions the concerns of relevant district administrations, despite differences in long term expectations, are typically in line with those of the communities³⁷. Although these concerns are communicated to the AISD, with district government having limited authority over both allocation and implementation, their capacity to influence corporate practice and government investment strategies is in practice negligible. District administrators openly brood over their highly con-

tradictory roles; one as a representative of their constituency and the other as an investment enabler. With their input into the investment process increasingly being undermined by ongoing centralization processes, it is generally acknowledged that their capacity to intervene is substantially diminishing.

The only observed case where the court system was consulted is when a group of contract workers at HSM filed a class action lawsuit against the company for arbitrary dismissal. However, since non-certified land and casual labor have no legal protection, the issue of community 'legal capacity to claim' is of limited relevance to Ethiopian concession allocations. Moreover, with the passing of the Societies and Charities Proclamation No. 621/2009, foreign NGOs and those receiving more than 10 percent of their funding from foreign sources are not permitted to perform human rights and conflict related work (Article 14(2j-n), 14(5)). Therefore, considering the limited capacity of NGOs and local institutions to adequately represent community concerns and the limited legal grounds for contestation, in practice project affected communities have few opportunities for seeking recourse.

3.6 Discussion and conclusions

The ten case studies offered insights into how well local socio-economic and environmental considerations are being incorporated into the investment governance process and the manner in which this shapes the relationship between large-scale commercial farming and traditional forms of production. While the Ethiopian government formally contends that the introduction of modern farming will contribute to upgrading traditional production systems, early evidence suggests that numerous conflicts have and are threatening to arise as a result of the highly centralized implementation of Ethiopia's agricultural modernization policies and unwillingness of the state to accommodate contradictory interests.

The research, for example, has shown that while procedures and protocols are in place to identify potential land use conflicts, allocations decisions in practice illustrate clear biases against particular land use systems. With the government evidently avoiding areas that are under intensive, sedentary, forms of production, ecologically significant landscapes and areas dominated by land extensive livelihood systems (e.g. pastoralism, hunting and gathering, and shifting/opportunistic cultivation) are disproportionately targeted for conversion. While financial motives (e.g. avoiding compensation payments to holders of land certificates) partially underlie this phenomenon, biases reflect more importantly government's dismay over, what is regularly referred to as, 'backwards' and 'uncivilized' livelihood systems. This is reflected not only by the allocation decisions, but also by high levels of awareness of land use conflicts, the absence of consultation, participation, or impact mitigation mechanisms and the refusal to engage communities in post-implementation dialogue. Thus, the evident lack of consideration by the government for these local realities is not necessarily a product of poor monitoring and

enforcement capacity, but rather of a focused government strategy to modernize 'backwards' rural practices through both pull (e.g. villagization and intensification schemes) and push forces (e.g. loss of access to traditional livelihood resources).

However, findings show a widespread resistance to plantation employment and a reluctance to abandon traditional livelihood activities, particularly amongst the agro-pastoralists. This can in part be attributed to the deeply engrained social identities that are derived from these activities, but also to the perceived risks associated with increasing dependence on insecure income from casual employment and government resource supplies and sacrificing important safety net activities. Early evidence already suggests that land fragmentation and loss of access to vital livelihood resources is enhancing the risk of inter and intra-tribal conflicts and vulnerability to shocks; for example, by loss of wet season farmlands, pasture, and non-timber forest products - all of which constituting important consumption smoothing strategies. As a result, many households will over time be forced to abandon these activities and submit to development plans of the state.

While too premature, and beyond the scope of this research, to evaluate the implications of this shift in economic terms and in relation to human development indicators, the issue at hand transcends social empiricism. Fundamentally, findings suggest a growing disconnect between a developmental state in pursuit of agricultural modernization and normative human and citizenship rights. Despite decentralization reforms and advances in ethnic political representation under the current regime, the recent recentralization of the investment process is increasingly undermining the capacity of sub-national institutions to respond to the needs of its population, thereby undermining principles of ethnic federalism enshrined in Ethiopia's constitution, notably their right to self-determination. Compounded by increasingly prostrate civil society organizations and the absence of mechanisms for community consultation and participation, rural communities have no real means to ensure that their development needs are accounted for or able to contest the appropriation of the commons. As the widespread resistance to the agricultural investments and the reluctance to abandon traditional systems of production for employment illustrate, in its current form there is little compatibility between government modernization initiatives and extant rural livelihood systems. In this respect, Ethiopia's strategic turn exhibits many of the trademark features of history's many failed large-scale agricultural development projects, albeit focused more on the private sector, rather than the state, as the primary agent of implementation.

Although Ethiopia's governance system is in many ways unique to the rest of Africa, striking commonalities can be observed with some of the other major agricultural investment destinations. Studies on Ghana, Mali, Mozambique, Sierra Leone, Tanzania, and Zambia (Baxter 2011a, 2011b; German and Schoneveld 2012; Habib-Mintz 2010; Schoneveld *et al.* 2011) show, for example, how governments are increasingly repositioning themselves to capitalize on new land-based investment opportunities in support of rural modernization objectives distinctly alike to those of the post-independence era. Drawing on Scott's conceptualizations, it can

thus be argued that since state-led experiments in social and economic engineering have in many parts of the continent become increasingly unviable as a result of liberalization and democratic reforms, the state increasingly has to embrace the private sector as a source of capital and inertia for rural transformation - signifying merely a change in approach, not objective. Since the private sector has no developmental mandate, yet is now relied on so heavily as an agent of change, the absence of sufficiently comprehensive checks and balances gives cause for concern. With growing evidence that many of the underlying assumptions are deserving of greater scrutiny, a reconsideration of the prevailing development paradigm that is focused so heavily on issues of efficiency and productivity, rather than agency and choice, is certainly warranted.

Notes

- 1 As is reflected, for example, by the New Partnership for Africa's Development's (NEPAD) Framework Document, the OECD Initiative on Investment for Development, the UN Millennium Declaration, and the UN Economic Commission for Africa's 2011 Economic Report on Africa.
- 2 Here, we refer to modernization as an economic theory; it is, however, also used in reference to political development, connoting political participation, liberal democracy, and secularism (Huntington 1966; Ciaffa 2008).
- 3 During the 1970s and 1980s numerous other African countries, such as Nigeria, Ethiopia, Mozambique, Angola, and Zambia, also initiated such settlement schemes (see Clapham 1987; Young 1988; Lorgen 2000).
- 4 All schemes discussed here, bar the Gezira project in Sudan, eventually collapsed. Plagued by poor economic performance, even the Gezira project was far from a success story (Bernal 1997).
- 5 Examples include the Farm Block Development (FBD) program in Zambia, the Savannah Accelerated Development Authority (SADA) initiative in northern Ghana, the Green Belt Initiative in Malawi, the resurrection of the Office du Niger in Mali, the Bagré Growth Pole in Burkina Faso, and the agricultural growth corridors of Mozambique (BAGC) and Tanzania (SAGCOT).
- 6 Regional governments continue to reserve the right to allocate land smaller than 5,000 ha in extent.
- 7 It should though be acknowledged that despite increasing political pluralism, the EPRDF party network has always maintained considerable control over local administrative structures. This is reflected in the control of central government over budget allocation, the inability of regional government to influence policy making, and the lack of merit-based appointees within the local administration, as discussed in the searching accounts of Gudina (2003) and Balcha (2006).
- 8 This includes 1,317,268 ha in Oromiya, 1,099,893 ha in Gambella, 981,852 ha in Benshangul Gumuz, 409,678 ha in Afar, and 180,625 ha in SNNPR (FDRE 2011b). The other three regions are yet to be fully surveyed.
- 9 The government has not officially revealed the area of land that will be developed for this purpose. Based on ongoing development activities in Tana-Beles (Amhara), Kesem (Afar), Wolkait (Tigray), and South Omo (SNNPR), this will likely entail an area of between 500,000 - 550,000 ha.
- 10 Areas are generally categorized as 'highland' when elevation exceeds 1500 m above sea level,
- 11 The management of both the Serofta Modern Farming and the Karuturi Oromiya operation are outsourced to the Indian agricultural input producer, Multiplex Bio-Tech.

- 12 During the rainy season the main access roads are impossible to navigate. For projects west of the Omo river developing onsite infrastructure is particularly difficult due to the absence of functional bridges in the area. A bridge is though currently being constructed at Omorate by the Saudi Midroc Group.
- 13 Karuturi was initially allocated 138,000 ha, but was reduced in extent due to wildlife conflicts.
- 14 The Duma Swamp is the only known habitat of the endangered Nile Lechwe antelope in Ethiopia and of the vulnerable shoebill stork (Personal communications, HoA-REC/Nn 2012). With the Alwero Dam reportedly only able to produce enough water to irrigate 1,800 ha, Saudi Star is constructing a second dam across the Alwero River - this could have detrimental implications for the wetland water table.
- 15 Of the 706 agricultural investments in Gambella, only one investment is located in Jikawo (Karuturi) and none are located in Lare (FDRE, 2011c). The land bank has only made available an additional 14,832 ha in Jikawo and nothing in Lare (FDRE 2011b), despite the agro-ecological suitability of the land and its strategic location.
- 16 The other ESIA documents authors were able to peruse, from Karuturi Gambella and BHO Bio, were only submitted in July 2011 and October 2011, while cultivation activities had already commenced and leasehold contracts were signed as far back as October 2010 and May 2010, respectively. According to the AISD (2013), 90 percent of foreign agricultural investors in Gambella has prepared an ESIA, in contrast to 0 percent of domestic agricultural investors.
- 17 Their request to account for the Duma Swamp was, despite verbal commitments, not honored.
- 18 In Gambella, an anticipated 45,000 households are expected to receive land certificates for up to 4 ha of land by the end of 2013, while in SNNPR 58,000 households are expected to receive land certificates for up to 5 ha of land by 2015.

Villagization has recently been the subject of much media attention over claims that resettlements are, contrary to government claims, coerced and involuntary and are intended to make more land available for commercial agriculture (Rahmato 2011; HRW 2012). This was, however, not the observation of authors, who encountered a number of communities who refused resettlement without experiencing any repercussions.

- 19 Although the Constitution (1995) does recognize the free right of pastoralists to pasture (Section 40(5)) and peasant right to compensation in the case of expropriation (Section 40(8)), in practice these provisions are not extended to landholders without land certificates. Proclamation 455/2005, for example, defines

- a landholder in the context of expropriation only as one "with lawful possession of the land" (Section 2(3)).
- 20 Compensation will be in line with Proclamation 135/2007, in which landholders are entitled to compensation for loss of property, crops, trees, and burial grounds (Part 2) and receive replacement farmland (Part 3).
 - 21 A resettlement site is yet to be determined, though, according to the resettlement plan, will be located within a 10 km radius of the farm to minimize the trauma to the population of a second resettlement.
 - 22 At the time of research the zonal investment office indicated that the Sugar Corporation was eager to take over the plantation. In November 2012, this indeed happened.
 - 23 To the agro-pastoralists, such as the Nuer and Dassanech, cattle is considered the most important livelihood asset; not only as they are vital sources of milk, butter, blood, and meat (both for sale and consumption), but also for their social functions, particularly in defining status and enabling marriage.
 - 24 The persistent conflict over pasture between these two clans is the reason why Mekuey, formerly part of Jikawo, became a separate district in 2011.
 - 25 See Carr (1977), Almagor (1979) and Mekonnen (2010) for detailed ethnographies of the Dassanech relations with nearby tribes and the factors driving inter-tribal conflict.
 - 26 Lulekal *et al.* (2011) recorded 51 different wild edible plants used by the Anuak. Surveyed communities indicated that the wild yams and the fruits from the temple plant are the most important sources of calories when communities are faced by shocks.
 - 27 According to district statistics, the Bako plain supports approximately 22,000 heads of cattle.
 - 28 Ethiopia's main labor law, the Labor Proclamation (No. 377/2003), only applies to 'contracted workers', not day wage laborers.
 - 29 According to the Jikawo district administrator, the company even requested the district government to assist in recruiting children specifically. This type of labor is, however, not necessarily illegal in Ethiopia. The most explicit reference in Ethiopian law to child labor is the rather arbitrary Article 36(1d) of the Constitution, which specifies that "every child has the right not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being".
 - 30 None of the ten projects provided employees with any safety equipment, despite frequent use of fire and industrial chemicals. At HSM, snake bites are reportedly prevalent - the company did not have any facilities to treat these.
 - 31 Basen pay increased from 0.5 to 1 ETB per kilogram of cotton picked. According to the company, the average worker picks 50 kilograms of cotton per day.

- 32 According to officials from the Labor Affairs department in the Wolaita Zone, since the 1950s the area has been an important source of sugarcane and cotton workers in particular. It is argued that due to high population density, communities are required to seek supplementary forms of income outside the zone. In 2011, the department received requests from large-scale plantation companies to supply 23,650 workers. Although the department does not keep figures, the actual number of seasonal labor migrants is expected to be considerably higher, since many are recruited by private labor agencies, not by Labor Affairs.
- 33 Companies are typically required to pay a 400 ETB one-off incentive and for transportation.
- 34 At Serofta Modern Farming company yields were approximately half that of surrounding communities, while at Karuturi Oromiya these were approximately one-quarter.
- 35 The Codes of Practice are also relatively limited in scope. For example, besides the provision that "the local community gets an opportunity to acquire knowledge of the project so that peoples around provide sustainable support to the project" and "care should be taken to protect historical relics and burial sites" (p. 5), the 'social component' focuses entirely on labor conditions and make no reference to livelihood reconstruction obligations. The AISD acknowledged that the Codes of Practice were developed largely to appease donor concerns.
- 36 The Kebele is the smallest administrative unit in Ethiopia, equivalent to a municipality. The Kebele Chairman is the elected administrative representative.
- 37 Although district government is the sole beneficiary of land rents, most of the contracts have a 3 to 6 year payment exemption. With most companies still in their exemption period, at the time of research most district governments were yet to collect any rents.

Land Based Investments for Rural Development?

A Grounded Analysis of The Local Impacts of Biofuel Feedstock Plantations in Ghana

4.1 Introduction

An increasing number of countries around the world have started or are in the process of mandating the incorporation of renewable energy products into their energy matrix (REN21 2009). This is in large part driven by political and economic concerns in industrialized countries over excessive dependency on imported fossil fuels and the need to reduce carbon emissions. The adoption of blending mandates through the Renewable Energy Directive (RED) of the European Commission and the Renewable Fuel Standard (RFS 2) in the United States, in particular, has created sizeable and comparatively stable markets for biofuels. Although some developing countries share the concerns of industrialized countries, it is increasingly the new export opportunities that this trend inspires that are motivating their governments to embrace the renewable energy sector in general and first-generation biofuels in particular (Schoneveld 2010). It is generally perceived that developing countries, notably in Africa, are significantly more competitive in producing biofuels than industrialized countries, because of relatively low costs of production and the availability of cheap and agro-ecologically suitable land for the cultivation of biofuel feedstocks (FAO 2008; Fischer *et al.* 2009).

Seeking to capitalize on these opportunities many foreign companies have, over the past five years, acquired large tracts of land across Africa for the commercial cultivation of biofuel feedstocks, particularly for the oil seed bearing plant *Jatropha Curcas L.* (jatropha) (Amigun *et al.* 2008; Cotula *et al.* 2008; Gordon-Maclean *et al.* 2009; Schut *et al.* 2010). These investments could contribute to im-

proving the trade balance and provide African countries with much needed investment capital, while simultaneously contributing to energy security and rural development. It also presents a number of risks because many countries do not have comprehensive legal and institutional frameworks in place to regulate this type of land-based investment (Jumbe *et al.* 2009; Schoneveld *et al.* 2010). For example, there is emerging concern over the large-scale transfer of valuable land resources from customary land users to commercial enterprises, because of the loss of access to vital livelihood resources for the local poor, inequitable benefit capture, and environmental degradation. Although an increasing amount of literature is devoted to characterizing this trend and the underlying factors that are driving it (Cotula *et al.* 2009; Kugelman and Levenstein 2009; von Braun and Meinzen-Dick 2009; Zoomers 2010; World Bank 2011a), strikingly little evidence-based research has to date been conducted into the actual impacts and impact pathways.

Early efforts to introduce *jatropha* for use as a fuel in Africa, including Ghana, were typically promoted by nongovernment organizations through community-level cultivation, processing, and consumption. More recently though, *jatropha* is increasingly being adopted as a plantation crop, despite limited experience in the crop's propagation and management at a commercial scale. Along with countries such as Tanzania, Mozambique, Madagascar, and Ethiopia, Ghana is one of the primary investment destinations for commercial *jatropha* companies (CIFOR 2011). Although civil society in Ghana has cautioned against the surge of large-scale *jatropha* investments (see Nyari 2008; Amankwah 2009; Bull 2009; Nonor 2010; Civil Society Coalition on Land 2009, *unpublished report*), empirical evidence as to the precise scope, scale, and implications of these developments is limited. This article seeks to contribute to these research needs through a detailed case-study analysis of the local, social, and economic impacts of *jatropha* development in the Pru district of the Brong Ahafo region. By doing so, this article illustrates some of the challenges associated with fully capturing the rural development potential of this new wave of large-scale agricultural investments in Africa.

As a background, the article first discusses the development of plantation agriculture in Ghana and the potential opportunities and risks to Ghana's rural development. This is followed by the case study analysis. The wider relevance of findings from the case study is subsequently discussed by drawing on observations from other plantation sites visited in this research. The article concludes with a reflection on the potential rural development implications of plantation agriculture.

4.2 Background

4.2.1 Biofuels and the evolution of plantation agriculture in Ghana

Early attempts were made to develop large plantations for tropical export crops in Ghana under colonial rule. It was, however, not until Ghana's independence in

1957 that the development of large-scale mechanized agriculture became a policy objective (Akoto 1987). Most of these early, often state-led, initiatives were unable to weather the neoliberal market reforms of the 1980s, in which state support was removed, undermining their ability to withstand increasing international competition (Amanor and Pabi 2007). The only notable projects from that era that are still operational are four oil palm projects and one rubber project, with estates ranging in size from 2,500 to 13,000 ha, concentrated in southwestern Ghana. These projects all benefited significantly from the support of foreign private and, in some cases, donor capital (Gyasi 1996), and are all majority foreign-owned. In the 2000s, plantation agriculture in Ghana became the object of renewed interest by the private sector. This initially targeted the horticultural sector, particularly for the cultivation of pineapple for export to the European market. Although smallholders have historically dominated pineapple cultivation in Ghana, since 2003 shifting European demand to a pineapple variety that is more technologically intensive to cultivate and the increasing adoption of stricter health and fair trade standards, e.g. GlobalGAP, have tended to favor better capitalized operators (Takane 2004; Fold 2008; Jaeger 2008). At present, this market is dominated by a dozen medium to large-scale farms, up to 3,500 ha in size, concentrated in south-central Ghana. However, despite the prevalence of commercial farming in the horticultural and oil palm sectors, smallholders in Ghana account for approximately 90 percent of landholdings and 80 percent of agricultural output, and continue to contribute significantly to the output of the aforementioned sectors (Chamberlin 2008).

Despite these early developments, it was not until global oil prices starting showing signs of escalating in 2006 that companies showed a real interest in acquiring large tracts of land for plantation agriculture. At an unprecedented scale and pace, 20 commercial plantation companies, more than three-quarters of which are majority foreign-owned, have since gained access to an estimated 1.184 million ha of land for the purpose of developing biofuel feedstock plantations in Ghana. This is equivalent to approximately 4.6 percent of the total land area and 8.8 percent of the area suitable for agriculture. Although leasehold contracts appear to have been signed between companies and traditional authorities for most of this land, in Brong Ahafo only a small proportion of these land lease agreements were in fact formally registered at the Lands Commission at the time of research (Brong Ahafo Land Registry 2009, unpublished data). Although only few formal leasehold titles have therefore been granted, companies do gain legal rights over the land, albeit subject to a higher risk of conflict, because unregistered contracts are legally enforceable under Ghanaian contract law. Although the general fiscal regime in Ghana is highly conducive for investments, there were no newly introduced government incentives or even a biofuel policy and framework that prompted this surge in investment. Of the 20 inventoried biofuel plantation projects in Ghana, 13 focused on the cultivation of oil seed crops for biodiesel production, notably *jatropha*, four on starch and sugar crops for ethanol production, and three on woody biomass for, predominantly, electricity generation.

The largest number of projects are located within the forest to savanna transition zone (Figure 4.1). This area is an agro-ecological zone located between the humid tropical areas in southern Ghana and the dry savannas in the north, comprising the northern stretches of the Ashanti region and most of the Brong Ahafo region. This area is especially suitable for large-scale agricultural enterprise because of relatively favorable rainfall regimes (1,200 - 1,500 mm per annum and relatively low rainfall variability), relative accessibility to key markets, and low population densities enabling access to large contiguous areas of land at low cost.

4.2.2 The risks and opportunities of plantation agriculture to Ghana's rural development

Although Ghana has some experience with plantation agriculture in its southern regions, the unprecedented magnitude of investment commitments for large-scale biofuel projects in recent years could lead Ghana into uncomfortable territory. On the one hand, most government ministries in Ghana have embraced this development for its potential to contribute to ongoing efforts to promote rural development through the modernization and diversification of the agricultural sector. The agricultural sector is the backbone of the economy, accounting for 34 percent of GDP and employing 55 percent of the economically active population (World Bank 2010a).

Nonetheless, from being virtually self-sufficient in the 1970s, Ghana has become a chronic net food importer, unable to meet the domestic demand for staple foods such as wheat and rice with domestic production. Public and private underinvestment, poor market linkages, and barriers to adoption of modern inputs are considered to be key factors underlying Ghana's poor agricultural productivity (Seini 2002; Benin *et al.* 2009; Wolter 2009). Increases in production are, therefore, typically associated with an expansion in the area under cultivation rather than gains in land use efficiency (Quaye *et al.* 2010). Perpetuated by the relatively high cost of industrial inputs and poverty, the level of agricultural intensification is low, with most smallholders practicing the traditional system of rotational bush-fallow.

This is a form of shifting cultivation whereby land is cleared and burnt for the cultivation of specific crops and is subsequently left fallow for typically two to five years before being brought back into use. Although this system can be relatively sustainable at low population densities, land constraints are considered by some to be too high in much of Ghana for this farming system to be able to sustain the needs of a growing population (Ardey Codjoe 2010; Quaye *et al.* 2010). Seeking to address these concerns, Ghana's most recent Growth and Poverty Reduction Strategy (GPRS II 2006-2009) and Food and Agriculture Sector Development Policy (FASDEPII 2007) consider agricultural modernization as a primary means to engender inclusive economic growth and structural transformation in rural areas. One of the key action points in these plans is to enhance private sector competi-

tiveness by promoting investments in commercial farming and in outgrower schemes. With foreign direct investments considered to be critical in achieving these objectives, the government seeks to improve investment conditions by, inter alia, investing in infrastructure, deepening its integration into global markets, and facilitating investor access to land, e.g. through land banks.

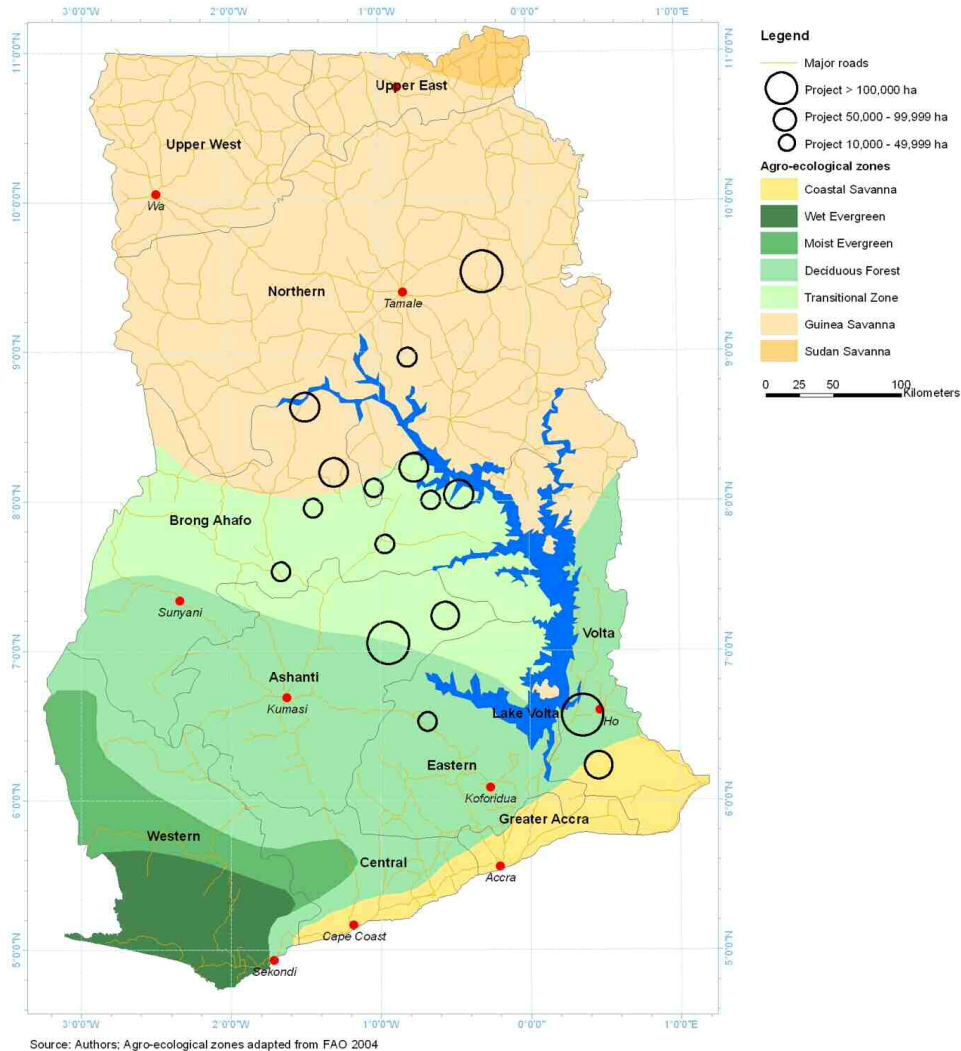


Figure 4.1: Distribution of biofuel feedstock plantations > 10,000 ha in size

Considering, however, the rather limited success of the Ghanaian government and its donors in realizing agricultural modernization and commercialization objectives both historically and in recent times (Akoto 1987, Wolter 2009), and its consistency with prevailing development strategies, the rather spontaneous interest

by foreign investors in the biofuel sector could be perceived as a blessing. Because many of these investments are targeting areas in the forest to savanna transition zone and to some extent also the northern Sudano-Sahelian regions, this trend could serve to reduce the north-south economic divide. Historically, all major cash and export crop industries have been concentrated in the southern regions, and poverty and subsistence agriculture in the northern regions (Sutton 1989, Wardell 2006). Enhancing agricultural productivity and value addition in these areas could be instrumental for reducing both national food insecurity and rural poverty. In this regard, there are some positive examples from previous experiences with plantation agriculture in Ghana. For example, it has been shown that as a result of improvements in infrastructure and increased availability of agricultural inputs, smallholders tend to intensify production (Tripp 1993; Brown and Amanor 2002), and increases in the availability of labor and demand for food products has been shown to incentivize smallholders to increase output (Amanor and Pabi 2007). However, the most direct contribution of large-scale plantation projects to rural development is arguably in the generation of new sources of income, for example, by leasing out land, participating in outgrower schemes, and plantation employment (FAO 2008; von Braun and Meinzen-Dick 2009; World Bank 2011a). Greater access to off-farm livelihood opportunities, such as plantation employment, is frequently cited as particularly instrumental to rural poverty reduction, through, amongst others, enhancing livelihood resilience to shocks due to income diversification and enabling households to invest surplus income in agricultural production (Reardon 1997; Ellis 1998; Barret *et al.* 2001; Lansing *et al.* 2008).

Such promises are countered with concerns, particularly in regards to early evidence that large-scale land acquisitions for plantation agriculture tend to displace customary land uses (Cotula *et al.* 2009; Sulle and Nelson 2009; Zaugg 2009; FIAN 2010; World Bank 2011a). The threat that rights to land are violated is especially pertinent to sub-Saharan Africa, where formalized rights to land in most countries range from two to ten percent of the total land area (Deininger 2003). Although customary rights to land are afforded legal recognition in most countries, the failure to formalize these claims undermines security of tenure. Although this need not be problematic when pressures on and conflicts over land resources are low, increasing competition over land incentivizes the exploitation of legitimate, e.g. chiefly, authority, tends to drive land concentration, and threatens the continued access among often marginalized customary land users to crucial livelihood resources (Woodhouse 2003; Richards 2005; Toulmin 2008; Peters 2009; Amanor 2010). Consequently, the displacement of customary land uses for plantation agriculture could exacerbate rural inequalities (Cotula *et al.* 2008; Poulton *et al.* 2008; Hayami 2010; World Bank 2011a), thus conflicting with rather than supporting government policies to modernize subsistence agriculture.

The risk that the wholesale alienation of customary land for plantation agriculture infringes on customary land rights is equally pertinent to Ghana, where approximately 78 percent of land is under customary ownership (Deininger 2003).

Unless acquired by the government through the right to eminent domain, as per the Ghanaian Constitution (1992), customary land cannot be permanently alienated, only formally allocated through renewable leases of up to 50 and 99 years' duration for foreigners and citizens, respectively. Traditional councils, typically comprised of a paramount chief and village elders, are the 'allodial title holders' and are, in this capacity, bestowed with the sole authority to negotiate and approve the allocation of customary land (Administration of Lands Act 1962). Customary land users, who often lack documented rights to land, are therefore often at the mercy of the traditional council's capacity and will to act in accordance with their fiduciary responsibilities (Blocher 2006; Grischow 2008; Ubink and Quan 2008; Berry 2009). New opportunities for extracting rents by elites from allocating large areas of customary land to commercial projects may be detrimental to the livelihoods of those who depend on that land.

To enhance tenure security, and enhance the downwards accountability of chiefs, the World Bank has since 2003 supported the Land Administration Project (LAP). One of the key components of the LAP is to establish Customary Land Secretariats (CLS) in traditional areas, which are tasked with, amongst others, registering individual claims to land, dispute resolution, and land use planning. However, these secretariats have only been established in a fraction of Ghana's traditional areas (World Bank 2010b). With participation in the project voluntary and demand driven, many traditional councils are disinclined to adopt new land management structures that risk circumscribing their authority and control over land (Ubink and Quan 2008; Personal communications, Project Director, Land Administration Project, Accra, 2009).

In addition to its socioeconomic implications, extensive conversion of existing land uses to plantation monoculture could also engender widespread environmental degradation, with subsequent socioeconomic repercussions. Because of extensive vegetation clearing and the adoption of monoculture, commercial plantations typically support considerably less (agro-) biodiversity than traditional farming systems and are often accompanied by loss of native forest and vegetation (Clay 2003; Poulton *et al.* 2008; Gibbs *et al.* 2010). With approximately 74 percent of forests in Ghana under no legal protection and the largest areas of land classified as forests located in the forest to savanna transition zone (calculations based on ESA 2006), the conversion of large contiguous areas of land to plantation agriculture could have far-reaching environmental implications.

4.3 Methodology

The research, conducted between June and August of 2009, comprised of three distinct phases aimed at capturing multi-scale processes, e.g. national, regional, and local. The first phase consisted of semi structured key informant interviews and secondary data collection in Accra. Interviews were conducted with officials

from relevant government institutions and civil society organizations to gain insights into relevant trends and their policy, regulatory, and institutional implications. Subsequently, visits to nine biofuel plantations were carried out in the central regions of Brong Ahafo and Ashanti, which were identified as areas with the highest concentration of biofuel investments. Interviews with representatives of only three companies were carried out, because of reluctance by many to participate in the research. The company responsible for the development of the plantation that is the subject of the detailed impact assessment was unfortunately unavailable for an interview. The company indicated that it wished to keep a 'low profile' for the time being and was, therefore, reluctant to have details surrounding its activities made public. As a result, the company was unable to clarify and/or explain field research findings and interpretations. Site visits, combined with focus group discussions with affected communities and interviews with the traditional leadership, were therefore the major sources of information on processes of plantation establishment and potential social, economic, and environmental impacts of plantation development. Additionally, various district and regional government institutions were consulted to corroborate and gain further insights into key establishment processes for the assessed biofuel developments and the role of different government actors therein.

On the basis of findings from key informant interviews at diverse levels, the research team sought to identify a plantation that was both representative of land use systems in the wider region being shaped by plantation agriculture and sufficiently advanced to enable the preliminary assessment of impacts. A 14,000 ha jatropha plantation, of which some 780 ha had been cleared for cultivation at the time of research, located in the Pru district of Brong Ahafo, was selected for a more comprehensive impact assessment. From discussions with the paramount chief, the traditional council, village chiefs, and community members, two broad stakeholder groups directly affected by the plantation were identified: (i) those employed at the plantation, originating from various areas in the district; and (ii) those losing land to the plantation, originating at the time of research largely from three communities. Within the latter group three subgroups were identified, namely, women, native inhabitants, and settler/migrant farmers. A total of 10 focus group discussions were subsequently held with the different groups. From information obtained from these sessions, the generic household questionnaires were adapted to ensure unique local issues were suitably captured. From a total sample size of approximately 120 employees, household surveys were conducted with 31 employees, 16 of which resided in the affected villages, constituting the entire subgroup sample frame, and 15 in other surrounding villages. From the land-losing household group, 63 household questionnaires were conducted from a total sample size of 69. It was not possible to survey all households because some had since migrated or were otherwise unavailable.

4.4 Case study background

The case study plantation is located in northeastern Brong Ahafo, in the newly formed Pru district, with a total population of 93,857 and a population density of 42.8 per km² (Medium Term District Water and Sanitation Plan, Pru District Assembly 2009, unpublished report). The district consists of four traditional areas, whose paramount chiefs rule from the towns of Abease, Konkoma, Prang, and Yeji. As part of the so-called 'yam-belt,' yam cultivation is the most important livelihood activity in the district, followed by the cultivation of cassava. Approximately 66 per cent of the population depends on agriculture as their primary livelihood activity, and the remainder largely on fishing from the Volta Lake and small-scale trading (Ministry of Food and Agriculture, Pru district 2009, unpublished report). With a real GDP per capita of approximately 195 Ghanaian Cedi (equivalent to US\$ 131 on January 1, 2011) per annum, approximately half the national average, poverty rates are comparatively high (World Bank 2010a; Medium Term Development Plan, Pru District Assembly 2006, unpublished report).

There was no evidence prior to 2007 of large-scale commercial farming operations in the area. Between 2007 and 2009, however, four commercial agribusinesses gained access to land in the district, three for the cultivation of jatropha and one for sugarcane. The companies gained access to land for a total of six different sites, which together covered an area of up to 152,500 ha, equivalent to 69 percent of the district's total land area. It was, however, not possible to ascertain whether all six leasehold agreements were formalized through a contract; this could only be verified for 77,500 ha, consisting of four sites with areas of 12,000 ha, 13,500 ha, 14,000 ha, and 38,000 ha (Personal communication, District Planning Officer 2009, District Assembly, Pru district, 2009; Personal communications, Director, Ministry of Food and Agriculture, Pru district, 2009; Regional Land Commission Registry 2009, *unpublished data*). Another 70,000 ha and 5000 ha were reportedly also accessed, though it could not be ascertained whether these were bound by contracts or were solely good faith agreements. All sites were located on customary land, through which access was negotiated with relevant traditional councils. Cultivation activities were taking place at four of the six sites.

At the case study site, an area of approximately 14,000 ha was allocated in 2008 to a foreign biofuel company to cultivate jatropha. The traditional area where the company obtained land consists of six villages and a few small hamlet communities and is used periodically by nomadic herdsman (Fulani). Aside from the native Brono ethnic group, a large proportion of the population consists of migrant farmers from northern ethnic groups, mainly Kokombas, Sisalas, and Dagaabas, most of whom settled in the area in the late 1980s. Migrant groups or 'settlers' obtained the unrestricted right to clear virgin land for cultivation from the traditional council, in exchange for an annual token of allegiance. In the case of the main settler village, this takes the form of 10 tubers of yam and two bottles of schnapps per household, and one sheep from the entire community.

Almost the entire population in the traditional area is engaged in traditional bush-fallow agriculture, with yam, like the rest of the region, being the key income earning crop. The land allocated to the company can be considered a forest-agriculture mosaic, characterized by patches of open and closed woodlands, herbaceous and woody fallow, and small agricultural plots. Along the banks of the main rivers on the southern and western ranges of the traditional area are galleries of more densely vegetated forests. Because the soils around these rivers are heavily waterlogged, making them unsuitable for yam, these areas are not actively cultivated.

In regards to the process for accessing land, the traditional authorities were, according to their accounts, directly approached by the company without any government intermediaries. The traditional council was extremely receptive to the project, because it would "bring development and create jobs for the youth" and "government and company representatives will come live in our village" (Personal communication, Paramount Chief, 2009). Moreover, the council argued that the "profit from the company is far, far better than the (yearly) homage paid by the migrants". Presented by what appeared to be a fixed and standardized contract, the traditional council entered into a revenue-sharing agreement with the company for 25 percent of the profits from jatropha cultivation and the construction of new boreholes in the villages, in return for a 50-year renewable lease. Similar agreements were made by the company at its 4 other plantation sites. At this site, a verbal agreement was purportedly made for at least 75 percent of the plantation workforce to be residents of the traditional area, though this was not recorded in writing. There were no arrangements made for compensating potentially adversely impacted households.

At the time of research, the company had not obtained environmental permits for any of its sites, as is legally required when clearing more than 40 ha of land (Personal communications, Regional Director, Environmental Protection Agency, Sunyani, 2009; Environmental Protection Agency, *unpublished data*). Although the Environmental Protection Agency (EPA) was, after a year of operations, made aware of this, it did not order the company to cease their activities, but instead requested the company to conduct an environmental impact assessment for the land not under cultivation. At the time of research there was no evidence of on-the-ground assessments having been conducted. According to the Regional Director of the EPA, he did not wish to "obstruct development" by issuing a stop order. The District Assembly and district office of the Ministry of Food and Agriculture (MOFA) were also aware of this, but, justified in similar fashion to the EPA, did not further pursue the issue. Arguably, there were some conflicts of representation and interest in the case of MOFA, with one of its senior employees employed on the side as an 'agronomic consultant' by the company.

4.5 Local impacts of plantation agriculture

4.5.1 Impact of land use change

The company commenced land preparation activities in mid-2008, having cleared an area of 960 ha by May 2010. Figure 4.2 shows the plantation area, with green shades depicting vegetation and pink/purple shades recently cleared land, which are typically under cultivation or are recently fallowed. The company plans to steadily expand the plantation westward toward the traditional area's main settlements, with a targeted 14,000 ha under cultivation before the end of 2014. In late August 2009, when field research was conducted, the total cleared area was estimated at 780 ha (calculated from analysis of Landsat Imagery). An estimated 46 percent of this area (359 ha) was not considered to be part of the active farming system prior to conversion. This is calculated by subtracting the total area of affected land under usufruct rights, derived from household surveys, from the total area cleared by the company. As a common pool resource, mostly for the collection of forest products and hunting, no individual households held exclusive use rights to this land. These areas were by and large under open or closed forest cover, albeit in some parts degraded from overexploitation.



Source: USGS, 2011

Both images constructed from Landsat 7 ETM, 194/54

Figure 4.2: Band 5, 4, 3 false color composite of plantation area (path 194, row 54)

The remaining 54 percent (421 ha) of the land was being used for bush-fallow agriculture, consisting of actively cultivated cropland and fallow land. A total of 69 households, from three different villages, claimed usufruct rights to that land, hav-

ing in the past been acquired either through inheritance, occupation through land clearance rights, allocation by the chief, or gift/sale. Approximately 19 percent (80 ha) of this land consisted prior to conversion of so-called yam plots. These are typically the most important plots to the household, because the primary cash and staple crops are cultivated here, generally controlled by the head of household. Another 24 percent (101 ha) of this land was used to grow other crops. Men in the communities actually considered these plots to be fallow, whereas for women these were considered the focus of their farming activities. Typically, these plots are acquired by women after having taken over the yam plots, often growing various subsistence crops, largely for household consumption. After one or two years of use, these plots are left fallow for a period ranging from 2 to 10 years, depending on total household landholdings. In this system of farming, tree stumps and rootstocks are often preserved, allowing woody vegetation to regenerate more rapidly. This facilitates plot rehabilitation before it is brought back into production. True fallow constituted approximately 57 percent (240 ha) of the land under user rights.

The 780 ha that were cleared directly impacted the landholdings of 69 households. None of these households participated in land negotiations, formally acquiesced to losing their land, or received any form of compensation for their loss. Their first knowledge of the plantation came in 2008 when the village chiefs informed them not to return to their land after harvesting their yam; land users had no prior contact with the company. For villages 1 and 3, land loss directly affected 41 and 51 percent of households, respectively (Table 4.1). The converted area was for these communities the most suitable and proximate area of land for cultivation, considering the heavily waterlogged and rocky soils around both villages. A smaller number of households from a third village (village 2) were active in this area.

Table 4.1: Population information of affected communities

Village Number	Total Population ^b	Number of HH	Proportion Native HH in Village ^c	Number of Land Losing HH	Proportion Total HH Losing Land	Proportion of land Losing HH that are Native
Village 1 ^a	927	93	65%	38	41%	41%
Village 2	347	42	0%	7	17%	0%
Village 3	435	47	8%	24	51%	0%

^b Population data from Medium Term District Water and Sanitation Plan, Pru District Assembly, 2009, unpublished report.

^c These proportions are based on information provided by the respective village chiefs.

^a Only 32 households were surveyed in this village, because of the temporary absence of some household heads at the time of research. All land losing households were surveyed in the other villages.

By 2009, the average household landholdings had reduced by 61 percent (Figure 4.3). Another 16 percent of the total landholdings of affected households had been earmarked by the company for conversion after the second and final yam harvest of 2009, which was due to commence just following the time of research.

Although ultimately losing more than three-quarters of their landholdings, only 18 households were able to gain access to replacement lands, constituting an area of only 12.6 percent of total initial landholdings. The average total household landholdings reduced from 26.1 acres to 12.7 acres, which by the end of 2009 was expected to have reduced to 8.5 acres. Seven households became landless as a result of plantation development.

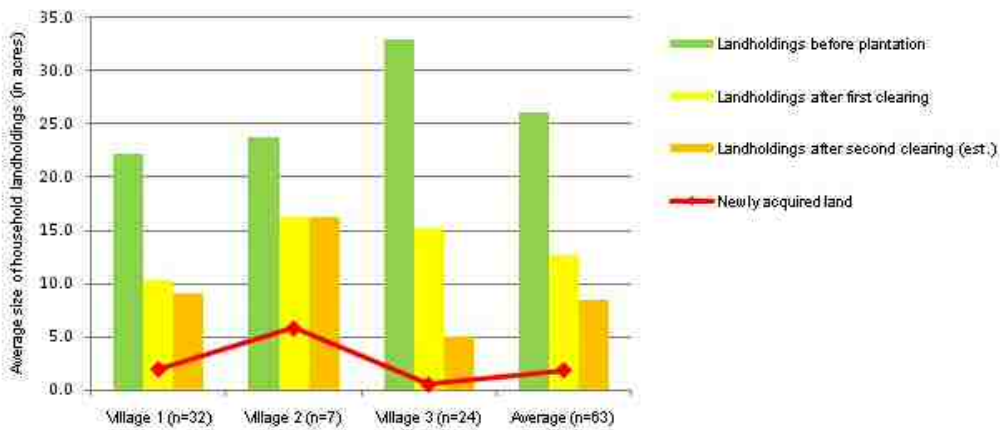


Figure 4.3: Changes in average household landholdings by community

The extent of land loss and ability to obtain replacement land differed greatly between villages. In the case of village 2, comprised entirely of settler farmers, households had little problem obtaining replacement land because of the relatively small proportion of affected households in the village. Four out of seven households secured new land from fallow land gifted to them by other community members. In village 1, where land loss was most extensive, only 12 out of the 32 surveyed households were able to recover new land. However, eight of these households were native inhabitants of the community (out of 13 native households losing land), while only four were settler farmers (out of 18 settler households losing land), illustrating the higher land recovery rate among native inhabitants. From all the households gaining access to new land, native households recovered on average four acres of land, whereas settler farmers recovered 1.3 acres of land. According to respondents, because of the absence of suitable and available land, all replacement land was in the form of fallowed land obtained from other community members, sometimes enabled through cash payment. Settler farmers perceived a bias in the reallocation of land by native households in favor of other native households, illustrating the role of ethnicity and social networks in the capacity to obtain new land. In village 3, where all affected households were settler farmers, only 2 out of the 24 households were able to obtain replacement land.

The key barrier to obtaining new land is the lack of suitable land. For example, 67 percent of households cited land scarcity resulting from plantation development

as the primary barrier to land recovery. For villages 1 and 3, most of the remaining lands are located either in heavily waterlogged or rocky areas, unsuitable for this type of farming system, or located too far from settlements to be considered viable. Even for those that did obtain new land, 50 percent considered this land to be of lesser suitability than the land they lost to the plantation. Another 13 percent of households considered lack of money to buy new land as the primary constraint, while 11 percent considered there not to be any barriers and 7 percent having made no attempt. The primary livelihood activity for 95 percent of respondents before land loss was yam cultivation, with maize and cassava also serving as key cash crops. Although these crops were mainly considered to be men's crops, women were responsible for a range of secondary cash and staple crops, especially ground-nuts, peppers, okra and tomatoes. Although cultivated predominantly for household consumption, these crops were also said to play a key role in providing cash income to cater for everyday household needs. In addition to farming, forestry activities were integral to most household livelihood portfolios. Besides firewood, most households depend on beans from the locust bean tree (*Parkia biglobosa*), which is fermented into a highly nutritious seasoning, locally referred to as "dawa dawa", nuts from the shea tree (*Vitellaria paradoxa*), charcoal production, which is the main income generating activity in the dry season for many households, medicinal plants, mushrooms, and small game. The locust bean and shea tree are considered especially important, for they typically provide a significant proportion of women's cash income. Charcoal, despite being an important source of income in many areas of Brong Ahafo, was considered to be the least important forestry activity, one only the youth engage in during the dry season. However, some households indicated it to be a desirable fallback option following land loss, despite its more limited availability.

In response to land loss, although the composition of household livelihood portfolios did not change substantially, marked reductions were observed in some activities (Table 4.2). Although a few households ceased farming altogether, principally as a result of becoming landless, and others stopped harvesting forest products, because of a reduction in forested land, these remain the primary livelihood activities for most households. However, most households did experience substantial declines in the contribution of these activities to their livelihood. As a result of smaller landholdings, most households reduced the area they had under cultivation and/or returned prematurely to fallowed plots, which will contribute to reduced yields over time. Other households who lost only fallowed land to which they were not immediately planning to return did not yet experience a decrease in farm output, but will likely feel the effects of reduced landholdings over time as they search for suitable new land to bring into production.

Although the company only occupied yam plots once the yam harvest for the year was completed, other crops, many of these women's crops, were ploughed under prior to harvesting. Furthermore, after land loss, women had access to significantly smaller areas of land for their agricultural activities because, in many cases,

the yam plots they would have used for their activities were already taken over by the plantation. This impact on women's cash income earning potential is compounded by the fact that most women experienced in particular marked declines, estimated through focus group discussions at 70 to 90 percent, in the amount of beans from the locust tree and shea nuts they can collect, process, and market.

Table 4.2: Changes in livelihood portfolios since plantation establishment (n = 63)

Livelihood Activity	% of HH participating – Before	% of HH participating – After	% of HH experiencing a de- crease in activity's contribu- tion to livelihood
1. Agriculture	100	87	73
2. Forest products	97	89	98
3. Livestock	21	29	0
4. Off-farm	3	10	0

To cope with lower agricultural incomes, a few households did however manage to expand the scope of their livelihood activities to include livestock rearing and off-farm activities such as salaried employment at the plantation (three households) and small-scale trading of consumer goods (one household). Nevertheless, lack of skills and financial capital are considered by most households to be the most significant barriers to livelihood diversification. This high *ex ante* dependency on on-farm activities and low capacity to diversify makes households especially vulnerable to external shocks that reduce the availability of important livelihood resources. The effects of land loss and inability to adopt new livelihood strategies has resulted in a decline in the standard of living for 73 percent of households, according to a host of locally salient indicators (Table 4.3). Households that did not experience a change were by and large those who lost fallow land they were not immediately planning to bring back into production, indicating that the use of this land will now intensify over time. The most cited changes to their livelihoods included, in order of frequency, loss of access to forest products, decreased availability of land, increased time spent gathering firewood, and loss of income. However, the primary underlying cause for lower living standards was considered to be the lower yields from agriculture and forestry, which in turn reduces household spending power and increases dependency on external food sources. Although only a small proportion of the surveyed households indicated an impact on social relations, some tensions resulting from plantation development were nonetheless apparent. For example, tensions between settler and native community members had emerged from the suspicion among settlers that their land had been specifically targeted for plantation development. As a result of land loss and the inability to acquire new land, most settler farmers in village 1 and village 3 were considering migrating back north in search of new land. Because settler farmers contribute significant communal labor for community development projects and land clearing, native households are concerned this will place an additional burden on the household and reduce farm productivity.

Table 4.3: Perceived livelihood impacts of land loss (n = 63)

Variable	Negative (% of HH)	No Change (% of HH)	Positive (% HH)
1. Access to forest products	95	5	0
2. Land availability	81	19	0
3. Time to gather firewood	74	24	2
4. Income level	67	33	0
5. Food security	61	39	0
6. Ability to support children	61	39	0
7. Social relations	37	63	0
<i>Overall Standard of Living</i>	73	27	0

Discontent over loss of land in the three villages was remarkably not directed at the traditional council that gave away their land, or even at the company. The general sentiment appears to be that the paramount chief cannot be challenged, because he, as the 'land owner', is in his full right to allocate land as he considers necessary. This view is especially strong among settler farmers, most of whom felt it was never their land to claim in the first place. The district government appeared to show a similar deference to the authority of traditional councils. When a group of villagers expressed their concerns with the Pru District Assembly, for example, they were told to take it up with the paramount chief himself; according to Assembly representatives this was because they did not wish to meddle in chieftaincy affairs. Moreover, because employees from the district office of MOFA and the District Assembly had openly provided their support to the company, in one focus group discussion it was argued that "the company must then be a good thing".

In village 1, however, it is the village chief that was held responsible for the plight of affected land users, because in their view it was he that was unable to negotiate a better deal for them, despite the fact that he was not directly involved in the land transfer process. Nevertheless, the vast majority of land losing households at the time of research did not express regret over the coming of the project, because it was anticipated that "development will come when the company starts making a profit". The most important developments households were typically hoping for included better schools and teachers, better medical care, and greater demand for food crops because of in-migration. However, very few households expected that the income allocated to the traditional council from these profits would be shared with the communities, just as the traditional annual homage to the council is not customarily shared.

4.5.2 Impact of employment

One of the key mechanisms through which the development of large scale commercial plantations can bring direct benefits to affected communities is through

plantation employment. At the time of research the plantation employed 120 persons, ranging from part-time manual laborers commissioned specifically for clearing land to more highly skilled workers, e.g. tractor operators. The average wage for unskilled fulltime employees amounted to 75 Ghanaian Cedi (US\$ 50) per month. On the basis of district averages, this would constitute approximately 51 percent of the average household income (assuming a real GDP per capita of US\$ 131 per annum and an average household size of nine persons). On the basis of the employee surveys that were conducted, 67 percent of the 31 respondents considered plantation employment to have had a net positive impact on their livelihoods (Table 4.4). Few of these respondents, however, attributed this to an increase in income. Rather, the majority perceived the increase in security and stability of income flows to be the key contribution, increasing their capacity to consistently cover food, medical, and educational expenses. The employees that did not indicate an improvement in their livelihoods (33 percent) had either 'mixed' sentiments about employment (5 percent) or did not consider employment to have had any significant impact on their livelihoods (28 percent). None of the respondents considered thereto be a reduction in their standard of living from employment.

Table 4.4: Perceived benefits of employment (n = 31)

Variable	Proportion with an affirmative response
1. Increased stability and security of income	74.1%
2. Increased ability to cover medical expenses	66.7%
3. Increased ability to care for children	59.3%
4. Increased food security	53.6%
5. Increased income levels	44.4%
6. Increased ability to save and/or invest	29.6%
7. Increased social status	25.9%
<i>Improvement to overall standard of living</i>	66.7%

Prior to employment, 73 percent of respondents were engaged in subsistence farming as their primary livelihood activity, with the remaining respondents either owning small businesses or employed elsewhere as waged laborers. Almost all respondents previously involved in off-farm activities abandoned these activities once having gained plantation employment. For those employee respondents who were, on the other hand, previously engaged in farming activities only 10 percent stopped these activities altogether. It was found that farming activities remain important to household income and food security, with plantation employment typically complementing, rather than substituting, these activities. Because employees are typically household heads and young adults who contribute significant labor to household farming activities, a decrease in their engagement does place considerable strain on other household members, especially during land preparation and harvesting periods. Most employees bemoaned the lack of flexibility in unpaid leave

to enable them to fulfill periodic household and communal labor commitments. In one community the inability of plantation employees to participate in the required communal labor activities caused a conflict that escalated to require police intervention. Such issues illustrate the potential incompatibility between traditional livelihood activities and social responsibilities on the one hand, and formal employment on the other.

Formal employment has the potential to contribute significantly to livelihood reconstruction efforts of land losing households. However, although the impact of employment is perceived to be generally positive, these gains do not appear to accrue substantially to households that have been affected by land loss. As previously discussed, only three land losing households (4 percent of households) managed to secure employment at the plantation, despite ample interest in formal employment among affected households. In the three affected communities, a total of 16 employees (approximately 13 percent of the labor force) were employed at the plantation, despite a reported verbal agreement between the paramount chief and company to provide preferential employment to neighboring communities. According to affected households, one of the key problems is that company administration, from where most recruitment is initiated, is based more than 20 km away. This unequal distribution of costs and benefits is even better illustrated when assessing the opportunity costs of land, which we assess by comparing the net value of employment to the net value of displaced economic activities. Although beyond the scope of this research to conduct a thorough economic analysis, greater returns to land are obtained from primary cash crop cultivation than from employment, disregarding other economic values of displaced land and the distributional effects. For example, 1 ha of plantation provides 0.15 jobs (120 employees for 780 ha), which generates US\$ 90 per year (at an average income of US\$ 50 per month per employee). To enable this employment, approximately 80 ha of yam was displaced, which generates an average profit of approximately US\$ 1005 per annum per ha (on the basis of farmer estimates). Thus for an area of 780 ha, yam cultivation alone generates approximately US\$ 103 per ha per year (114 percent the per-ha value of employment). Considering the value of other displaced cash and staple crops and forest products, the returns to land are far greater from prior land uses than from formal employment. According to three major biofuel companies in Ghana, however, labor intensity typically decreases to approximately 0.06 jobs per ha once the *jatropha* plants reach maturity, with seasonal hikes to 0.08 and 0.12 jobs per ha during harvesting months. This would imply that the per-ha value of employment will steadily decrease over time. An analysis of distributional effects is even more worrisome. Land losing households recuperated on average only US\$ 2.26 per ha per year directly through employment, only 2.3 percent of the value of displaced yam cultivation.

4.6 Discussion

The immediate negative impacts experienced by households relate principally to their loss of access to land and forest resources and their limited ability or inability to access these resources elsewhere. Not only does this reduce the quality of their livelihoods in the absence of effective livelihood reconstruction efforts, but it will also likely place a strain on non-land-losing households because of enhanced competition over increasingly scarce land and forest resources. On the basis of the above results, it is likely to be the most vulnerable groups that lose out most in this process. Women and settler farmers, in particular, will not have the same capacity to access land and forest resources, which is likely to alter both inter- and intra-community dynamics as patterns of power and control change. The increasing land pressure in the area will undoubtedly exacerbate the process of land degradation on remaining land as cropping cycles shorten, soil fertility declines, and forests deplete through increased harvesting intensity. This is likely to have direct implications for agricultural and forest biodiversity, which, in turn, could bear negatively on the diversity of livelihood resources to which households have access. Such processes and related impacts are likely to intensify as the plantation expands and more land and forest resources are converted to plantation monoculture. Figure 4.2 clearly depicts the high concentration of agricultural plots in the direction the company is expanding. Based on average household landholding data and observed farming intensity in the area (derived from geospatial analysis), it is estimated that between 1,500 and 1,600 households will face land loss should the plantation area develop to its planned extent.

Many of these processes often play out when smallholder farming is displaced for commercial monoculture plantations. However, the lack of initiatives by this particular company to alleviate the impact of land loss significantly contributes to the population's current plight. For example, company-initiated efforts to secure suitable replacement land for farming, provide agricultural inputs to offset the agronomic challenges and related costs associated with reduced fallow time, and cash compensation, as well as implement well-functioning preferential employment policies, could have contributed significantly to livelihood reconstruction. Although similarly detailed assessments were not carried out for other companies, on the basis of interviews at other communities, these problems appear to be widespread. Where such negative impacts are not as apparent is where companies make concerted efforts to restore *ex ante* levels of local food production. Although such companies tended to be those who had secured environmental permits, it is unclear whether this was due to company policies or the effectiveness of the environmental impact assessment process per se. Though an isolated case, one jatropha project in the Northern region reportedly actually contributed to increasing the acreage under food crops by providing inputs, designating plots on the estate for continued smallholder production, and facilitating access to agricultural machinery (Boamah 2010; Personal communications, Chief Executive Officer, Biofuel Africa, 2009;;

Personal Communications, Executive Director, Energy Commission, Accra, 2009). Although some companies will be inclined to implement mitigation measures because of their own sense of corporate social responsibility, financing conditions, environmental permit conditions, or pressure from civil society, it is unlikely that such practices will be adopted by companies with poor corporate social responsibility track records in the absence of additional regulations or incentives. Traditional councils could be another avenue through which affected persons could obtain recourse, when, for example, household-level compensation and various other developmental commitments are negotiated and formalized as part of the leasehold contract. However, at none of the nine plantations visited in this research was there any evidence of Traditional Councils consulting, or negotiating direct compensation on behalf of, their constituents. Presumably, the responsibility of some Traditional Councils to act in the interest of their constituents is compromised by the opportunities for personal enrichment or lack the capacity, e.g. legal literacy, to negotiate fair terms. In this case study, in particular, the traditional council harbored strong feelings of personal entitlement to manage, alienate, and profit from the land as they see fit. Unfortunately, this does not appear to be an isolated case, with similar processes having been observed in the oil palm (Gyasi 1996) and horticultural (Fold and Gough 2008) sectors and in the urban periphery (Alden Wily and Hammond 2001; Kasanga and Kotey 2001; Ubink and Quan 2008). Given that communities at most of the visited plantations were generally receptive to the projects proposed in their areas and showed significant deference toward chiefly and government authority, it is unlikely that many affected persons will formally contest the expropriation of their land, despite having sufficient legal grounds to do so. The risk that unjust and legally contestable land alienations are not challenged through the judiciary is further compounded by the strong pro-development stance of district and regional governments and the limited capacity of affected persons to effectively claim their legal rights.

These observations illustrate, in particular, the need for more transparent and participatory negotiation processes, which fully account for the needs of all relevant stakeholder groups. Ideally, such negotiations would lead to binding agreements ensuring (i) loss of customary land uses key to food and income security are minimized; (ii) all economic losses are duly compensated for; (iii) alternative livelihoods at equal or greater value are secured; and (iv) meaningful co-benefits for local communities are realized, e.g. through value chain integration, infrastructure, and social services. It must be recognized, however, that the limited awareness of the true value of land, unrealistic expectations about future benefits, the weak negotiating capacity of traditional councils and customary land users alike, and the discursive politics of the negotiation encounter will undermine the effectiveness of local participation or local consultation efforts in leveraging more meaningful benefits and overcoming the elite capture of the benefits that do accrue. The threats this presents suggests the need for more direct intervention of key sectoral ministries in the land alienation process. However, as has been shown in other countries in

which governments play a more active role in the negotiation encounter (German *et al.* in press), the effectiveness of the land alienation process may only be undermined and resulting social injustices legitimized by a political economy of government more aligned to the interests of the investor than the customary land user. Albeit theoretically justifiable, conflicting interests, systemic capacity constraints, and historically entrenched power relations limiting the check and balances on chiefly authority in Ghana will in practice likely limit the utility of public intervention. Bottom-up approaches to strengthen capacities to claim, by means of, for instance, legal empowerment initiatives supported by civil society organizations, are likely to have an essential role to play in efforts to protect user rights. Efforts to leverage improved corporate practice, for example, by identifying potential synergies between market demands and domestic governance shortfalls, could also be explored, particularly market-based sustainability standards.

4.7 Conclusion

The case study analysis illustrates that corporate irresponsibility, poor regulatory enforcement, elite capture, and under-regulation of land deals can have severe implications for local land users. As communities lose access to vital resources, especially forests and land, it directly impacts on their food security and income earning potential. In areas where large-scale land transfers induce resource scarcity, capacity for livelihood reconstruction is severely undermined. Vulnerable groups, such as women and migrant farmers, are particularly impacted as a result of their comparatively insecure access to vital livelihood resources. On the other hand, formal employment on plantations was found to have had net positive livelihood impacts for employee households by enhancing the stability and security of income flows. Although this form of waged employment is unlikely to enable accumulation, it can be perceived foremost as an important consumption smoothing activity to complement, not substitute, traditional livelihood portfolios. However, with the value of directly displaced economic activities exceeding the direct economic returns of employment and limited numbers of losing households acquiring jobs, it raises the question of whether substituting smallholder agriculture for formal employment is an economically, not to mention socially, desirable proposition. Targeted development and risk mitigation interventions suitably adapted to unique local needs and realities are evidently required to ensure other co-benefits are effectively captured by negatively impacted households.

The evidence presented here suggests these new large-scale investments in plantation agriculture should justifiably be met with some circumspection. The potential magnitude of adverse impacts and the limited local economic gains calls into question some of the assumptions underlying prevailing rural development strategies not only in Ghana, but also in many other African countries. Foremost, the implicit assumption that private investment in large-scale plantation agriculture

will make net economic contributions through the modernization of the rural economy needs to be qualified. It is only under the right set of legal, institutional, and political-economic conditions that mutually advantageous coexistence between subsistence and commercial agriculture can be realized. Although there is ample space for the state in fostering these conditions, structural impediments, both in orientation and in capacity, currently threaten this coexistence. Consequently, this new wave of agricultural investments may in practice actually engender developmental outcomes that contradict rather than enable the achievement of extant policy objectives.

Translating Legal Rights into Tenure Security

Lessons from the New Commercial Pressures on Land in Ghana

5.1 Introduction

Global trends such as rising food prices and demand for and policy commitments to alternative energy have over the preceding decade led to a rapid expansion in the scope and scale of transboundary investments in land for the cultivation of food and biofuel crops (Cotula *et al.* 2009; de Schutter 2011a). Despite an absence of comprehensive data, early evidence suggests that much of these investments have targeted sub-Saharan Africa (World Bank 2011a; Anseeuw *et al.* 2012a). While, historically, the region has largely been neglected by foreign direct investment, it is becoming an increasingly attractive destination for farmland investments due to its relative abundance of cheap and agro-ecologically suitable land and its increasingly liberalized trade and investment regime (FAO 2008; Fischer *et al.* 2009).

These growing commercial pressures on land, however, pose significant threat to customary land rights. In much of rural Africa, systems of collective ownership under customary, rather than statutory, law continue to govern claims to land and resources. While many African governments have implemented land reform programs to extend legal recognition to customary land rights, customary claims are rarely afforded the same legal protection as formal property rights and remain susceptible to expropriation (German *et al.* 2013). With investment flows in Africa having become increasingly contingent on ease of access to land, strengthening customary rights and 'investment promotion' are threatening to become conflicting policy objectives. This tension raises very real challenges to sustaining land reform initiatives on the continent.

Within sub-Saharan Africa, Ghana has become one of the primary recipients of large-scale farmland investment. It is estimated that since 2005 investors have gained access to more than two million ha across the country, equivalent to approximately 99 percent of the total area that is both agro-ecologically suitable and potentially available for agriculture (based on data from Schoneveld 2011)¹. Since most suitable land is under other socially and economically valuable land uses, insufficiently regulated land use change in Ghana could have dire developmental implications. Only through the effective management of land acquisitions can these risks be minimized; for example, by ensuring investments target genuinely available land or by protecting the customary tenure rights and needs of existing land users.

This article offers insights into customary tenure security in Ghana in the context of rising commercial pressures on land resources and the effectiveness of existing governance mechanisms in preventing and mitigating the adverse impacts associated with dispossession. With Ghanaian land laws considered to be one of the most progressive in sub-Saharan Africa in providing customary rights legal recognition (Alden Wily 2011), by bringing to light deficiencies in implementation we illustrate some of the fundamental challenges in translating legal land rights into tenure security. It does this through an analysis of the legislation protecting customary land rights and governing large-scale farmland investments and by contrasting legislation with actual land acquisition processes.

The following section will discuss the evolution of farmland investments in Ghana and their alignment with Ghana's policy aims. This is followed by an overview of the methodological approach. The next two sections profile findings from the analysis of the statutory underpinnings of customary rights protections and large-scale land acquisitions, and land acquisition processes in practice. The paper concludes with a reflection on findings and implications for governance.

5.2 Background

5.2.1 Large-scale farmland investment trends in Ghana

The commercial farming sector in Ghana has long been limited to only a dozen medium- to large-scale tree crop and horticultural plantations, most of which developed during the early post-colonial era (Schoneveld *et al.* 2011). In recent years, however, Ghana has experienced an unprecedented expansion of capital commitment to the sector, with over 36 companies having acquired an estimated 2.05 million ha of land for large-scale plantation agriculture and forestry since 2005 (Schoneveld 2011). Eighty one percent of these projects were initiated in the period 2007-09, at the height of the global oil and food price crisis. The global economic prospects for biofuels, particularly for the mandate-driven European markets, were ostensibly the key driver of investment (Figure 5.1). For example, 19 investments, the vast majority of European origin, exclusively target the production of biofuel

feedstocks; 12 of which target the cultivation of the drought resistant, oilseed bearing plant *Jatropha Curcas L.* (jatropha). A number of large plantations cultivating multi-use crops such as oil palm and sugarcane or jatropha in combination with cereal crops were also found to be targeting the biofuel end-market. The food crop investments, on average involving significantly smaller land areas, were predominantly targeting the cultivation of cereal crops such as rice and maize for domestic consumption.

The largest proportion of investments was documented in the forest-savanna transition zone that separates the semi-arid north from the human tropical coastal areas. With a biannual rainfall regime, relatively low population density, and comparatively developed physical infrastructure, this area has proven to be of particular strategic interest to investors. Compared to the more developed and populous southern regions, this area offers more opportunities to acquire large contiguous areas of land at significantly lower costs (in part due to lesser developed land markets).

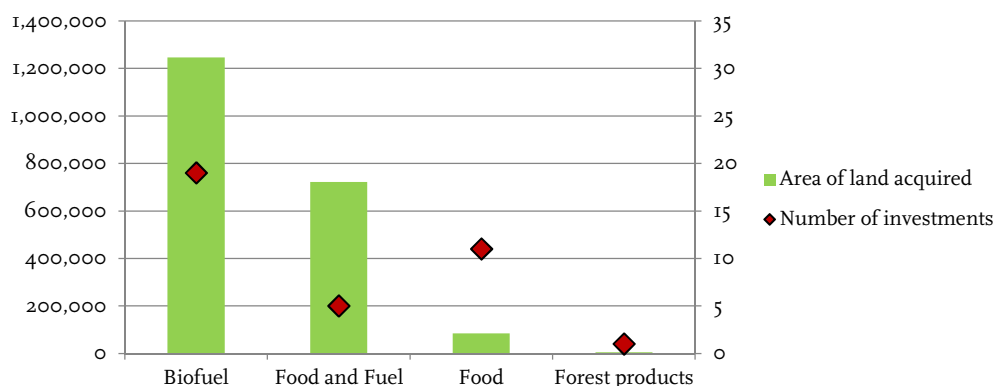


Figure 5.1: Sectoral composition of farmland investments (2005-2012)

Source: Based on updated data from Schoneveld (2011)

5.2.2 Alignment with policy aims

Despite being the backbone of the Ghanaian economy, the development of the agricultural sector has been long hindered by low productivity; principally due to public underinvestment and limited smallholder access to inputs and markets (Seini 2002; Benin *et al.* 2009). The agricultural sector accounts for 34 percent of GDP and employs 55 percent of the economically active population (derived from World Bank 2010a). From being a net food exporter in the 1970s, Ghana now depends on external markets to meet all of its consumption needs for most of its staple crops.

In recognition of the social and economic importance of modernizing the agricultural sector, various strategies and policies have been adopted in recent years

to address some of these structural issues. Ghana's Food and Agriculture Sector Development Policy (FASDEP II 2007) and the Growth and Poverty Reduction Strategy (GPRS II 2006-2009), for example, perceive the modernization of the agricultural sector to be the basis for equitable economic growth and structural transformation. One of the key strategies to achieve this is by enhancing market efficiency through the promotion of large-scale commercial farming and nucleus-outgrower schemes. Ghana's most recent national development plan, the Ghana Shared Growth and Development Agenda (GSGDA 2010-2013), further reinforces these commitments, reiterating the importance of private sector investments in modernizing the agricultural sector. In support of these modernization objectives, MOFA launched the Ghana Commercial Agriculture Project (GCAP) in 2010, in collaboration with the World Bank and USAID, with "the principal objective of improving the investment climate for agri-business"². The underlying assumption of these policies is that commercial farming projects will in addition to improving national food security and the current account balance, engender valuable new horizontal and vertical linkages within the agricultural sector. This, it is argued, will contribute to smallholder productivity by enhancing access to markets and inputs and through knowledge spillovers.

The recent surge in farmland investments has therefore been generally well received by Ghanaian policy makers. However, while the aforementioned policy objectives relate primarily to food crop production, large numbers of investments are targeting the cultivation of non-food biofuel feedstocks such as jatropha. Although during early sector development it was widely argued that jatropha would not compete with agricultural land (Energy Commission 2006; Ahiataku-Togobo and Twum Addo 2007), the government is increasingly cautioning for the threat of food versus fuel competition (Energy Commission 2010; National Development Planning Commission 2011; Personal communications, Senior official from the Ministry of Energy, Accra, 2011; Personal communications, Senior official from the Environmental Protection Agency, Accra, 2011). Despite this, the government, through the National Bioenergy Policy (Energy Commission 2010), continues to formally encourage commercial biofuel feedstock cultivation, without specifying conditions under which such investments are viable. The policy simply argues that such investment would enhance energy security, increase export earnings and "provide an avenue to reduce poverty and wealth creation through employment generation" (Article 2.1). On this basis, biofuel investments too are very much in line with government policy aims.

5.3 Methodology

The following methodology was used to assess the legal underpinnings of large-scale land acquisition and the actual practices involved: a content analysis of key policies and legislation, key informant interviews with government agencies in-

volved in land administration, planning, environmental protection, and investment promotion, key informant interviews with local chiefs and authorities and focus group discussion with affected households.

Nine plantations were visited from six different companies, with each plantation ranging from 5,000 ha to 70,000 ha in size. These were spread across four districts, namely Asante Akim North, Kintampo North, Nkoranza, and Pru – eight located within the forest-savanna transition zone and one in the Guinea savanna zone. These areas were selected due to the disproportionately high concentration of farmland acquisitions that were observed. Land acquisition processes in Pru district, where five plantation sites were located, were studied in greater depth.

Table 5.1: Overview of parameters

Parameter	Description
1. Types and duration of land rights afforded to investors	Nature of land rights that may be acquired by investors (e.g. usufruct, leasehold or freehold) and conditions (e.g. duration and renewability of these rights).
2. Provisions to protect customary rights	Legal provisions to protect customary rights – whether through formal titling or recognition of existing systems of land occupation and tenure, as well as mechanisms to ensure local rights to land and other natural resources are safeguarded during the negotiation process.
3. Mechanisms for guiding land allocation	Legal provisions for identifying suitable and/or available land for particular types of uses or that assist investors in acquiring land; areas that are off-limit for development
4. Accommodation of customary land users	Legislated steps and processes through which customary rights holders are informed, consulted or given decision authority over land transfer and its terms. This includes three related sub-parameters.
a. Mechanisms for local representation	The legislated role of government agencies or other actors in regulating, mediating or facilitating the negotiation process.
b. The role of intermediaries	Legislation that specifies mechanisms for representation of 'local communities' or customary rights holders in the negotiation process.
c. Compensation mechanisms	Legal provisions that specify the level, type and distribution of compensation to be paid for land alienation.
5. Impact mitigation requirements	Legislation requiring project proponents to mitigate negative socio-economic impacts of their investments.
6. Monitoring	Legislation requiring the monitoring of social impacts and, where stipulated, the social dimensions or indicators to be monitored.
7. Dispute resolution	Legally recognized mechanisms for recourse for aggrieved parties.
8. Changes in the status or classification of customary land	The legal status of land following the termination of investor land rights (e.g. whether it reverts to customary tenure or becomes state land).

The methodology for assessing the legal underpinnings of customary land rights and the process of large-scale land acquisition involved the development of a set of parameters to explore how the law supports different dimensions of customary rights in the negotiation process. These parameters are structured sequentially, following key stages in the 'land acquisition process' – from the underlying rules governing rights and who may hold them and land alienation procedures to project implementation and the status of land following project completion (see Table 5.1).

These parameters closely mirror principles related to the protection of customary land rights of internationally recognized codes of conduct, notably the Voluntary Guidelines on Responsible Governance of Tenure (FAO 2012) and the Principles on Responsible Agricultural Investment (PRAI) (World Bank *et al.* 2011).

5.4 The statutory underpinnings for farmland acquisitions

Land ownership in Ghana can be classified into two broad categories: those under customary ownership (constituting 78 percent of the total land area) and those controlled by the state (20 percent of the total land area), with the remaining area under some form of shared ownership (Deininger 2003). While providing customary land with legal recognition, the Ghanaian Constitution of 1992 forbids its sale, only allowing for temporary alienation through leasehold titling. Customary land can only be reclassified to state land through the use of the state's right to eminent domain, which enables involuntary expropriation of customary land for a 'public purpose' (see Table 5.2 for a detailed overview of legal provisions and relevant legislation). Customary law freehold (or usufruct title) can be acquired by subgroups or individuals within their 'traditional area', typically by being the first to cultivate that land, through inheritance, or through allocation by a chief. However, only a fraction of individual landholdings are formally registered – those that are typically located in (peri-)urban areas or where so-called Customary Land Secretariats (CLS) have been established³.

A Traditional Council, comprised of the traditional area's Paramount Chief or king and his senior and divisional/village-level chiefs, administers land under customary ownership in accordance with customary law⁴. These Councils, referred to in Ghana as the 'allodial title' holders, hold the ultimate right to retract user rights and reallocate and alienate land. The Traditional Council therefore holds the sole authority to negotiate with project developers over leasehold terms⁵. Various statutory instruments have specified the conditions under which Traditional Councils are to administer (and therefore also alienate) their landholdings. The Constitution is most explicit in this regard, stipulating that Traditional Councils have the "obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard" (Article 36.8). Although principles of free prior and informed consent (FPIC) are not enshrined explicitly in the Constitution or in Ghana's many land laws, though lacking statutory force, the National Lands Policy of 1999 does insist that "no interest in or right over any land ... can be disposed of ... without consultation of the owner or occupier" (Article 4.3c).

Moreover, with the exception of compulsory land acquisitions by the state, there are no comprehensive legal provisions that guarantee the right to compensation for loss of livelihood, specify resettlement and rehabilitation procedures, or assign responsibilities to this effect. Although the Regional Lands Commission, a

Table 5.2: Legal provisions regulating farmland acquisitions

Parameter	Relevant legislation	Specific provisions
1. Types and duration of land rights afforded to investors	Land Title Registration Law 1986, Constitution 1992	Only leasehold titles for a period of up to 50 years for foreign investors and 99 years for domestic investors. Leases are renewable for the same period.
2. Provisions to protect customary rights	Land Title Registration Law 1986, Administration of Lands Act 1962, Constitution 1992, State Lands Act 1962	Customary tenure is recognized and governed by customary law. The Traditional Council has to approve the alienation of customary land and has fiduciary duties. However, land can be compulsorily acquired by the state through the right to eminent domain.
3. Mechanisms for guiding land allocation	Wildlife Reserves Regulations 1971, Forest Ordinance 1927, Ghana Investment Promotion Act 1994, Savannah Accelerated Development Authority (SADA) Act 2010	Forest and wildlife reserves cannot be developed for agriculture. The GIPC provide assistance and guidance to enterprise during project establishment. The Savannah Accelerated Development Authority (SADA) should assist agribusinesses in acquiring land.
4. Accommodation of customary land users	Environmental Assessment Regulations 1999 (<i>National Land Policy 1999</i>)	A public hearing may be required if concerns are raised over the content of the ESIA before an environmental permit is issued. (<i>No interest in land belonging to an individual or family can be disposed of without consultation</i>)
a. Mechanisms for local representation	Constitution 1992	Besides deciding on the alienation, the Traditional Council is mandated to represent its constituents in negotiations, having fiduciary duties to administer land in a manner beneficial to its constituency.
b. The role of intermediaries	Constitution 1992, Land Commission Act 2008	The Lands Commission is required to approve that the development is consistent with existing development plans before titling.
c. Compensation mechanisms	State Lands Act 1962, Constitution 1992 (<i>National Land Policy 1999</i>)	Only legislated for land acquisitions by the state, which should enable the replacement of land of equal value and suitability and 'cover the cost of disturbance'. Land revenues should be shared between the Traditional Council, Stool, and District Assembly according to a constitutional formula. (<i>For all types of land acquisitions, 'provisions should be made for persons displaced'</i>)
5. Impact mitigation requirements	Environmental Assessment Regulations 1999	Aside from the above compensation mechanisms, impact mitigation requirements apply only to environmental issues and should be included in the EMP.
6. Monitoring	Environmental Protection Agency Act 1994, Environmental Assessment Regulations 1999	The EPA is charged with ensuring 'compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects'. Project proponents must produce an EMP to guide 'self-regulation' and submit an annual environmental report.
7. Dispute resolution	Environmental Assessment Regulations 1999, Land Title Registration Regulation 1986, Chieftaincy Act 2008	Aggrieved persons can issue complaints with the EPA over issuance of environmental permits; with the Lands Commission over issuance of leasehold titles; and the House of Chiefs over chiefly misconduct.
8. Changes in the status	Constitution 1992, State Lands Act 1962	Customary land cannot be sold; it can only be reclassified to state land when acquired by the state

Note: Policies are denoted with brackets.

government agency charged with "promot(ing) the judicious use of land by the society" (Article 4(a), Land Commission Act 2008), has to approve and ultimately allocate the leasehold title to the investor, Ghanaian land laws fail to specify criteria for approval; they merely stipulate that the Regional Lands Commission should determine whether alienations are "consistent with existing development plans" (Article 267(3), Constitution 1992). Therefore, the Lands Commission does not have a mandate to advise on or ensure that the leasehold agreements between the developer and the Traditional Council provides for the equitable distribution of proceeds and adequately reflects the land's true economic value. However, in the case of objections over the titling, the Regional Lands Commission is required to bring the matter before an Adjudication Committee who is then charged with resolving the conflict.

When converting more than 40 ha of land, project proponents must conduct a detailed Environmental and Social Impact Assessment (ESIA) through independent consultants, which, in addition to environmental factors, also requires that the potential social and economic implications of project development are assessed. The subsequent report is then to be published in local media. Should any persons raise concerns over the content of the report, a public hearing is to be held. Despite this, ESIA-related laws fail to specify responsibilities of proponents towards customary land users. For example, while proponents are required to adopt impact mitigation strategies as part of their Environmental Management Plans (EMP), unlike the ESIA, they are not legally required to account for non-environmental impacts. When the Regional Environmental Protection Agency (EPA) carries out monitoring activities, it uses these EMPs to assess compliance.

While the ESIA process does enable the government to have some influence over the nature of land use change, there are no national-level regulations or procedures that specify the type of land that can be converted to plantation agriculture. The only restrictions are currently land within forest and wildlife reserves.

In addition to the opportunities to object during the land titling and ESIA process, land users can also appeal to customary institutions and the judiciary. For example, in the case of chiefly misconduct (e.g. not acting in the interests of the constituency, appropriation of funds) disputes can be brought before the House of Chiefs, which holds the sole power to 'dethrone' traditional authorities. On the basis of Article 36.8 of the Constitution, the judiciary, in theory, also has the authority to rule on cases involving community land disputes.

5.5 Evidence from implementation

This section will trace the land acquisition process and highlight some of the issues that threaten the rights of customary land users.

5.5.1 Lack of external guidance

Despite the rapidly rising interest by investors in Ghana's farmland, the Government of Ghana, however, was not observed to have played an active role in enabling these land acquisitions. While the government can acquire land on behalf of investors through its right to eminent domain, at the time of research, it had not used this right for any recent land acquisitions. According to the Lands Commission, due to past irregularities and unresolved disputes over compensation payments, the involuntary acquisition of land by the state for such purposes is no longer politically viable (Personal communications, Senior official of the Lands Commission, Accra, 2009; Larbi *et al.* 2004). Although farmlands in practice can therefore only be acquired through voluntary transaction, in the context of GCAP the government is planning to involuntarily acquire customary land for infrastructure development in the course of 2012 (MOFA 2011). Besides the allocation of an abandoned state farm to a rice project, there was no evidence either of government leasing out state land to investors. All of the nine land acquisitions profiled in our research originated from the customary land domain.

Although investors can obtain support from the state, typically through the Ghana Investment Promotion Center (GIPC) that maintains a land bank to help identify suitable land and Traditional Councils willing to alienate land for investments, at none of our case studies did the government play a direct role in facilitating or mediating land acquisitions. All the investors initiated first contact with Traditional Councils in the areas of interest; in most cases with local business partners familiar with local protocol.

Traditional Councils subsequently negotiated directly with the investors on the terms and conditions for the leasehold contract. Although the government did facilitate access to 150,000 ha of land in southern Ghana for two high-profile jatropha investments (Personal communication, Director of the GIPC, Accra, 2009), the GIPC claimed that it merely links investors to land owners and does not wish to interfere in the negotiation encounter, since these are "the affairs of the chiefs". There was no evidence either of non-governmental organizations (NGO) being actively involved in the land acquisition process, as, for example, advisors or community representatives.

5.5.2 Elite capture and opacity of the negotiation encounter

While Traditional Councils have, as per the Constitution, fiduciary duties, in practice, however, none of the land alienation cases demonstrated evidence of any consultations with the wider community to determine whether the allocation would be "in the benefit... of the people". At three plantations, communities only became aware of the projects when land clearing activities commenced, despite the divisional chiefs being responsible for communicating decisions of the Traditional Council to their community. In two cases in Pru district, divisional chiefs claimed also not to have been aware of pending land alienations, suggesting that hierarchies within the Traditional Council also come into play in the decision making process. Here, it was argued that the Paramount Chief and his senior chiefs, who are typically councilors and spiritual leaders closely affiliated to the Paramount Chief, ultimately decide and negotiate on land alienations.

This apparent absence of intermediaries (and formal regulations promoting this) in the alienation process exposes the process to iniquitous and exploitative conduct. Investors may exploit the ignorance of the Traditional Council as these may be unfamiliar with the true market of land, not attuned to potential long-term implications of alienation and easily swayed by 'development' prospects. For example, four Traditional Councils (for four separate plantations by two different companies covering 91,500 ha) entered into agreements with the investor to share between 25 percent and 33 percent of profits from *jatropha* seed sales. However, both companies established different limited-liability companies for cultivation and biodiesel refining. With such corporate structures and undifferentiated tax rates in the agricultural sector (with both agro-processing and cultivation activities being zero-rated in Ghana), companies can easily concentrate future profits within the refining business to circumvent pay-outs. Moreover, the tendency of Traditional Councils to put their faith in the goodwill of the investors poses risks. For example, according to a Traditional Council in Pru District, it made a verbal agreement with the investor to support the development of social and physical infrastructure in the traditional area's communities and adopt preferential hiring policies. The investor did not live up to this agreement, with less than 20 percent of employees originating from affected communities. The failure of the Traditional Council to contractualize these agreements illustrates well the lack of legal literacy of some Traditional Councils and the need for intermediaries to support Traditional Councils in negotiations.

While the Regional Lands Commission has the legal authority to decline investor applications for formal leasehold titles (e.g. on grounds of inconsistency with district development plans or objections by the public), in practice it seldom exercises this authority. According to the Regional Lands Commission in Brong Ahafo, for example, an application is always approved once the paperwork is in order. Since employment generation, private capital formation, and agricultural modernization objectives figure prominently in the district medium terms development

plans (DMTDP) of all four districts, there are few grounds for the Lands Commission to reject acquisitions on the basis of development planning conflicts⁶. Therefore, in practice, the Lands Commission is not in a position to appraise or exert influence over the content of the contracts signed between Traditional Councils and investors.

Even in situations where official complaints against the land transfer are lodged with the Lands Commission, in practice the transfer and titling of land is seldom denied. In Brong Ahafo, for example, the Lands Commission claimed not to be aware of a single case in its institutional history where this has happened (Personal communications, Director Regional Lands Commission, Sunyani, 2009). With the Lands Commission typically based in the regional capitals, land conflicts playing out within the (more distant) districts often fail to reach them. In one case, for instance, it was observed that a number of complaints were lodged with the District Assembly in Pru District over involuntary resettlement for plantation development⁷. However, none of these complaints were ever communicated to the Regional Lands Commission or referred to the courts, since the District Assembly "wants employment and therefore has to encourage the company" and feels that issues related to negative impacts "should be left to the EPA" (Personal communications, Senior Planning Officer, Yeji, 2009). Instead, the District Assembly sought to placate these persons to prevent these issues from escalating and adversely affecting the investments.

Since 1988, the Ghanaian government has implemented a series of decentralization reforms, which have gradually devolved administrative, fiscal, and planning responsibilities to local government. However, as recognized by Ghana's latest decentralization policy, limited popular participation, and pervasive capacity and resource constraints have to date undermined the effectiveness of district-level government as agents of local development (Schiewer 1995; Kasanga 2002; Crook 2003; Ministry of Local Government and Rural 2010). Since these new farmland investors have all made some promises of contributing to service delivery (particularly through investments in social and physical infrastructure), it is unsurprising that the District Assemblies profiled in this research were highly supportive of developments that alleviate some of their responsibilities. Moreover, considering the difficulties faced in raising adequate funds to invest in development projects amid pressure from central government, district revenues accruing from land alienation are much welcomed new income flows⁸. As argued by Lentz (2006), the devolution of power in Ghana has also intensified special-interest politics. Despite difficulties in documenting such conflicts in this study, the rapid influx of investment capital undeniably creates new spaces for appropriating rents by local political elites.

Due to the various incentives created by these investments, local government has a tendency to be aligned more strongly with farmland investors than customary land users. These tendencies are arguably compounded by, what Ubink (2008) coins, the informal government 'policy of non-interference' in chieftaincy affairs. Although the post-colonial government made various attempts to rein in chiefly

power, through, for example, the removal of their right to political office by the Constitution, in the context of a decentralized governance structure they continue to wield, as 'vote-brokers', substantial political power (Ubink 2008; Berry 2009; Belden 2010; Knierzinger 2011). As a result, many government institutions tend to be disinclined to become involved in chieftaincy matters, particularly land management, as can be observed by the limited intervention capacity of the Lands Commission and is evidenced by the limited progress made in reforming land laws to curtail chiefly stronghold over land management. The Director of the Land Administration Project (LAP), for example, conceded that even the flagship CLS initiative was therefore entirely demand-driven. With many Traditional Councils disinclined to adopt land management structures that risk circumscribing their authority and control over land, after more than 8 years of implementation, CLSs have only been established in 36 out of the more than 800 traditional areas in Ghana (World Bank 2011b).

As a result of this lack of outside scrutiny, Traditional Councils are able to exploit negotiations for personal enrichment, rather than representing, in their role of fiduciaries, the interests of their constituency. For example, according to customary law, when the Chief allocates land, the recipient presents a token of allegiance or 'drink money' for the Chief's consideration. While this customarily entails a bottle of alcohol, kola nuts and food products, it can also take the form of large cash payments. In this manner, 'drink money' is increasingly a way to put a socially acceptable label on what amounts to rent capture by traditional authorities (see also Kasanga *et al.* 1996; Blocher 2006).

Although by law all land revenues are to be reported to the Office of the Administrator of Stool Land (OASL) and divided along the constitutional formula, drink money falls into a grey area since it is traditionally considered part of a social custom rather than income (Personal communications, Project Director of the LAP, Accra, 2009; Personal communications, Administrator of Stool Lands, Nkoranza, 2009). As also noted by Belden (2010) and Alden Wily and Hammond (2001), the nature of these payments is therefore rarely made public and claimed by the OASL. Consequently, there is arguably a risk that Traditional Councils may forego large annual rent payments, which are typically formalized as part of the land lease agreement, in favor of a more informal type of one-off contribution benefitting individual customary leaders.

With high levels of opacity surrounding the nature of negotiations and the payment of drink money, it proved impossible, despite efforts, to collect concrete evidence of these informal agreements. Community members, and in some cases the divisional chiefs, were frequently found to have had no knowledge of even the most basic provisions of the leasehold contracts, illustrating the lack of transparency of the land alienation process. In Kintampo North, where in contrast to the other districts the chieftaincy rotates between a number of eligible communities, the new Paramount Chief was unaware of the content of the contract the recently deceased chief signed for the alienation of 50,000 ha of land. It was argued that the tradi-

tional leadership of that community did not wish to disclose the contract's content for fear of having to portion up proceeds.

5.5.3 Insufficient consideration for loss of livelihood

At the time of research, no Traditional Council had proposed direct compensation, nor promised to share future revenue flows⁹. It is difficult to gauge the motives of Traditional Councils accurately and to speculate how well, and to what ends, future land revenues will be used, but there is undeniably considerable risk of elite capture and self-interest within existing (legal) structures of power and control. However, skepticism as to the benevolence of Traditional Councils appears to be endemic in the region; an attitude widely held by community members and government officials alike. One Traditional Council in Pru exhibited a marked sense of personal entitlement to land revenues: "Many households neglect to pay their homage to us at the end of the season. The money from the company is far, far better". Others researchers have made similar observations, particularly in relation to land alienations in the urban periphery (Kasanga and Kotey 2001; Alden Wily and Hammond 2001; Ubink and Quan 2008; Wisborg 2012).

Although the government in practice exerts little influence over the terms and conditions of land alienation and many Traditional Councils are disinclined to redistribute proceeds or extend support to project-affected households, in theory redress can be sought through participation in the ESIA process. While communities are to be consulted in identifying the potential socio-economic implications of project development, these consultations often take on the character of a public relations forum. According to two communities that participated in ESIA related engagement activities, discussions revolved primarily around the nature of developmental contributions (e.g. schools, hospitals, roads, boreholes, and employment), without providing adequate information of project implications. Although EPA staff were involved in initial site visits (for drafting the terms of reference for the ESIA), they did not participate in community consultations, which only included company representatives and ESIA consultants. Since independent government and civil society representatives were absent from these processes, communities were unable to gain a balanced view of the opportunities and risks of project development, and thereby suggest appropriate interventions.

Environmental regulations do though require that a public hearing of grievances be conducted by the EPA if that is requested after it publicizes the ESIA document. However, the sources through which the public is informed, typically the national press and the premises of the District Assemblies, are often inaccessible by communities. Moreover, due to the technical nature of the ESIA, affected communities often lack the capacity to fully comprehend key issues raised in the report, which is further reinforced by the fact that the ESIA report is not translated into local languages. As a result, affected communities appear very much unaware of

the potential negative effects of project development. This implies that community concerns cannot be adequately incorporated into the EMP, which serves as the benchmark for EPA audits.

Box 5.1: Potential implications of land alienation on rural livelihoods in the forest-savanna transition zone

The wholesale transfer of large contiguous areas of land for plantation monoculture in Ghana could have far-reaching implications for the livelihoods of those losing access to land and land resources. The potential severity of land use competition is illustrated by data from three land alienation case studies (Table 5.3). It shows that in these cases between 31.8% and 53.0% of land allocated for investment is part of the existing farming system - these areas are equivalent to the landholdings of between 1,631 and 2,654 households. As illustrated by the impact assessment of the Abease concession conducted by Schoneveld *et al.* (2011), the expropriation of farmland and other valuable livelihood resources, notable from forests, threatens, amongst others, food security and income generating capacity. Even though the forest-savanna transition zone is less populous than the south, since most suitable land is in some way part of the farming system, which tends to more extensive due to the practice of bush-fallow agriculture, most displaced households are typically unable to recover their landholdings; with access becoming increasingly contingent on quality of social relations and the capacity to engage in monetary transactions. With greater limitations in this respect, more marginalized community groups, such as women and migrants, were found to be disproportionately impacted by land expropriation and increases in resource scarcity.

Table 5.3: Extent of displacement of customary landholdings

Traditional area	Total concession area (in Ha) ^β	Area under cultivation (in Ha) ^γ	Total active landholdings (in Ha) ^α	Proportion of concession area	Equivalent number of households ^δ
Agogo	20,450	2,508	9,278	45.40%	2,039
Yeji	38,000	3,263	12,074	31.80%	2,654
Abease	14,000	2,359	7,419	53.00%	1,631

^β Concession boundaries for Agogo and Yeji obtained from individual ESIA reports; Abease concession boundaries based on verbal communications with company representatives and traditional authorities.

^γ Area under cultivation derived from remote sensing analysis using Landsat MT satellite image (various dates).

^α Total active land holdings include area under cultivation *and* area of land under fallow. This is based on the typical ratio of fallow to cultivated land of 2.7 in the forest-savanna transition zone, derived from Ardey Codjoe (2010).

^δ Number of households based on total average landholdings, including fallowed land, of 4.55 ha per households in the forest-savanna transition zone, derived from Chamberlin (2008).

Despite these shortcomings and lack of legal requirement, the two plantations (of the nine assessed in this research) for which an environmental permit had been obtained at the time of research had adopted strategies to mitigate social impacts in their EMP. Typical counteracting measures included preferential hiring policies; designated farming areas within the leased land; and (temporary) subsidized access to agricultural inputs to enable agricultural intensification (since bush-fallow rotation is no longer feasible given land constraints)¹⁰. Though by no means entailing comprehensive resettlement and rehabilitation measures, the inclusion of such

interventions does illustrate the potential utility of the ESIA process. However, with both projects still in their incipiency, it could not be assessed how well and to what extent these measures have been implemented. As the EPA lacks the necessary human and financial resources to conduct regular and comprehensive monitoring activities, the inclusion of such measures in the EMP could serve to merely placate potential project opponents¹¹.

5.5.4 Poor inter-institutional coordination and accountability

The integrity of the ESIA process is, however, undermined more significantly by the ability to circumvent the process entirely. For example, five of the nine projects were found to be cultivating more than 40 ha of land without having conducted ESIA's or having obtained environmental permits, as is required by environmental law. One company spokesperson argued that since most companies in the region are insufficiently capitalized they can only start bearing the cost associated with the ESIA process once they are sufficiently developed (Personal communications, Managing Director, Italian jatropha company, 2010). As in many other African countries, the jatropha companies in Ghana have little experience in the sector, are still in pursuit of additional investment, and are operating under highly uncertain conditions and assumptions.

Although district-level governments were in all these cases aware of the unapproved developments taking place in their respective districts, in the absence of formal coordination mechanisms and incentives, they failed to liaise with regional and central government to ensure companies follow establishment procedures. Additionally, there are many incidences where biofuel companies were in the process of registering their land at the Lands Commission before obtaining the necessary Environmental Permits. In these situations, the Lands Commission does not appear to consult or inform the EPA, with both agencies acknowledging lack of formal or even informal forms of collaboration (Personal communications, Director, Regional EPA, Sunyani, 2009; Personal communications, Chief Registrar, Sunyani, 2009). Such interaction could in theory be of significant mutual benefit, as this would provide an opportunity for the EPA to learn of large land-based investments and for the Lands Commission to learn of the potential adverse impacts of these land transfers in order to exert influence over the alienation process. Similarly, at the time of research only one of the nine companies was, as is required, registered with the GIPC, which, as a centralized government agency could play a pivotal role in fostering inter-institutional information flows (Approved agricultural investments, GIPC, 2009, unpublished; Personal communications, Director, GIPC, Accra, 2009). As a result of the limited cross accountabilities, the Regional EPA in Brong Ahafo claimed to only be aware of three of the eight projects researched in the region. However, even when it does encounter unapproved developments, the EPA is disinclined to take action. For example, in two cases in Brong

Ahafo, the EPA chose not to issue any stop orders, since, justified in similar fashion to district government, it "did not wish to obstruct development" (Personal communications, Director, Regional EPA, Sunyani, 2009). Rather than being fined for ignoring environmental regulations, one of the companies in Nkoranza who had planted more than 1,000 ha was merely told to stop their clear-felling practices and conduct an ESIA for the remaining area of the land.

5.5.5 Limited community will and capacity to contest rights infringements

With traditional conflict resolution mechanisms and the various government institutions involved in the project establishment process rarely serving the interests of customary land users, the only alternative avenue for claiming rights is through the judiciary. Despite cases involving extensive displacement of customary land uses, no projects were formally contested before the courts, or the House of Chiefs for that matter. On the basis of community discussions, this appears to have a three-fold cause: limited capacity among affected households to claim their legal rights, customary deference to chiefly authority and high expectations of modernization prospects. One land losing community asserted that "Once Accra was a village. Look at it now. We will become like Accra". With such positive, typically unrealistic, expectations of project development, numerous communities claimed that they, therefore, would be reluctant to deter investors by excessive demands.

As a result, consultations will in many cases fail to serve their intended purpose and will likely only serve to further legitimize the land alienation process. Therefore, even if communities are well-informed of the potential threats to their livelihoods, in many cases investors will be able to exploit community desperation for development to negotiate favorable terms of alienation. While a number of Accra-based NGOs have publically campaigned against large-scale land alienation, at none of the nine plantations did such organizations provide any pre-alienation support to project-affected persons (e.g. in the form of community empowerment support). Although this can in part be attributed to their lack of on-the-ground presence, it is also a result of the limited opportunity of outsiders to gain awareness of pending land alienations; this due to the rather clandestine nature of the negotiation encounter.

Another obstacle to legal justice is in the difficulties in using customary law to make evidentiary claims against irregular land alienation. Since the Paramount Chief and affiliated elders are the 'custodians of tradition', they are well positioned to define what is 'custom' and, therefore, construct rules that serve their own interests and that legitimize their land dealings. Because customary law is rarely codified - partly since there are clear benefits to ambiguity - it is poorly integrated with the statutory law. While customary law often is subordinate to statutory law, in practice, in the Ghanaian courts it typically replaces statutes (Blocher 2001;

Woodman 1996), providing significant ammunition to those who have authority to define customary rules.

5.6 Conclusion

This study has highlighted both fundamental flaws in the content of legal provisions relevant to the protection of customary land rights and in the implementation of those provisions. Although the Ghanaian legal system does recognize customary land rights, by neglecting to sufficiently detail the nature of both individual and collective rights and the responsibilities and accountability structures of customary land management institutions, local elites are able to capture rents from the alienation process at the expense of customary land users. In particular, the lack of hard consultation, consent, and compensation requirements makes customary land users susceptible to involuntary expropriation without adequate forms of redress. The excessive reliance on the ESIA as a mechanism to place checks and balances on the alienation process further betrays the limitations of Ghanaian land laws in securing both formal and informal claims to land.

The nine case studies show that in practice the absence of legal mechanisms to protect usufruct rights causes the negotiating encounter to be decidedly opaque. Without any forms of intra-community consultations, traditional authorities fail to negotiate alienation terms that adequately address the needs and loss of access to vital livelihood resources of their constituency. Since the government tends to perceive customary land management as one in which citizens are responsible for holding their leaders to account on the basis of traditional practice, they play no role as intermediaries or provide any oversight in the alienation process. While political motives partly underlie this phenomenon, it too can be ascribed to a relatively invariant view held on the modernization prospects of foreign investment; very much in line with government policy aims. Often hiding behind narrow institutional mandates, many government stakeholders failed as a result to act upon in-transigencies by both investors and traditional authorities.

Issues of cross-accountability and communication among government agencies (e.g. between the GIPC, Lands Commission, and EPA) and with and between various levels of government (between central, regional, and district government) further contributes to this lack of enforcement, particularly for potentially valuable tools such as the ESIA. This is caused in particular by capacity constraints, fragmented responsibilities, and perverse incentives. While the different functions and roles of these agencies could in theory be complementary, due to the absence of effective coordination mechanisms this potential is largely undermined. The decentralized governance structure in its current form, where district governments have few enforcement mandates, have limited accountability to sectoral agencies, and are increasingly required to raise their own funds, arguably weakens the responsiveness of the state to local development needs.

In conclusion, as a result of deficiencies in the regulatory regime and in the will and capacity to enforce the laws that provide rights to land, the Ghanaian state plays only a marginal role in ensuring customary land users are protected from (the consequences of) land expropriation. With legal rights therefore rarely translating into tenure security and with few effective safeguards in place to ensure traditional authorities and investors respect customary norms and basic principles of social justice, in practice the protection of citizen rights is solely the responsibility of the aggrieved. Considering limited capacities to claim these rights, unrealistic expectations, and deference to customary hierarchies, formal contestation, if any, will be in many cases be retroactive, and will, therefore, only address issues of restitution, not *ex ante* participation. This raises very real challenges for ensuring communities are sufficiently empowered to claim their full bundle of rights within the confines of a legal system where these rights are afforded only limited protection. While this is arguably justification for greater direct involvement of the state in the customary land domain, prevailing institutional structures will serve to undermine any legal reforms to such effect. Rather than placing implicit faith in legislation, this suggests that equitable land management in Ghana is more fundamentally about realigning incentives and accountabilities.

Notes

- 1 Land considered 'potentially available' includes all land that is not classified as forested or as cultivated.
- 2 The GCAP focuses initially on two projects; developing 11,000 ha of irrigated commercial agriculture on the Accra Plains and modernizing the agricultural sector in the northern savannah ecological zone of northern Ghana. For the latter project, the government established the Savannah Accelerated Development Authority (SADA) that is mandated to support and create an environment conducive to investment.
- 3 Under the World Bank supported Land Administration Project (LAP) a number of traditional areas have since 2003 established a CLS. These are tasked with registering individual claims to land, dispute resolution, and land use planning.
- 4 The kingdom of the Paramount Chief typically encompasses a population of 10,000 - 20,000, divided into a number of communities. The role of chief is normally inherited from being born into the royal family. While some ethnic groups in Ghana are patrilineal, the Akan, Ghana's largest ethnic group, practice matrilineal succession.
- 5 While it is beyond the scope and focus of this article to offer a full historical account of the evolution of 'traditional' institutions, it is worth noting that prevailing power structures are largely a product of British Indirect Rule. By vesting all land in the Paramount Chiefs - including those of subordinate stools - the colonial government not only sought to form more rational local government units, but also to exert greater control over land by fostering alliances with local elites. Since this typically conflicted with existing social relations and land management practices, the notion of what is 'customary' has been long contested. These issues have been well covered by Crook (1986); Gocking (1994); Nugent (1996); Rathbone (2000), and Amanor (2008) and many others.
- 6 See budget statements on the Website of the Ministry of Finance and Economic Planning for the strategic objectives of individual districts: <http://www.mofep.gov.gh/?q=highlights/130712> [accessed on July 18, 2012]
- 7 Pru District's capital Yeji is located approximately 270 km along a partly paved road from the regional capital Sunyani, where the Regional Lands Commission is headquartered.
- 8 According to the Constitution, Article 267, land revenues are divided as follows: after deduction of a 10 percent administration fee for the OASL, 25 percent of the remaining sum is allocated to the Stool, 20 percent to the Traditional Council, and 55 percent to the relevant District Assembly

- 9 Only one company offered to extend compensation directly to landholders, at a rate of 1 Ghanaian Cedi per acre, equivalent to approximately US\$ 0.90 per acre at the time of alienation.
- 10 This information is based on the Environmental Impact Statement and provisional EMP of Scanfuel (August 21, 2008) and Natural African Diesel (November 11, 2008).
- 11 In Brong Ahafo, for example, only five technical staff were employed at the EPA for a region the size of the Netherlands.

The Politics of the Forest Frontier

Negotiating between conservation, development, and indigenous rights in Nigeria

6.1 Introduction

For many, the Federal Republic of Nigeria is the penultimate 'paradox of plenty'. With more than three-quarters of government revenue derived from hydrocarbons (IMF 2013), Nigeria's rentier state is notorious for oil politics and patrimonial accumulation (Schatz 1984; Ikpe 2000; Omeje 2005). This has given rise to entrenched ethno-regional commercial and bureaucratic classes that serve primarily to articulate and advance the interests of international capital at the expense of domestic productive investment (Vaughan 1995; Omeje 2005). As a result, Nigeria has been long marked by economic mismanagement, regional marginalization, civil disorder, and ethnic and religious sectionalism (Gore and Pratten 2003; Pierce 2006).

Despite its continued reliance on extractive industries, Nigeria remains an agrarian economy - with the majority of the population residing in rural areas and engaged in agricultural production (FRN 2013). Yet where Nigeria was once a major exporter of cash crops and self-sufficient in most food crops, protracted crises and state neglect following the emergence of the oil economy has made Nigeria one of the largest net food importers in sub-Saharan Africa (Korieh 2010; Odozi and Omonona 2012). However, with rising rural poverty and unemployment, the agricultural sector is increasingly being considered an important target for Nigeria's economic diversification strategies. Especially since the end of Nigeria's long military rule in 1999, the government has been actively pursuing the commercialization of the agricultural economy through market-led reforms, as has

been formally articulated in the 2003 National Economic Empowerment and Development Strategy (NEEDS) and the 2012 Agricultural Transformation Agenda (ATA) (Adesina 2012; Iwuchukwu and Igbokwe 2012). This has involved *inter alia* the privatization of the state's agricultural assets and the promotion of private-sector investment in priority value chains (Adesina 2012).

The fertile and tropical Cross River State (CRS), located in southeast Nigeria along the Cameroon border, has since the colonial era been one of Nigeria's largest producers of export crops such as cocoa, rubber, and oil palm (Udo 1965). Its many large private and state-owned plantations, however, had by the 1970s degraded into a state of neglect or had been altogether abandoned. In line with federal government policy, recent state administrations have increasingly embraced the private sector as a means to rehabilitate these plantations and modernize its neglected agricultural economy (GoCRS 2004; CoCRS 2009). Whether these efforts will, in fact, serve to alleviate high rates of rural poverty in the state can though be debated; particularly in light of mounting evidence to suggest that without effective governance mechanisms increasing private sector participation in cultivation may instead crowd out smallholder production systems (Deininger 2011; de Schutter 2011a; German *et al.* 2013). Such threats are especially pertinent to Nigeria, since the nationalization of land in the late 1970s has transferred all land-management authorities from traditional institutions to state government. The subsequent loss of legal protection for many customary claims to land and its resources has enhanced the threat of dispossession and displacement (Otubu 2010; Alden Wily 2011).

The 5,000 square kilometer Oban-Korup forest block, which covers large parts of CRS and continues into Cameroon, represents more than 50 percent of Nigeria's remaining tropical high forest and is considered one of Africa's most important biotic reserves (Oates 1999; Kamdem Toham *et al.* 2006)¹. Already experiencing rapid degradation from an ever-expanding agricultural frontier, a resurgent plantation economy could serve to exacerbate pressures on forest resources (Oyebo *et al.* 2011). Despite this, the incumbent state government appears to exhibit genuine commitment to reconciling development and conservation objectives, as reflected in the enactment of a deforestation moratorium in 2010 and in its active engagement with the Reducing Emissions from Deforestation and Forest Degradation (REDD+) initiative (UN REDD 2012)². However, considering finite land resources, if the expansion of plantation agriculture were to respect forest conservation then that would likely have dire socio-economic implications.

Sustainable agricultural development in the state, therefore, involves striking a delicate balance between competing land use systems and economic and political interests. In practice, however, this often results in trade-offs (Neumann 1997; Sanderson and Redford 2003; Hirsch *et al.* 2011; McShane *et al.* 2011); with, historically, agribusiness expansion in forest frontiers, such as in the Amazon Basin and Southeast Asia, for instance, typically resulting in both widespread environmental degradation and neglect of indigenous rights (Rudel *et al.* 2009; Schoneveld 2010). Against this compelling backdrop, this paper analyzes the implications of the

state's new agricultural modernization policies on forest conservation and indigenous rights. Considering Nigeria's patrimonial political structures, it is focused, in particular, on the underlying political-economic processes and state-society-investment interactions that shape priorities and, ultimately, outcomes. In so doing, this paper offers insight into the governance obstacles to reconciling potentially divergent and conflicting policy objectives.

As background, the next section provides a historical overview of the evolution of the plantation economy and conservation management in CRS. After a brief outline of the methodological approach, the section that follows will present the study findings. The findings will center on two different processes: the privatization of defunct state farms and the establishment of Greenfield plantations.

6.2 Historical background

6.2.1 The rise and demise of the plantation economy

While CRS offered the ideal conditions for the cultivation of numerous tree crops, under British colonial administration the development of European-owned plantations was actively discouraged. Under the Dual Mandate, which formed the basis of British policy in Tropical Africa, peasant production was considered to be more economically viable and would protect colonial authorities from the political and social unrest arising from a growing landless class (Udo 1965, Ijere 1974; Hinds 1997)³. It was assumed that the native system of land rights was incompatible with the extension of state power over land (Francis 1984; Berry 1992). In contrast to British East Africa colonies, where conditions were more conducive to European settlement, in Southern Nigeria this policy largely protected systems of customary tenure and thus restricted European plantation companies from obtaining interests in land (Hancock 1942; Meredith 1984).

The only companies to have successfully acquired land were the prominent Miller Brothers and United Africa Company (UAC), who managed to obtain the consent to develop two rubber plantations in 1905 and 1907, respectively; only after attempts to safeguard Southern Nigeria's wild rubber export industry had failed (Munro 1981; Steyn 2003; Fenske 2012)⁴. In order to expand its acreage under oil palm, UAC later made numerous attempts to acquire more land (UAC 1938; GoN 1938; Wilson 1954; Nworah 1972; Fieldhouse 1994). In order to protect the Nigeria oil palm industry from rising competition from the East Indies, UAC pled for the development of a tripartite agreement, where the government would provide land and oversight, the UAC the technical, commercial, and managerial expertise, and the 'African' the labor (UAC 1944). The government strongly rebuked this position, arguing that as a result of high population densities in the Eastern Region and strong traditional attachments to land, foreign-owned plantations would "at once be suspect and ... bring forth such a storm of protest that its success would be heavily

prejudiced from the start" (GoN 1944, p. 3). Rather, it contended that interventions should be directed at improving the quality of oil obtained from existing palms, establish plantations through settler schemes in the lesser populated areas, and introduce mechanical extraction through so-called pioneer oil mills (*ibid.*, p. 4).

In 1954, as part of British political reform in Nigeria, the Lyttelton Constitution was passed, introducing a system of federalism in Nigeria that transferred many aspects of economic planning to its three regional governments (Northern, Western, and Eastern Regions) (Lynn 2002). This marked the beginning of the indigenization of agricultural policy in Eastern Nigeria and transformed the nature of government support to the agricultural sector (Udo 1965; Korieh 2010). Breaking from earlier policy, the Eastern Nigerian Development Corporation (ENDC), a quasi-government corporation established in 1954 to promote industrial development in the region, began investing directly in large-scale rubber and oil palm plantations.

It was not until Independence in 1960, when Dr. Michael Okpara became the Eastern Region's first Premier and declared his 'agricultural revolution' that state wealth creation through the establishment of large-scale state run plantations became an explicit objective (ENDC 1962). One of the underlying drivers was to encourage population movements from congested areas within the Niger Delta to the lesser populated areas of present-day CRS (Uyanga 1980; Korieh 2010). The ENDC also became an important tool to garner political support in exchange for employment (McHenry 1985). By 1962, the ENDC acquired land for 16 plantations, covering an area of 28,852 ha (ENDC 1962). During the height of the ENDC in 1966, its landholdings exceeded 60,000 ha; more than 80 percent of which located in what is now CRS (Committee on the Management and Financing of Cross River State Estates 1990). It was also during this early post-Independence period that foreign investors were again able to acquire land, which saw the establishment of large new private plantations by Dunlop (rubber), UAC (oil palm), the Commonwealth Development Corporation (CDC) (oil palm), and the Danish Nigeria Agricultural Company (DANAC) (banana) (UAC 1956; DANAC 1957; ENDC 1962).

When the civilian government was overthrown in a coup and replaced by a military government in 1966, the relationship between the government and the Igbo majority ethnic group of the Eastern Region quickly deteriorated (Steyn 2003). With the abundance of oil resources in the Eastern Region becoming increasingly apparent during the 1960s, the military government sought to undermine an impending Igbo-led secessionist movement by splitting the Eastern Region into three states (the minority controlled Rivers and Southeastern State, and the Igbo dominated East-Central State); effectively cutting of the Igbo majority from the oil-rich Niger Delta (Udo 1970; Nafziger 1983). This resulted in the Eastern Region declaring itself the Independent Republic of Biafra in May 1967, which culminated in a Civil War that ended in January 1970 with the collapse of the Biafra resistance. Disruptions and material damage resulting from the conflict marked the downfall of the region's fledgling plantation economy. All private investors, except for UAC,

had by that time abandoned their plantations (various local oral histories, 2012; Personal communications, Plantation Director, Pamol, 2012).

With formation of new states, the ENDC was dissolved and the agricultural assets were transferred to Agricultural Development Corporations (ADC). The ADC in Southeastern State, renamed to Cross River State in 1976, inherited most of the ENDC's plantations, including the abandoned Dunlop plantations (Personal communications, Commissioner of Agriculture, 2012). However, being heavily underfunded, poorly managed, and employment decisions continuing to be based on political affiliation rather than merit, the inability of the ADC to generate revenues and to pay wages soon made it both a fiscal and a political liability (Commission of Inquiry 1986). Although the CRS government was able to sustain the heavily indebted ADC during the oil boom of the 1970s, falling oil prices and rising state deficit led to the dismantlement of the ADC in 1982 (McHenry 1985). At the time of its demise, this ADC was the largest ADC in Nigeria and the largest public corporation in CRS (*ibid*).

Although the ADC was retained as a corporation, its rubber estates were allocated to a newly formed corporation jointly owned by the state and federal government, Cross River Estates Limited (CREL), and the oil palm and cocoa estates were allocated to the private management company Nigerian Joint Agency Limited (NIJAL) to manage the estates on behalf of the government (Commission of Inquiry 1986). However, the allocation of the management contract to NIJAL was fraught with irregularities. A Commission of Inquiry charged with investigating the matter concluded in its 1986 report that the terms of contract severely compromised the interests of the ADC by protecting NIJAL from all liabilities, providing a management fee based on the acreage managed, rather than revenue generated, and offering exorbitant salaries to management staff. Furthermore, the report claimed that NIJAL was underreporting revenues and side-selling to UAC. Following the report's recommendations, the government proceeded to rescind the management contract and re-allocate individual estates also under management agreements to other private management companies. However, following the recommendations of another Commission of Inquiry in 1990, which detailed similar irregularities, these estates were eventually repossessed by the state government; many, including CREL that was being managed by the CDC, left behind significant debts (Commission of Inquiry 1990). While a Committee on the Management and Financing of CRS Estates (1990) recommended that these be partially privatized to minimize their mismanagement, with most companies demanding a majority share and with vested economic and political interests to maintain a *status quo*, no shares in any of the estates were divested. With officials reaping substantial economic gains from re-allocating parts of the estates, there was little incentive to re-invest and maintain the estates, which eventually resulted in estate neglect (Personal communications, Commissioner of Agriculture, 2012; Personal communications, Former official of the Bureau of Public Enterprises, 2012; Personal communications, Permanent Secretary of Agriculture, 2012).

6.2.2 From empire forestry to strict conservation

The majority of forest reserves in Nigeria were established under British colonial rule, particularly in the period 1920 - 1930; the Oban Group forest reserve, established in 1912, being one of the region's oldest forest reserves (NFIS 2012). Most of these forest reserves were established for the purpose of timber extraction, very much based on principles of scientific forestry that characterized the reductionist Russian and European forest management practices of the nineteenth century (Scott 1998; Barton 2001; Powell 2007). This was represented, for example, by concepts such as maximum sustainable yield and annual allowable cut (Adam and Hutton 2007). In line with the Dual Mandate, in southeast Nigeria these forest reserves were typically established in consultation with local communities (Caldecott and Morakinyo 1996). Customary rights, relating to hunting and harvesting of non-timber forest products (NTFP), were rarely compromised since these did not interfere with the management of timber resources (Lowe 1993); individual Forest Reserve orders detailed the specific types of products that could be harvested.

With the emergence of the plantation economy in the 1950s and 1960s, land for plantation development was typically allocated through a negotiated process, which resulted in plantations generally developing over off-reserve forestland. Nevertheless, this period experienced a profound shift in the quality of reserve management. Where under colonial administration well-defined forestry policies and co-management with traditional authorities protected forests from over-exploitation, the indigenization processes of the 1950s served to undermine established conservation programs (Areola 1987). The management of forest reserves was consolidated within the regional government, which prioritized the development of wood-based industries and employment generation (*ibid*). The allocation of timber concessions and royalty fees soon made forest reserves important sources of government patronage (Aweto 1990; Lowe 1993). While such royalties in theory were to be shared with communities, in practice these were largely appropriated by government, resulting in communities increasingly colluding with illegal loggers (Caldecott and Morakinyo 1996). By the mid 1970s, most forest reserves in Nigeria had been depleted of their valuable timber species, which resulted in many forest reserves being converted to pulpwood plantations (Aweto 1990)⁵.

Due to its size and inaccessibility, large parts of the Oban Group of forest reserves though remained off-limits to logging companies. By the late 1980s the biological significance of these forests attracted the attention of numerous international researchers and CSOs, including the International Union for Conservation of Nature (IUCN) and the World Wide Fund for Nature (WWF) (Caldecott 1993). In 1988, WWF became directly involved in the management of Cameroon's Korup National Park, which is contiguous with the Ikpan block of the Oban Group (see Figure 6.1)⁶. With the objective of developing a cooperative regional program, in the same year, WWF, in collaboration with the Nigerian Conservation Foundation (NCF), developed a proposal to protect the Oban Group (Oates 1999). Since

the proposed park was planned to involve a large and costly rural development component, it was to rely predominantly on external funding, particularly from the European Commission (EC) (Caldecott *et al.* 1989; Oates 1995, 1999). Although commercial forestry was almost paralyzed by that time, the CRS Forestry Department strongly opposed park establishment as the cancellation of most logging concessions would reduce their revenue generating capacity (Caldecott 1996; Ite 1998). Therefore, additional technical assistance was proposed for developing the capacities of the Forestry Department in, for example, sustainable plantation management and forest product use (Okali 1989). Such commitments resulted in strong support from the CRS government (Caldecott 1996). Moreover, buy-in from the federal government was ensured by the inclusion of provisions to relieve some of Nigeria's large external debt obligations (*ibid.*).

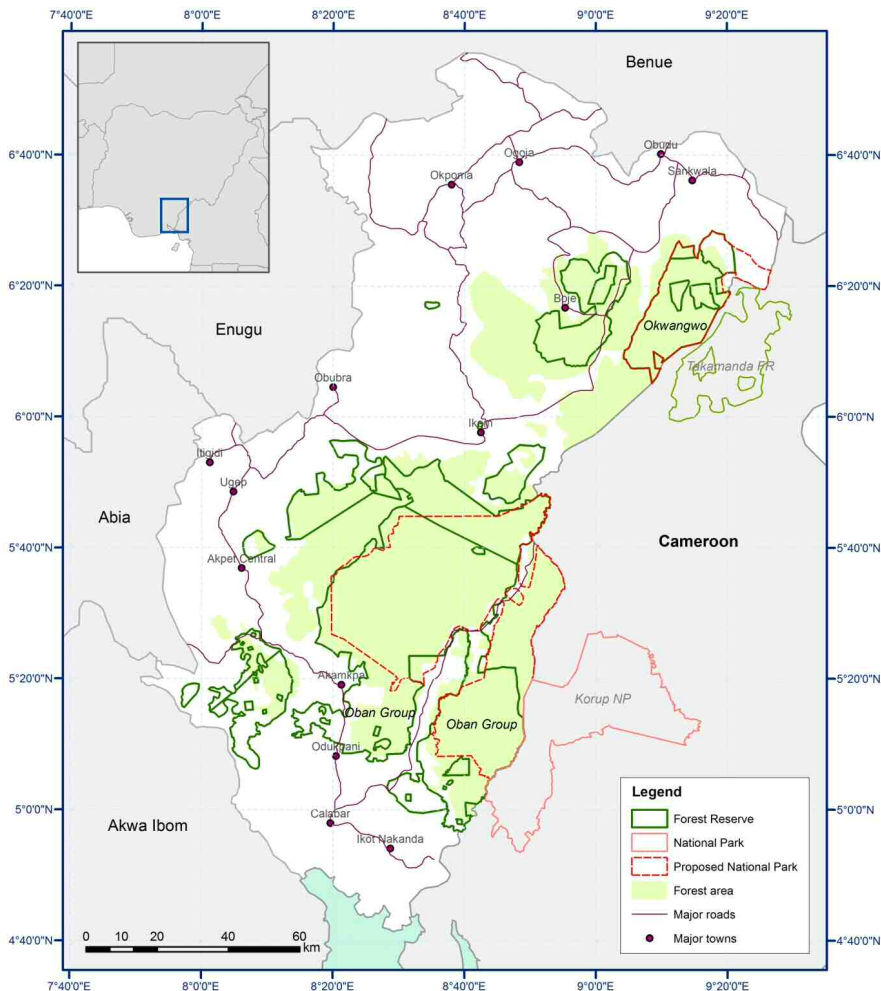


Figure 6.1: Map of Cross River State and its protected areas

Source: Author's representation; protected area boundaries digitized from CRS Forestry Department (1994)

An elaborate park Master Plan, financed by the EC, was completed for the federal government in late 1989, which simultaneously appeared to serve as an EC funding proposal (Caldecott *et al.* 1989). Since conservation success was thought to rely largely on reducing human dependence on the forest, the Master Plan involved numerous economic incentives as part of its Support Zone Development Program (*ibid.*). Thirty-nine villages residing on the park's periphery would benefit from various rural development projects, related to, for example, agricultural productivity and alternative livelihoods and the construction of new feeder roads, the provision of educational and health facilities, and a compensation fund (Holland *et al.* 1989). While most communities would lose access to part of their agricultural land and traditional hunting, fishing, and NTFP harvesting areas, these planned interventions had guaranteed the support of most communities (Ite 1998; Ite and Adams 2000).

In 1991, the federal government passed a decree making the Oban Group and the Okwango Forest Reserve the Cross River National Park (FRN 1991)⁷. Although WWF proposed new park boundaries that would have ensured the legal protection of most intact forests, including a large off-reserve forest area on the Nigerian-Cameroon border, in the absence of funding to negotiate and survey new park boundaries, the boundaries of the Oban Group were maintained (Oates 1999; Personal communications, Director Wildlife Conservation Society (WCS) 2012). It was not until 1994 that the EC contract was finalized and management contractors were selected (Oates 1999). However, when the Nigerian government executed nine political activists in 1995 and it was consequently expelled from the Commonwealth, the EC withdrew all its support to the project (Oates 1999; Ite and Adams 2000). Since, the management of the Park has been taken over by the federally administered agency, the Nigerian National Parks Service (NNPS), which, without external funding, is engaged exclusively in park patrols (Personal communications, Director NNPS, 2012). None of the envisioned support zone interventions ever materialized; having led to significant resentment among peripheral communities (various focus group discussions, 2012).

6.3 Methodology

This paper is based on qualitative field research conducted during the period April-May 2012 and August-November 2012. Due to the limited availability of data on the plantation economy in CRS, the first activities under this research project involved archival research and collection of secondary data from relevant ministries in CRS. In order to gain insight into the magnitude and spatial distribution of plantations, the Survey Department in Calabar provided assistance in scanning individual plantation survey plans, which were then digitized by the author through a Geographic Information System (GIS). However, owing to the high costs of accessing survey plans, not all plans have been included.

Semi-structured key informant interviews were subsequently conducted with five agricultural investors, five civil-society organizations (CSOs), thirty four government stakeholders across various sectoral ministries and levels of government. Site visits were then made to fourteen plantations located within the vicinity of the Oban-Korup forest block⁸. A Global Positioning System (GPS) was used to collect spatially explicit data on land use systems and to geo-reference survey plans.

At each plantation, focus group discussions were held with 'landlord' communities; in total thirteen communities were profiled, of which five were 'landlords' of two plantations. In order to capture intra-community dynamics and reduce bias, focus group discussions were held with three different community groups, which were locally considered to capture most interests. The first group involved the Chiefs and Elders Council, which consists of a village chief, various subordinate chiefs, and prominent elders and is responsible for decision-making, protecting culture and tradition, and conflict resolution. The second group involved 'youths' up to an age of approximately forty five that are represented by the Youth Council; this council plays an important role in maintaining law and order and mobilizing labor for community development projects. The final group involved women, represented also by their own council, which are primarily responsible for sanitation and health issues. Three focus group discussions were also held with migrant communities residing within the larger estates.

6.4 Findings

6.4.1 Privatization of defunct state farms

Privatization process

When Nigeria returned to Civilian Rule in 1999, the federal government was already in the process of privatizing many of its assets. However, it was not until July 2002 that CRS under its first civilian Governor, Donald Duke (1999-2007), made its first concerted efforts at privatization. A nine person Privatization Council was established to oversee the privatization of all state-owned rubber estates, along with a hotel, a cement company, a timber processing company, a flour mill, and a meat processing factory (GoCRS 2002). This marked an important shift from the military command economy to more coherent economic planning and public finance management.

In what was generally considered to be a transparent and competitive process, all the rubber estates were privatized by 2003. The largest estate, CREL, was fully privatized to a Taiwanese-American company Eng Huat, which had been operating a rubber factory in the Delta State since 1979 (see Table 6.1 for a tabulated overview and Figure 6.2 for the locations of select estates around the Oban-Korup forest block). This acquisition included 18,537 ha of undeveloped land that CREL had ac-

quired in 1979. Ikot Okpora and Agoi/Nko were acquired by Pamol, which used to be a subsidiary of UAC (now Unilever) and continues to operate the rubber estate that it acquired in CRS in 1907. In 1997, Unilever sold its share to Dunlop, which currently holds a 60 percent stake in Pamol. Biakpan was privatized to a small Nigerian rubber company, Royal Farms. The ONREL privatization was revoked when the investors failed to make payment and in 2006 was sold to Real Oil Mills, owned by the former Governor of Oyo state, Senator Rashidi Ladoja (that had been impeached on corruption charges). Though not slated for privatization, the Kwa Falls oil palm estate was also sold to Obasanjo Farms, owned by the then sitting President of Nigeria, Olusegun Obasanjo. Unlike the other estates, Kwa Falls and ONREL were not privatized through a competitive bidding process, which has led many to assume that party politics played an important role.

In 2002, it was decided not to privatize the oil palm and cocoa estates, but rather to allocate these under the CRS Smallholder Scheme to farmers surrounding the estates. This was locally referred to as the 'one man, one plot' scheme. The ministry of agriculture leased out between 2 and 4 ha of palm and cocoa against a nominal fee. Recipients would be responsible for maintaining their assigned plots and permitted to harvest and sell the crops at their own discretion. Rubber was prioritized for privatization since it was rarely cultivated by smallholders and, with processing typically taking place on a commercial scale, there were few local off-take opportunities. Oil palm and cocoa, on the other hand, had a well-established market, were processed locally, and have long been cultivated by smallholders. As a result, these were considered important crops from a poverty alleviation perspective, as recognized by the CRS Economic Empowerment and Development Strategy Document (CR-SEED I) for the period 2004-2008.

In 2008, under a more private sector oriented governor, the former Minister of Power and Steel Liyel Imoke (2007- present), the Smallholder Scheme was consolidated into the Cross River Agriculture and Rural Empowerment Scheme (CARES). This was a strategy platform for the commercialization of smallholder production systems for oil palm, cocoa, and cassava, and enhancing youth participation in agriculture. Under CARES, undeveloped parts of the government estates were allocated to 'commercially-oriented' smallholders. The government was responsible for clearing the land and providing improved seedlings and the beneficiary would be allocated 10-20 ha for oil palm and 1-2 ha for cocoa under a rent-free lease for 25 years. In turn, beneficiaries would be responsible for managing and maintaining their allocated plot. In 2011, 4,120 ha of mature oil palm and 4,735 ha of mature cocoa were allocated and 452 ha of oil palm and 1,056 ha of cocoa had been planted on the undeveloped plots (GoCRS 2011).

However, in June 2010, a new Privatization Council was inaugurated that was charged with fully privatizing these estates, signaling a strategic move away from the community-government partnerships that formed the basis of CARES. The government attributed their change of approach to three interrelated factors. Firstly, it was argued that the new administration sought to offload burdensome state

assets; the CARES program was considered unproductive and prone to rent capture. Smallholders, government argued, lacked the will and technical expertise to properly manage and maintain their allocated plots. Plots were allegedly not allocated on the basis of capacity, but rather on the basis of patronage, which resulted in large numbers of absentee plot owners and rampant sub-letting of plots. Communities and government representatives estimated that between 70 and 90 per cent of plots were allocated not to landlord communities, but to customary elites, particularly chiefs, local businessmen, and officials within the state administration.

Table 6.1: Privatization status of Cross River State estates

Plantation Name	District	Year Established	Gross area (in ha)	Area planted (in ha) upon acquisition	Crop	Investor	Year of privatization/status
Kwa Falls	Akamkpa	1947	2,826	1,877	Oil palm	Obasanjo Farms*	2003
CREL-1	Akamkpa	1957	8,844	7,901	Rubber	Eng Huat Industries	2003
CREL-2	Akamkpa	1979	18,537	0	Rubber	Eng Huat Industries	2003
Ikot Okpora	Biase	1959	6,092	518	Rubber	Pamol	2003
Biakpan Rubber	Biase	1962	2,584	1,605	Rubber	Royal Farms	2003
Agoi/Nko Rubber	Ugep	1963	3,915	1,693	Rubber	Pamol	2003
ONREL	Akamkpa	1955	4,688	1,262	Rubber/oil palm	Real Oil Mills	2003/2006
Ayip Eku	Akamkpa	1979	12,411	3,606	Oil palm	Wingsong M-House ^β	2008
Calaro	Akamkpa	1954	6,398	4,977	Oil palm	Wilmar	2011
Biase (former CDC estate)	Biase	1960	8,688	0	Oil palm	Wilmar	2011
Ibiae	Biase	1963	5,561	2,419	Oil palm	Wilmar	2011
NNMC	Akamkpa/ Odukpani	1986	25,000	10,349	Gmelina	Negril Group	2012 ^α
Boki	Boki	1963	4,618	1,735	Oil palm	-	Under negotiation
Nsadop	Boki	1964	5,411	1,280	Oil palm	-	Under negotiation
Erei Oil Palm	Biase	1979	4,153	758	Oil palm	-	Unclear
Various cocoa estates (7)	Boki/Ikom/ /Obubra	1954- 1965	15,274	7,098	Cocoa	-	Under negotiation
<i>Total</i>			<i>135,000</i>	<i>47,078</i>			

Source: ENDC 1962; Commission of Inquiry 1990; various privatization notices

^β These estates were purchased by Wilmar in 2012.

^α According to the Forestry Commission, a total of 100,000 ha will be allocated to Negril Group within forest reserves, though the precise location is still to be determined.

Secondly, the new strategic plan (CR-SEED II) for 2009-2012, placed considerable emphasis on agricultural modernization through adoption of 'best practices' and 'adaptable agricultural investments'; leaving no place for government's direct engagement in agricultural markets⁹. Even the provision of inputs (e.g. improved seedlings and fertilizers) is envisioned to become more market-oriented¹⁰. In support of these objectives, the Investment Promotions Bureau (IPB) and its One-Stop Investment Center (OSIC) were established in November 2008 to promote and facilitate private capital formation. While never publicly articulated as such, senior officials within the Ministry of Agriculture, IPB, and the Governor's Office were rather explicit about the urgency to bring technical capacity in agriculture to the state through the private sector; arguing that smallholder-focused interventions are rarely successful due to the innate inability of smallholder to adopt modern farming practices. Benefits are instead assumed to trickle down naturally from private sector-led agricultural commercialization.

The third contributing factor is the state's loss of access to oil reserves. Nigeria and Cameroon have long been entangled in a territorial dispute over the oil-rich peninsula of Bakassi that formed part of CRS. Cameroon took the matter before the International Court of Justice, which in 2002 ruled in favor of Cameroon. In August 2008, Nigeria handed over Bakassi. In order to prevent ceding 76 maritime oil wells in CRS to Cameroon, the federal government allocated all the State's maritime territory to neighboring Akwa Ibom. As a consequence, CRS lost its littoral status and its share in the 13 percent Derivation Fund that is allocated by the federal government to oil-producing states¹¹. With rising budgetary pressures to increase the state's Internally Generated Revenue (IGR), privatization and the private sector, more generally, are perceived as essential sources of revenue. With negligible revenue generated from rural areas, IGR is increasingly being pursued through corporate income tax, tax generated through the formalization of employment, and land rent revenues.

The new privatization exercise, with a much greater focus on 'high capacity' foreign investors, resulted in Singapore's Wilmar, the world's largest oil palm producer, acquiring three oil palm estates in 2011, for a combined area of 19,713 ha. After the state Governor visited Wilmar's plantations in Kalimantan, Indonesia, there were high hopes of replicating this 'success' in CRS. In 2012, the government also assisted Wilmar in acquiring four privately-owned estates, covering an area of 26,017 ha; three from Obasanjo Farms and one from Wingsong M-House, which in 2008 acquired the federal government-owned Ayip Eku estate. The two other remaining oil palm estates, Boki and Nsadop, were initially privatized to Belgium's SIAT, but the allocations were later revoked due to SIAT's failure to make payment. In the beginning of 2013, Wilmar was in negotiations to acquire these estates for the cultivation of rubber. The government was also in negotiations with the large US-based commodity trader Ecom Trading to acquire all of its seven cocoa estates.

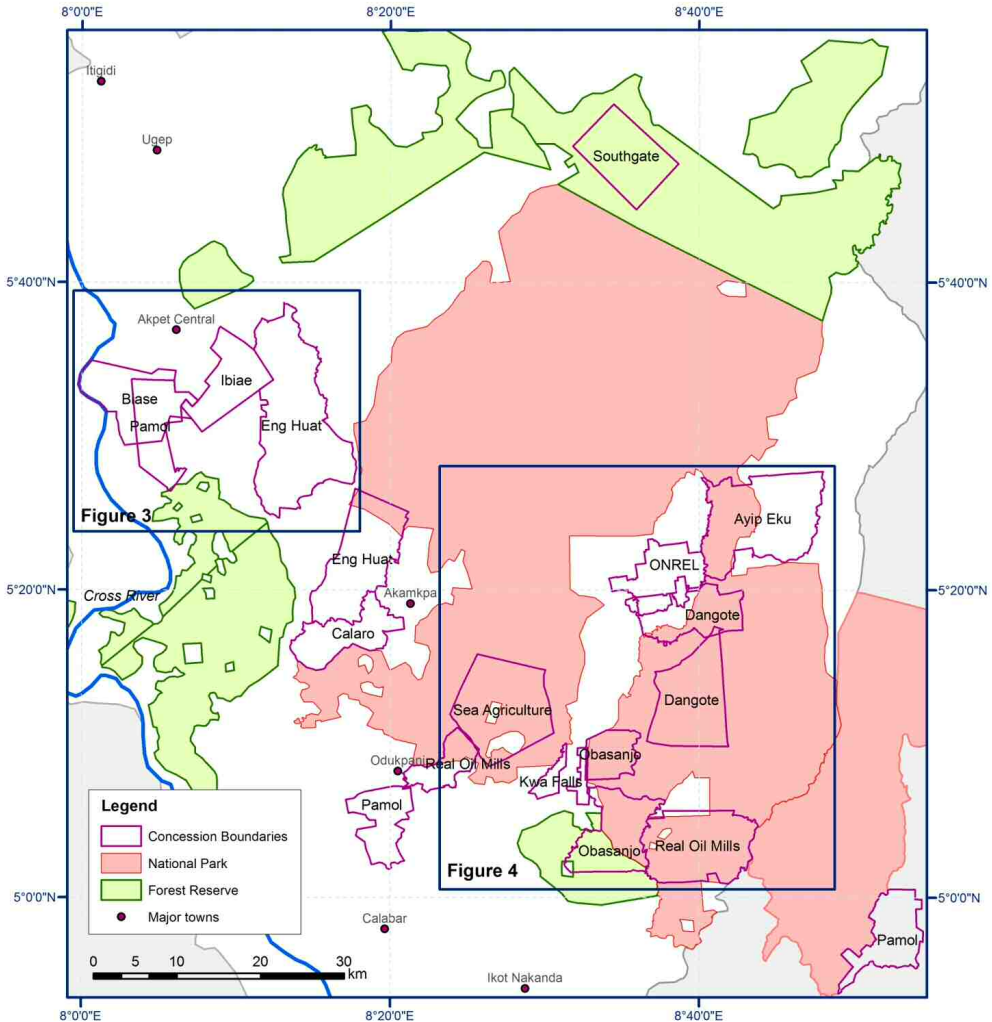


Figure 6.2: Distribution of selected concessions

Source: Author's representation. Concession boundaries from individual survey plans obtained from CRS Survey Department; Protected area boundaries digitized from CRS Forestry Department (1994).

Implications for indigenous rights

When the ENDC acquired its plantations in the 1950s and 1960s, plantation demarcation was a product of a consultative process. According to oral histories, community consent was actively sought and concession boundaries were jointly identified. This implied that upon establishment plantations only minimally conflicting with existing farmer systems and came at the expense of virgin forest, which has long been the primary source of agricultural expansion in the area. Although allocation of leasehold and freehold titles to the land effectively revoked all customary claims, communities continued to be acknowledged as the rightful

'landlords' of the plantations - a terminology that remains in use to this day. Communities were accordingly paid annual royalties (two pounds and six shillings), were granted free access to schools and hospitals constructed at the plantations, and select students were granted scholarships for tertiary education. Owing to the region's comparatively low population density at that time and the limited conflict with existing farming systems, only few households were engaged in plantation employment. This was considered to be too poorly remunerated and tedious, taken up solely by 'idle' youths. Since plantation employment tends to be associated with poor, landless, migrants, it too carries social stigmas. In line with government objectives, the vast majority of employees were migrants from neighboring Akwa Ibom, one of Nigeria's most populous states¹². In order to minimize conflicts with landlord communities, housing quarters were constructed for migrant employees.

When the plantations degraded into a state of neglect by the late 1970s and with most plantations only being partially developed (see Table 6.1), land within plantation boundaries was rapidly encroached upon. As can be observed from Figure 6.3, most unexploited land (e.g. forests) in the Ikot Okpora, Ibiae and Biase concessions were converted to agriculture between 1986 and 2002. While this can to a large extent be attributed to population growth within landlord communities, in Ibiae, Calaro, and CREL, private management firms regularly permitted migrant communities residing within the concessions to cultivate subsistence crops between the rubber and oil palm trees and on undeveloped parts of the estate against a fee. Since this land was inadequate to sustain a growing migrant population, many supplemented this by renting land from landlord communities or from renting land from the Forestry Commission in forest reserves (particularly surrounding the Calaro estate)¹³. Since most migrants had moved into the region during plantation establishment, in large part as a result of landlessness, and with most worker camps having developed into self-sustaining communities or having integrated into landlord communities, few migrants migrated back. Rather, most turned to cultivation of subsistence crops to compensate for loss of employment opportunities¹⁴. The change of livelihood focus of this group no doubt contributed significantly to land-use change processes in and around the plantations during this period - particularly since migrants were not eligible for plots under the CRS Smallholder Scheme.

During the first round of privatizations in 2002, the state government did not consult landlord communities or put in place mechanisms to manage encroachment. Although privatization agreements were signed, with government at that time reportedly interested primarily in short-term economic gains and extending political favors, these agreements did not include any performance requirements. Although investors have no legal obligation to engage or accommodate landlord communities, with the landlord concept thoroughly entrenched in the region, most companies did acknowledge the importance of having a 'social license to operate'; it is generally accepted that one cannot freely operate without the consent of traditional authorities. Although the 1978 Land Use Decree transferred all land-

management functions from traditional authorities to the state, chieftaincy institutions in CRS continue to hold important social and political functions. With government largely absent from rural areas and with much of the rural population perceiving state actors to be largely self-serving, traditional institutions offer the most tangible form of political participation. Not only does this sustain the legitimate authority of chiefs, but their capacity to mobilize and influence the opinions of their constituency has also urged politicians and investors alike to carefully foster their chiefly relations.

Government at that time, therefore, preferred not to interfere in these negotiations and urged companies to settle terms privately with relevant chiefs. As such, companies like Real Oil Mills, Pamol, and Eng Huat all consulted the Chiefs and Elders Councils of their landlord communities. These consultations require the company to donate what is termed 'consultation' and 'traditional rites' fees; the former is customarily paid to the community when requesting an audience, while the latter is a contribution to the purchase of drinks and food to celebrate the arrival of a new investor. These fees typically average between two and ten million Nigerian naira¹⁵. During consultations, community demands are negotiated and a company-community agreement is formulated, which is registered with the Ministry of Justice.

The level of inclusiveness of consultations depends, however, entirely on the Council of Chiefs and Elders. For example, at one of the landlord communities at Pamol's Ikot Okpora estate, negotiations on which conditions to include in the community-company agreement arose out of an intra-community consultation process that involved both the Youth and Women Council. Demands included the payment of 400,000 naira in annual royalties, youth employment, rehabilitation of the primary access road, and scholarships for tertiary education. All income derived from the plantations is allocated towards a community development fund (e.g. for the construction of a town hall and school maintenance), which is co-managed by the three Councils. In contrast, at the sole landlord community at Real Oil Mills' ONREL, the Council of Chiefs and Elders did not liaise with or seek the consent of any of the other community groups. The Youth and Women Council were completely unaware of how much was paid in consultation and traditional rites fees, the nature of the community-company agreement, or how income derived from the plantation is used. According to the Chiefs and Elders Council, the only provision in the agreement is the payment of 5 million naira in annual royalties. According to the women and youth groups, these monies had never been used for community development purposes - illustrating the risk of elite capture in the community-company negotiation process.

While the government played no active role in community negotiations during the first round of privatization, during the second round in 2010 involving the privatizations to Wilmar, the government played a more prominent role. The IPB, on behalf of the Privatization Council, invited all the thirteen Councils of Chiefs and Elders to the CRS capital, Calabar, to seek consent. While most of the Councils

claimed to have been apprehensive about the privatization, particularly since many chiefs were CARES beneficiaries, government assurance that Wilmar would adopt preferential hiring policies, contribute to schools and hospitals, and provide access to clean water and electricity compelled all Councils to consent to the privatization. Three million naira per community in consultation and traditional rites fees were accordingly accepted. Again, the use of these monies differed greatly between communities; in two of the five sampled landlord communities these were used in their entirety for community development purposes, while in the other three these were appropriated by community elites.

The agreed-upon terms were to be incorporated into the Privatization Agreement between Wilmar and the Privatization Council in lieu of a community-company agreement. However, by the end of 2012, despite repeated requests by landlord communities, Wilmar and the government refused to disclose the terms of the Privatization Agreement that had been finalized in May 2012. Wilmar claimed that since its agreements are solely with the government, it is not in a position to accommodate community concerns. However, when the researcher eventually managed to secure a copy, it was observed that the only contributions required of Wilmar towards landlord communities was one-time scholarships to two individuals per landlord community and the payment of annual royalties¹⁶; none of the provisions related to infrastructure development were included.

While there are risks associated with the formulation of community-company agreements in the absence of oversight, this illustrates, on the other hand, also the potential consequences of the government 'representing' the interests of communities. Particularly in the context of prominent investors like Wilmar, it is questionable whether agencies such as the IPB charged with facilitating and promoting investment are in a sufficiently neutral position to engage in such negotiations. Co-optation of government actors also appears to be a problem; with, for example, a personal aide of the Governor and a senior official within the Ministry of Agriculture being employed by Wilmar as 'consultants'. Additionally, the increasing fiscal imperative to promote private sector investment creates distortionary incentives, which in this context are prejudiced against smallholder interests.

Despite community negotiations, encroachers and migrant communities have not been accommodated to a meaningful extent in any of the estates - even for completely undeveloped estates (e.g. the Biase and Eng Huat estate - see Figure 6.3). Besides lack of legal rights, this highlights the limited consideration for competing claims during the negotiation process and thus the representative and fiduciary capacity of chieftaincy institutions. Most companies have also argued that since the government is contractually obliged to ensure the privatized land is "free from encumbrance" they bears no responsibility for accommodating displaced migrants or any other forms of land loss. The only case of compensation payment was for the appropriation of 1,100 ha of unexploited land on the Ibiae estate that had been allocated under leasehold to CARES farmers (which is the only type of land use that constitutes a legal claim).

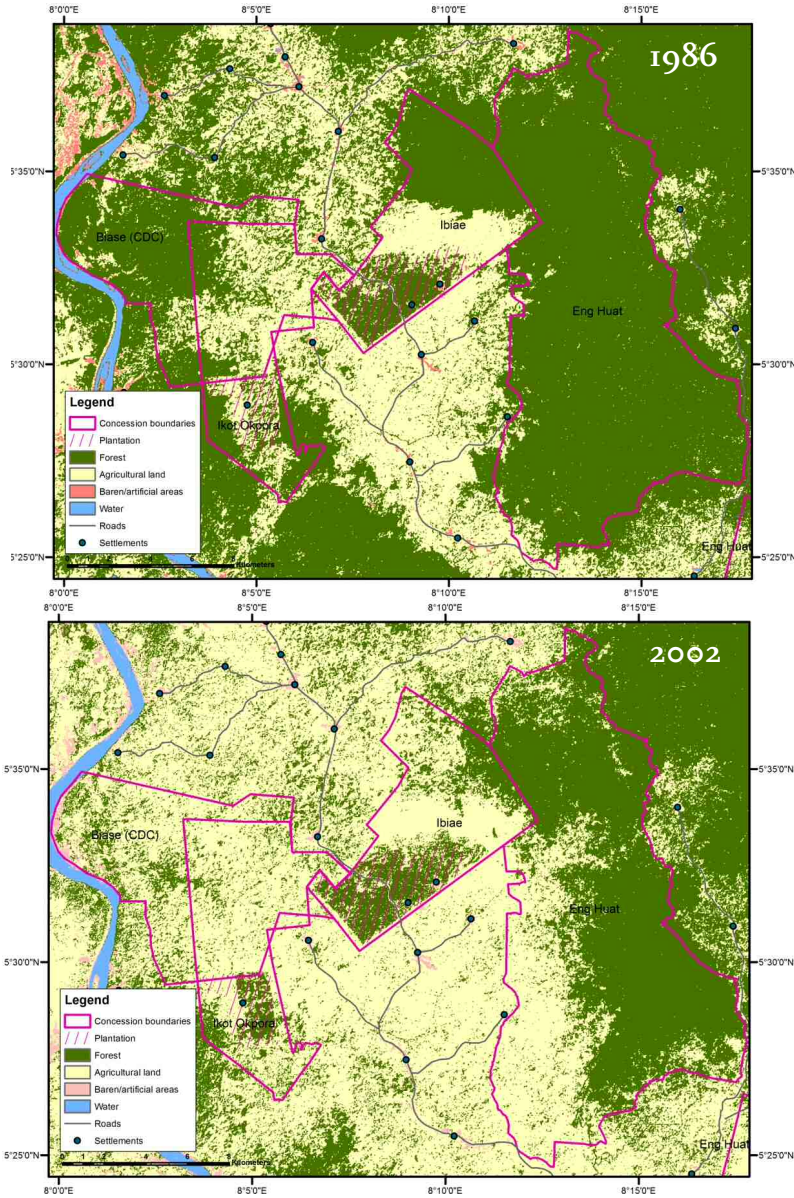


Figure 6.3: Land-use change 1986-2002

Source: Author's representation based on NASA Landsat 5 satellite imagery.

Note: Agricultural land includes both fallowed and cultivated land, which could in some instances also include secondary forests. Forests include exclusively closed canopy tree cover.

The rehabilitation of 'defunct' estates, therefore, entails widespread displacement of smallholder production systems. For example, in the four estates depicted in Figure 6.3, it is estimated that the extent of community farmland comprised within plantation boundaries is equivalent to the farmland of between 5,200 and 7,800 households¹⁷. Since in most communities land proceeds are appropriated by

customary elites, besides employment opportunities that signify downwards social mobility, there are few mechanisms through which affected households can claim redress. Migrant communities residing within the estates face some of the greatest challenges. At Wilmar's Ibiae and Calaro estate, for example, all old camps were in the process of being destructed, with only those migrants rehired by the company permitted to remain within the estate. This, however, constitutes only a fraction of the population of more than 9,500. Households unable to regain employment were offered 'retirement' packages to aid in relocation back to Akwa Ibom, which ranged from US\$ 5 to US\$ 50. Since many of those households have been residing in the camps for between 40 and 50 years, are landless, and after many generations have lost most social ties to Akwa Ibom, many seek to take up residence in landlord communities and rent land. This will undoubtedly serve to exacerbate local competition for land and forest encroachment. With customary land as a result becoming an increasingly valued commodity and with limited suitable farmland available, livelihood reconstruction will largely become a function of financial and social capital differentials. Some women group also expressed concerns that rising land competition could jeopardize the security of 'women plots'¹⁸.

While the Ministry of Agriculture is now attempting to promote local spillovers by transforming CARES into an outgrower support scheme, the success of such a scheme can be debated. For example, since oil palm producing communities are engaged in numerous activities along the value chain (from harvesting the fresh fruit bunches to retailing crude palm oil), merely supplying investors with fresh fruit bunches would undermine smallholder value addition. Most households, therefore, regarded commercial plantations as a competitive threat rather than a new marketing outlet. Moreover, rubber investors were uninterested in participating in such a scheme, arguing that creating off-take opportunities for smallholders would only serve to stimulate estate theft.

The only legal avenue through which impacts associated with dispossession can be addressed is through the environmental and social impact assessment (ESIA). The Environmental Impact Assessment Decree of 1992 stipulates that when an agricultural project develops more than 500 ha or involves the displacement of more than 100 households, prior to commencing any land development activities, an ESIA that evaluates the project's potential social and environmental impacts and proposes appropriate mitigating measures is to be conducted. However, since this process is considered too expensive and time-consuming, in CRS these legal requirements are in practice not enforced. Wilmar was, for example, the only company to have conducted an ESIA, though mostly in order to fulfill obligations under the Roundtable on Sustainable Palm Oil (RSPO)¹⁹. However, since the ESIA failed to acknowledge the existence of migrant groups and the need for their resettlement and without quantifying the magnitude of dispossession, the veracity of the process can be disputed. Moreover, with the ESIA report not made public, local CSOs have strongly condemned the lack of transparency and limited opportunities for effective community consultations.

Although associational life is comparatively strong in CRS, few stakeholder groups have, however, contested displacement or dispossession. Youth groups within the landlord communities of ONREL and Ayip Eku, for instance, claimed that the Chiefs and Elders Council prohibited them from rebelling against the investors over poor labor conditions and failure to contribute to community development. In these communities, the co-optation of chiefs and community deference to their authority served to quell collective action. Wilmar's adherence to RSPO has though offered civil society new avenues for contesting rights infringements not recognized under Nigerian law. For example, for Wilmar's Ibiae estate, the RSPO solicited public inputs under its New Planting Procedure (NPP). The CRS-based advocacy CSO Rainforest Resource Development Center (RRDC), representing the four Ibiae landlord communities, submitted a complaint in which it argued that Wilmar contravened a number of RSPO principles related to community consent, consultations, and compensation (RRDC 2012; Ibiae Landlord Community 2012). However, within three weeks, without the resolution of any of the outstanding substantive issues, the chiefs formally distanced themselves from the complaint (Ezak 2013). According to the RRDC, chiefs were either compromised or were subject to state intimidation; a number of threats by the CRS police force had also been directed at the Chairman of the RRDC.

6.4.2 Greenfield developments

Establishment process

In an effort to rehabilitate the ailing Nigerian oil palm sector, the federal government imposed a ban on the bulk importation of crude and refined vegetable oils in 2001; Nigeria became a net vegetable oil importer by the 1970s. The consequent national deficit and the concomitant surge in price and demand for locally-produced palm oil provided an important stimulus for private investment into the sector (USDA FAS 2003; PIND 2009). Since the ADC estates were at that time earmarked for the Smallholder Scheme, the rising interest from the private sector for oil palm cultivation was accommodated by bringing new land into production.

In CRS, a number of private investors, most of which targeting the oil palm sector, managed to acquire large areas of land for Greenfield development. Before the first privatization round in 2003, the only large privately-held plantations were those of Pamol. Most new plantations were established along the MCC Road that bisects the Cross River National Park (Figure 6.2). With comparatively high rainfall intensity and low rainfall variability, this area is especially suitable for oil palm cultivation. The largest areas of land have been acquired by Sea Agriculture, a Nigerian-owned startup, Real Oil Mills, Obasanjo Farms, Dansa Food, a wholly-owned subsidiary of one of Africa's largest business conglomerates, Dangote, and by a joint venture between the state oil company Nigerian National Petroleum Corpora-

tion (NNPC) and the Brazilian energy company Petrobras for the production of palm-based biodiesel (see Table 6.2). The Obasanjo Farms estates were purchased by Wilmar in October 2012.

Table 6.2: Large-scale Greenfield plantations

Project developer	Location	Year Established	Gross area (in ha)	Crop	Note
Pamol	Odukpani	1907	4,229	Rubber	Used to be almost 6,500 ha in extent. Parts have been acquired for urban expansion. Entire estate is developed.
Real Oil Mills	Akamkpa/ Odukpani	1988	2,975	Oil palm	Was purchased in 2005 from Pamol. Approx. 1,270 ha converted.
Obasanjo Farms	Akamkpa	2002	7,805	Oil palm	Purchased by Wilmar in October 2012. Approx. 4,740 ha converted. Additional 930 ha converted outside concession boundaries.
Obasanjo Farms	Akamkpa	2002	2,986	Oil palm	Purchased by Wilmar in October 2012. Approx. 1,095 ha converted.
Sea Agriculture	Akamkpa	2003	11,246	Oil palm	Considered a speculator. Was sold in 2012 to an unspecified buyer. No land developed.
Real Oil Mills	Akamkpa	2004	9,700	Oil palm	Approx. 300 ha converted. Two saw mills within estate.
Dansa Agro-Allied	Akamkpa	2005	5,621	Pineapple	Commenced in 2012. 450 ha converted - plans to develop entire estate by 2016.
Dansa Agro-Allied	Akamkpa	2006	9,313	Oil palm	To commence in 2013. None converted - plans to develop entire estate by 2018.
Unknown	Ikom/ Obubra	2006	7,756	Oil palm	Acquired by the government, but unclear who it has been allocated to.
NNPC/ Petrobas	Obubra	2007	50,000	Oil palm	Yet to commence development.
Nedu Limited	Akamkpa	2008	3,300	Oil palm	Approx. 1,000 ha converted. Has not obtained a Certificate of Occupancy.
Southgate	Ikom	2012	7,241	Cocoa	Certificate been revoked. The government is searching for a new land.
<i>Total</i>			<i>122,172</i>		

Source: Various CRS official gazettes; individual surveys plans; field research; investor questionnaires

While colonial land laws complicated the acquisition of large areas of land for private plantations, the 1978 nationalization of land significantly changed the legal basis for land possession in southern Nigeria by reducing customary interest to non-transferable 'rights of occupancy'. The Decree was borne out of the "necessity to harmonize the land tenure system in the country... and the difficulty of government in obtaining land for development" (Otubu 2008, p. 130). The consequence of the act is that all 'undeveloped' land (e.g. fallowed land and common property resources) is put at the complete disposal of local and state government and any other rights can be extinguished to obtain "control over land required for or in con-

nection with economic, industrial, or agricultural development" (Article 51(i-h)), without requiring consultations or consent and for which compensation is only granted for 'unexhausted improvements' (e.g. crops, planted economic trees, settlements, and other structures). The government then allocates a Certificate of Occupancy (CofO), which has a standardized duration of 99 years. In rural CRS, commercial enterprises pay 300 naira per hectare to the government and non-commercial actors 50 naira (GoCRS 2003).

In all land acquisitions since 2000, except Nedu Limited, the Ministry of Agriculture was responsible for identifying suitable land for investors. In determining land availability the ministry is, however, not guided by a procedural framework or any formal social or environmental criteria. Once suitable land is identified, government and investors typically meet with community chiefs to seek their consent; the only exception being the land for the two Obasanjo Farms estates, which were forcibly acquired (though later also required chiefly endorsement).

Nedu Limited was one of the few larger investors who bypassed government completely and directly engaged the landlord community. Unlike government-led acquisitions, land boundaries were jointly determined through a process that also included the Youth and Women Councils. While chiefs cannot legally allocate land for investment, for smaller estates this continues to be common practice, with proceeds going directly to the community rather than the government. On the western periphery of the National Park, a number of senior civil servants were also observed to have acquired land in this fashion, though largely for estates ranging from 200 to 500 ha. However, these acquisitions were rarely formalized; a process that requires the consent from the Governor, the approval of a survey plan by the Surveyor General, the allocation of CofO from the Land Use and Allocation Committee at the Ministry of Lands and Housing, and the payment of ground rents. The high costs associated with this process often acts as a deterrent for smaller investors.

In contrast to many of the privatized estates, only Nedu Limited and Real Oil Mills developed company-community agreements with landlord communities. For Nedu Limited this entailed the payment of compensation to individual farmers and at Real Oil Mills this entailed a onetime contribution of five million naira (again, community groups are unaware how this was spent) and the construction of a borehole. In all other cases, no community-company agreements were made. Most large companies tend to prefer that the government use their right to eminent domain to acquire land. According to the Ministry of Agriculture and the Ministry of Lands and Housing, the acquisition is then the responsibility of the government and costs associated with excessive community demands tend to be spared. When the government is involved, negotiations with chiefs tend to be more political and clandestine than when investors directly engage communities.

In similar vein to the privatizations to Wilmar, in case of strife, investors who acquired land through government tend to relieve themselves from responsibility. In the case of the Dansa pineapple farm, for example, the Commissioner of Agriculture was forced to appease the chiefs over the refusal of Dansa to enter into a

community agreement. The acquisition of Obasanjo Farms also led to long-lasting disputes between one of its landlord communities, represented by the RRDC, and the government over failure to pay consultation and traditional rites fees and compensation for loss of farmland. The investor turned to the government to resolve the situation. Not unlike the RSPO complaint against Wilmar, following a closed-door meeting between government and chiefs, without any of the community's substantive demands being met, the chiefs, nevertheless, issued a communiqué formally endorsing the company. With one of the chief's sons subsequently appointed as the company-community liaison, further points at underlying processes of co-optation.

While in many of the privatized estates the absence of the government in the management of community relations prompted companies to engage communities more directly, the more heavy-handed role of the government in Greenfield acquisitions arguably fueled greater elite capture in the alienation process. Due to the opacity of these negotiations, it is difficult to ascertain how chiefs were persuaded to consent to alienation. However, in the communities that were researched, skepticism as to the benevolence of chiefs appears to be endemic, with most chiefs also exhibiting a marked sense of entitlement to land and its proceeds. Rent capture is locally rarely a condemned practice; with most community groups considering such gains as legitimate privileges of leadership positions. Upwards social and economic mobility is, therefore, widely associated with one's ability to effectively maneuver within and capitalize on patron-client networks.

Implications for the Oban-korup block

Except for Obasanjo Farms, lack of resistance to these Greenfield plantations can also be attributed to the limited conflict with community farmland. Like the expansion of plantation agriculture in the 1950s and 1960s, the surge in demand for land in the 2000s has chiefly come at the expense of forests. This is predominantly due to the reluctance to acquire land over which communities have legally protected claims. On the one hand, this is to prevent the political ramifications of conflict with landlord communities, while on the other, it is also to minimize the costs associated with payment of compensation. Since forestlands do not involve 'unexhausted improvements', the Land Use Decree does not protect land users from loss of access to NTFP resources. Moreover, no compensation is payable for the alienation of agricultural land located within Forest Reserves or the National Park; even when that land has been allocated to communities by the Forestry Commission, such as in the case of the farmland located within the Ekinta Forest Reserve and National Park that have been allocated to Obasanjo Farms. Most communities were observed to be highly receptive to agricultural investors, arguing that ample forestland remained for agricultural expansion and NTFPs. With many also embittered about the formation of the National Park, little environmental consciousness is apparent.

The allocation of predominantly forestland to plantations does, however, expose a number of irregularities in the alienation process. For example, at least ten of the acquisitions are located within forest reserves and the National Park, covering an area of 57,855 ha; many of which comprising dense, closed-canopy forests located within important connectivity zones of the Ikpan block (Figure 6.4). Land for the two Dansa plantations, two Real Oil Mills plantations, two Obasanjo Farms plantations, Sea Agriculture, a pending expansion of Wilmar's Calaro Estate, and the allocations to Negris Group comprise large part of the Cross River National Park. Southgate is located within the Cross River South Forest Reserve. However, there is some disagreement as to the boundaries of the park, with most officials claiming that the boundaries proposed by WWF in 1991 are the unofficial boundaries (see Figure 6.1); although the National Parks Decree of 1991 gazetted the entire Oban Forest Reserve as the National Park. Nevertheless, the concessions that then fall outside the unofficial boundary are still located within forest reserves. Legally speaking, for a concession to be allocated within a protected area, the land first needs to be de-reserved (in the case of forest reserves by the CRS Forestry Commission) or degazetted (in the case of the national park by the federal government). Since this has not happened for any of the plantations, all development activities by the investors are technically illegal. In the context of the recent shift from royalties (e.g. from logging) to royalties (e.g. REDD+), investor activities are too in contravention of the state's deforestation moratorium.

Moreover, as per the Land Use Decree (1991), the acquisition of land by the state requires that it be published in the state's gazettes. Only for the 7,756 ha estate acquired in 2006 has this happened. As with the privatized estates, none of the estates had either finalized the ESIA process. Real Oil Mills commenced their ESIA process in 2004, though failed to complete the process. The Ministry of Environment conceded that it did not enforce the Environmental Impact Assessment Decree (1992) and was focused more on waste management in CRS's major towns.

The lack of adherence to the Land Use Act (1978), National Park Decree (1991), Environmental Impact Assessment (1992), and Cross River State Forest Law (2010) can clearly not be attributed to lack of oversight or unawareness of land use conflicts, considering the high degree of awareness of all relevant state agencies and ministries. This included key actors of agencies responsible for enforcing environmental management laws, such as the Commissioner of Environment, the Chairman of the Forestry Commission, the Director of the NNPS, and the Deforestation Taskforce. A senior official within the Ministry of Environment gave a surprisingly frank interpretation. He asserted that conservation was not a priority for the ministry and that the failure of companies and government alike to consult civil society (e.g. through the gazetting and mandatory ESIA-related consultation process) was to avoid excessive public scrutiny. Therefore, the Real Oil Mills' ESIA activities were stalled before any public engagement activities could commence. According to numerous CSOs and even senior official within government, the lack of enforcement and transparency can be attributed to the complicity of many

commissioners and directors who have made substantial personal gains from allocating land.

While many of these acquisitions date back to the Donald Duke era, to date the current Governor has revoked only one allocation. Following a campaign against Southgate by the RRDC and the Wildlife Conservation Society (WCS), the Governor, who reportedly personally approved the allocation, revoked Southgate's certificate of occupancy - this, according to the CSOs, after both the Commissioner of Environment and Commissioner of Agriculture attempted to pressure the CSOs into dropping the case. Public embarrassment in light of the pending allocation of US\$ 4 million by UN-REDD in support of the state's REDD Readiness activities was thought to be a key contributing factor. Besides the three campaigns by RRDC, CSOs have rarely brought government to account for the many irregularities in the allocation process. For a large part, this can be attributed the opacity of the process. None of the major environmental CSOs in the state claimed to be aware of any other concessions; even the state's vibrant media has failed to address these issues. Limited CSO capacity and will to advocate on politically sensitive issues could also be seen as contributing factors. For example, four of the five major environmental CSOs in CRS were either dependent on government funding or engaged in government partnerships. Two of the most state's most active anti-deforestation activists now also fill key positions within the state administration, with one being appointed as the Chairman of the Forestry Commission and the other as head of the Deforestation Taskforce. That neither had formally addressed these irregularities illustrates either their limited capacity to exert influence within existing political structures or complicity.

The director of the NNPS, for example, claimed that meddling in such activities would jeopardize his job security²⁰. Such concerns are widespread, with many senior government officials openly expressing their reluctance to interfere into the affairs of other officials. Since many key officials are frequently appointed on the basis of politics, not merit, and often observed to be rotating between ministries, internal accountability tends to be undermined. For example, the current Commissioner of Environment was formerly the Commissioner of Agriculture; the Commissioner of Agriculture was formerly the Chief of Staff; the Commissioner of Lands was formerly the Surveyor General; the Surveyor General was formerly employed in an unrelated post within the oil industry; and the current Director of the NNPS was formerly a banker. As in the case of the Commissioner of Environment, this could result in situations where a commissioner responsible for facilitating a land deal is later responsible for regulating that land deal.

The newly appointed Surveyor General sought to streamline the allocation process by developing a modern GIS department capable of developing a land bank; with the objective of minimizing land use conflicts. He could not find the necessary support from other departments and claimed to have faced strong internal opposition. He argued that such a process was not in the interest of other stakeholders since that would be "too transparent" and, therefore, would reduce the

opportunity for individual rent-seeking activities. This illustrates that reforms that threaten to circumscribe existing structures of power and control will face significant resistance by a deeply entrenched bureaucratic class.

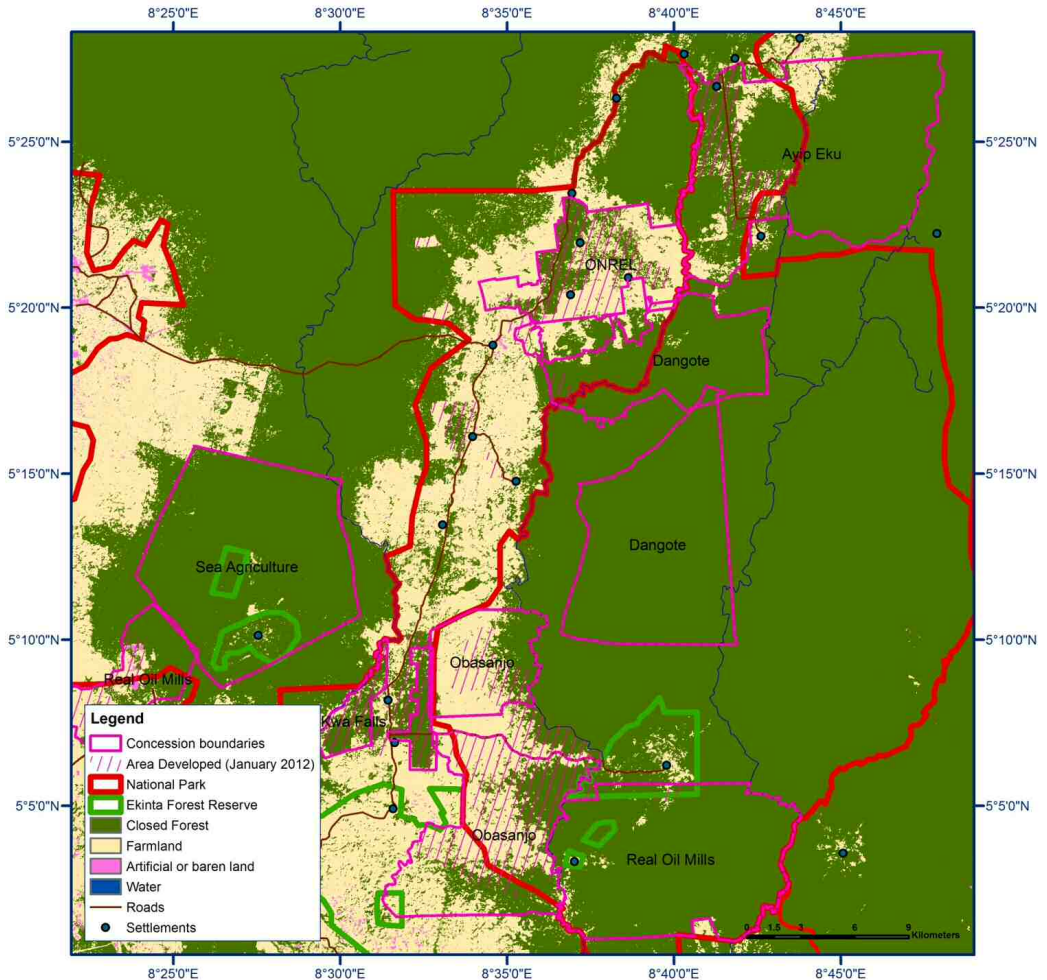


Figure 6.4: Land use along MCC Road in 2002

Source: Author's representation based on NASA Landsat 5 satellite imagery (30m resolution) and Spot Image satellite imagery (5m resolution).

While individual gains are likely to play a prominent role in explaining allocation decisions, some CSOs also point at the political aspect. For example, directors of three of the five largest agricultural investors in the state, Real Oil Mills, Dansa, and Obasanjo Farms, like Duke and Imoke, are all powerful members of the right-wing People's Democratic Party (PDP) that has ruled the country since taking over from the military regime. Besides Olusegun Obasanjo and Rashidi Ladoja, Dansa's Aliko Dangote, also a PDP supporter and the Chairman of Nigeria's Economic Advisory Committee, is the country's richest, and arguably, the most economically

powerful individual. Dangote is also a major source of funding for both presidential and governorship campaigns. At Obasanjo Farms, employees also bemoaned the use of the company to reward political support. Since Obasanjo established his CRS oil palm estates soon after his administration passed the bulk import ban of oil palm further raises questions over misuse of authority. Moreover, a number of former employees are now employed in senior positions within government. This tenuous separation between public and private interests further compromises the capacity to effectively regulate agribusiness.

6.5 Discussion and conclusions

In CRS, the rising participation of the private sector in agricultural production has come at the expense of both indigenous rights and conservation. This, however, is not simply a result of indiscriminate land alienations and a narrow focus on investment promotion. The state is disinclined to alienate customary land over which communities have legal claims and, therefore, right to compensation. As a result, the state has exclusively allocated land that falls under their own administration, regardless of the magnitude of land use conflicts, such as defunct state farms and land within forest reserves and national parks. Since most state farms have only been partially developed and have long experienced heavy encroachment, privatization entails widespread displacement and dispossession. Although the state, technically, has no legal obligations to encroachers and can easily hide behind an 'illegality' argument, considering the state's direct role in promoting in-migration in the 1960s, increasing local dependence on the estates through CARES, and long periods of estate neglect, from a human rights perspective, it is arguable that the state bears some responsibilities towards managing the socio-economic implications of privatization. Its failure to accommodate smallholder interests reflects not only state neglect for local rights, but also, more generally, its investment-centric development strategies and its discriminatory ideologies regarding 'inefficient' smallholder production systems.

The interactions between state, agribusiness, and customary elites play an important role in shaping these outcomes. With chieftaincy institutions continuing to wield substantial political influence, the state and investors alike seek to legitimize their (lack of) actions and absolve their responsibilities by empowering and co-opting customary elites. This serves to quell local resistance and to alleviate the potential political ramifications of dispossession. The apparent ease with which chiefs are compromised reveals not only the patrimonial nature of chieftaincy institutions, but also the limited capacity of their constituency to demand accountability. This can be ascribed primarily to the strong political and, arguably, economic alliance between customary elites and ruling coalitions that since colonial times have served to entrench and protect existing power and control structures. This, in turn,

severely undermines the capacity of CSOs to mobilize communities and engage in right-related campaigns.

The tendency to avoid customary land and instead target forestland for Greenfield expansion highlights the potential leakage of provisions to protect customary rights (albeit merely through compensation requirements in this context) without effective environmental protection mechanisms. Despite the state's conservation rhetoric and strict conservation laws at both the state and federal level, in practice these policies and laws are only selectively enforced. Where state failure to adhere to land laws would be quickly exposed (particularly by opposition parties), the merits of biodiversity protection do not appear to be sufficiently institutionalized, neither in government nor in society. With protection of Oban-Korup largely a product of expectations of large unfulfilled external aid flows, rather than domestic conservation pressures, Park protection enjoys little political support. This raises very real concerns over underlying motives and the capacity of the state to transition to a low-carbon economy. Like the Greenfield plantations, REDD+ is merely another strategy to capture economic gains from an 'underexploited' resource.

CRS should though be credited for developing a coherent long-term economic vision to address its need to generate internal revenues. In line with federal policy and Washington Consensus orthodoxy, this has involved structural economic reforms to reduce the state's direct participation in the agricultural economy, which has removed important sources of patrimonial accumulation. However, findings suggest that the state's new private-sector oriented policies may neither serve the interests of the state's agrarian population, nor the environment for that matter. This can be attributed to the fact that coalitions of local elites merely realign and reorganize around new economic structures to perpetuate and consolidate established lines of inclusion and exclusion. In similar vein to oil rents, the state's increasing reliance on fiscal revenues generated through agribusiness will continue to undermine the quality of societal representation. With the agricultural sector in CRS monopolized by a small number of politically and economically powerful companies, political futures are increasingly shaped by coalescing with private sector actors. With accountability structures undermined by the blurring of private-public boundaries, conflicts of interests, cronyism, and opacity, CRS's new development strategies, therefore, fail to adequately reconcile competing interests. This raises very real questions about the virtues of private-sector led development in frontier markets, especially where this serves to extend local state power.

Notes

- 1 For example, it is home to numerous endangered mammal species, such as the drill (*Mandrillus leucophaeus*), Preuss's red colobus (*Procolobus badius preussi*), Preuss's guenon (*Cercopithecus preussi*), Cross River chimpanzee (*Pan troglodytes ellioti*), collared mangabey (*Cercocebus torquatus*), russet-eared guenon (*Cercopithecus erythrotis*), leopard (*Panthera pardus*), and forest elephant (*Loxodonta africana*) (Kamdem Toham *et al.* 2006).
- 2 REDD+ is an international initiative spearheaded by the United Nations to generate financial value for the carbon stored in forests. It offers incentives for developing countries to minimize emissions associated within forest conversion and invest in pathways for low-carbon development (Angelsen 2009).
- 3 The Dual Mandate refers to the principles underlying British policy of indirect rule in its Protectorates, where local administration was shared with traditional rulers. According to Lugard (1922), this policy was premised on the obligation to protect local practices and institutions, while simultaneously using these institutions to promote peasant-based production, exportation, and taxation.
- 4 Until 1929, UAC was known as the Lever Brothers. UAC is now owned by Unilever.
- 5 In CRS, 25,000 ha of the southwestern parts of the Oban Group were allocated to the state-owned Nigerian Newsprint Manufacturing Company (NNMC) in 1986. The NNMC had converted approximately 10,000 ha, including 3,000 ha of closed canopy forest, for planting pulpwood species such as gmelina and pine before abandoning their plantations in 1988 due to capital constraints (Personal communications, Chairman Forestry Commission, 2012).
- 6 The Ikpan block constitutes the eastern part of the Oban Group, along the Nigeria-Cameroon border. The Ikpan block is tenuously connected to another large forest area, the Oban Hills, which is largely separated by the MCC Road that links the CRS capital Calabar to Cameroon.
- 7 Okwango is a smaller forest area in the north of CRS and is one of the last remaining habitats of the critically endangered Cross River Gorilla (*gorilla gorilla diehli*).
- 8 These estates include Biase, Ikot Okpora, Agoi/Nko, Ibiae, Ayip Eku, Calaro, CREL, Nedu Limited, one Obasanjo Farms estate, three Real Oil Mills estates, and two Dansa Food estates (see Table 6.1 and 6.2 for an overview of estates).
- 9 The Global Competitive Index (GCI) is the theoretical basis of CR-SEED II, which focuses strongly on principles of market efficiency and innovation. "Making agriculture more profitable and productive" was the highest priority on the government's new seven point agenda.
- 10 For example, the federal Growth Enhancement Support Scheme (GESS) that provides subsidized inputs to smallholders will be taken over entirely by private

- sector input traders. The ministry of agriculture conceded that the distribution process has been particularly susceptible to corrupt practices. It is the general perceptions amongst rural communities that any smallholder-oriented interventions largely favors those with political connections (e.g. such as micro-finance schemes and even the World Bank assisted projects).
- 11 13 percent of national oil revenues are reserved under a derivation fund as compensation to oil-producing states for the environmental costs of oil production.
 - 12 According to the 2006 Population Census, the population density in Akwa Ibom is 587 persons/km², compared to 133 persons/km² in CRS. Although information on workforce composition is not maintained, companies and communities estimate that between 80 to 90 percent of the plantation workforce originates from Akwa Ibom.
 - 13 In the 1980s, under the Taungya system of plantation forestry, large forest reserve areas had been allocated by the Forestry Commission to farmers. When plans to develop large gmelina plantations were soon shelved, the Forestry Commission continued to allocate forests for farmland expansion; this rather as a source of income, which it shares with 'landlord' chiefs.
 - 14 The population residing within the plantations is estimated at 5,949 in Calaro, 3,615 in Ibiae, 2,496 in ONREL, and 1,186 in Ayip Eku (derived from GoCRS 1991). DIN (2012) estimated that in the community of Mbarakom, on the outskirts of the Calaro estate, approximately 76.1 percent of the community's population of 3,648 are migrants.
 - 15 On 15 April, 2013, one dollar was equivalent to 158.3 naira.
 - 16 While the Agreement did not specify the royalty rate, according the Ministry of Lands these would be fixed at 200 naira per hectare per annum.
 - 17 This is based on 15,611 ha of agricultural land comprised within concession boundaries (calculated from Landsat 5 imagery). According to focus group participants in the area, the average household owns between 2 and 3 ha of land (including both cultivated and fallowed land).
 - 18 In CRS, most women farm their own plots. Many women contend that these plots protect household food security, since 'male plots' are often more market-oriented.
 - 19 The RSPO is a multi-stakeholder certification scheme with the objective of promoting palm oil production in accordance with social and environmental sustainability standards (see Annex A5 for an overview).
 - 20 This was especially in reference to Dangote. He argued that rather than cancelling the concessions, those parts of the park should be de-gazetted instead.

Capturing the Gains from Biofuel Investment

Analyzing the Effectiveness of Zambia's Legal and Institutional Framework

7.1 Introduction

On the heels of structural adjustment programs in many sub-Saharan African countries, which witnessed a significant downsizing of the state, countries have turned to private sector investment and export-led development strategies as means to revitalize national and rural economies alike (Lavers 2011). With support from bilateral and multilateral agencies, governments have embarked on ambitious programs to liberalize land markets and create conditions to attract foreign investors (Chachage 2010; Daniel 2011). The rationales often put forward for private sector-led, export-oriented development models include anticipated employment generation, improved balance of trade through increased exports and import substitution, revenue generation, and economic and technological spillovers. For agricultural investments, the revitalization of rural economies also features prominently in official rationalization narratives.

Preoccupation with global energy supplies and global climate change in the "global North" and a desire to improve the balance of trade and capture value in the emerging carbon market by developing countries have caused biofuels to feature prominently in foreign and domestic investments alike (Cotula *et al.* 2008; World Bank 2011a). Much of this recent land use change is occurring in developing countries where large agro-ecologically suitable tracts of land may be accessed at lower economic and opportunity cost (Mathews 2007). The biofuel industry has thus emerged at a time when the wider structural conditions for foreign investment are ripe, leading to the rapid penetration of commercial crops that provide suitable bio-

fuel feedstocks (e.g. sugarcane, soybean, oil palm, jatropha) into rural communities and forested landscapes throughout many areas of the global South. This has been a significant factor in the recent and highly polemic surge of large-scale land acquisitions by domestic and foreign investors alike (Cotula 2011b; German *et al.* 2011a; Schoneveld 2011; World Bank 2011a; Anseeuw *et al.* 2012b).

In recent years, Zambia has actively sought to attract foreign and domestic investment as a means to diversify its economy away from its historic dependence on mining and to revitalize the agricultural sector as an engine of rural development. As a vast landlocked country with no domestic petroleum reserves and high domestic pump prices, the country's high dependence on fossil fuel imports has long weighed on the public treasury and incomes of everyday citizens¹. The emergence of a global biofuel market has therefore been seen as an opportunity to enhance domestic energy security and improve the balance of trade while channeling much-needed investment to rural areas. While key policy aims for the energy sector are enshrined in the 2007 Energy Policy and five-yearly national development plans, policies and strategies for biofuels are in their infancy—with the Biofuels Industry Strategy formulated in 2008 but yet to be approved. While this makes it difficult to evaluate sector performance, it provides a benchmark for assessing the early evolution of the sector and provides a unique opportunity to shed light on critical factors shaping this evolution.

This paper evaluates the extent to which Zambia has established the necessary legal frameworks and institutional mechanisms to turn the perceived economic and ecological benefits of biofuel production into reality. Key sources of evidence included published and draft policies and legislation for relevant sectors, data from company websites and key government agencies, and key informant interviews with government agencies, investors, civil society, and affected communities. The paper is structured according to its three analytical lenses: a review of policy aims, a review of mechanisms envisioned or in place to support these aims, and an evaluation of early performance. It concludes with a discussion of implications for sector governance.

7.2 Background

7.2.1 The biofuel polemic: Land grabs, food security, and livelihoods

Expansion of biofuel feedstock cultivation in developing countries is widely embraced by producer country governments as a means to achieve energy security and stimulate rural economic development through employment and smallholder market integration (Energy Commission of Ghana 2006; Ministry of Energy and Water Development of Zambia 2008; Republic of Mozambique 2009; de Andrade and Miccolis 2011). It is also expected that foreign and domestic investments in biofuel feedstock cultivation may lead to positive economic spillovers for local farmers and

businesses. Yet the expansion of industrial-scale production models has been countered by a critical response by civil society actors, United Nations agencies, and analysts concerned about the recent increase in large-scale land and resource acquisitions and their implications for economic and social justice and new agrarian relations (Civil Society Biofuels Forum 2009; de Schutter 2009; Forest Peoples Program 2010; Friends of the Earth 2010; Borras *et al.* 2011; Toulmin *et al.* 2011; Oxfam 2011).

It is difficult to derive an accurate figure on the scale of the recent "land grab" due to the unconfirmed nature of reports, the poor quality of host country databases, and the tendency for companies to inflate their positions as a means to attract investment (Schoneveld 2011). However, it is clear that the pace and scale of recent land-based investments are of an unprecedented magnitude. The World Bank (2011a) estimated that between October 2008 and August 2009 alone, 56.6 million hectares of large-scale farmland deals were concluded. Representing a sharp break from the past, investments are also heavily concentrated in Africa, representing roughly 70 percent (39.7 million hectares) of these deals (World Bank 2011a; see also Anseeuw *et al.* 2012a). While biofuels, food crops, and plantation forestry all factor significantly in recent land-based investments, biofuels are the primary driver of large-scale land acquisitions in Africa (Schoneveld 2011; World Bank 2011a; Anseeuw *et al.* 2012a)².

One of the main concerns associated with global expansion in biofuels is its impact on food security. A recent report by the United Nations' Food and Agriculture Organization (FAO) (2008) found liquid biofuel production to have enhanced food insecurity in at least three ways: by contributing significantly to the recent increase in food prices, by inducing land concentration for commercial scale plantations (through both displacement and tenure insecurity), and through their effect on the environment—including biodiversity effects and competition for water. The diversion of the US corn and soybean crop and the Brazilian sugar crop to biofuels is also considered to have been one of the key factors contributing to the 2007/08 food price crisis (Mitchell 2008; Baier *et al.* 2009; DEFRA 2010), a trend that is expected to intensify (IFPRI 2006; OECD and FAO 2007).

Another critical concern involves the loss of customary land rights, displacement of customary land uses and users, and implications for the human rights to food, to self-determination, and to development (de Schutter 2009; German *et al.* 2011a; Matondi *et al.* 2011). A recent review of livelihood impacts of biofuel projects in six case study countries suggests that customary rights holders losing land to investors are the most negatively affected (German *et al.* 2011b). Economic losses were found to result from the loss of agricultural and forest income, insufficient or poor management of compensation payments, and the failure to channel jobs and other benefits to affected households (see also Toulmin *et al.* 2011). A major cause was found to be a host of deficiencies in the process by which investors acquire land under customary use and ownership and the resulting contracts (Cotula 2011a; German *et al.* 2011a)³.

Recent research has also highlighted the dubious nature of claims about both the local livelihood and climatic benefits of the emerging biofuel industry in Africa. Recent case studies on smallholder and commercial-scale investments alike illustrate both the risks of unproven feedstock and business models and the possibility that the value generated through employment is far less than the value of displaced land uses (German *et al.* 2011c; Schoneveld *et al.* 2011). Recent publications also highlight the ecological costs of biofuel investments and the possibility that the carbon debts associated with biofuel-induced land use change may undermine their intended greenhouse gas savings (Reijnders and Huijbregts 2008; Achten and Verchot 2011; Romijn 2011). Zambia is one of the countries at the forefront of land-based investments in Africa (Schoneveld 2011), making questions about how to govern the emerging biofuels industry to leverage its potential as an engine of economic development while mitigating its social and environmental costs of paramount importance.

7.2.2 Sector evolution

A brief review of the evolution of the Zambian biofuel sector will help to interpret and contextualize the analysis that follows. Early initiatives in the Zambian biofuel sector were private sector-led. Seeking to capitalize on the increasing global interest in renewable energy sources, private investors moved ahead with operations in the absence of any formal policy commitments. Three large biofuel companies, focusing on jatropha as a feedstock, dominated the biofuel market in the early years⁴. While two of these companies sought to develop large nucleus estates in which land and production are controlled by the company, each of these investors relied heavily on smallholder feedstock production⁵. While such business models are not new to the agricultural sector, they do present an interesting parallel to the recent and highly publicized surge in large-scale land acquisitions and plantation-based production. Evidence suggests this pattern has a lot to do with efforts to defray higher than anticipated labor and input costs and slower than expected plant growth. By 2007, the companies had a combined network of an estimated 26,000 outgrowers (Freim 2008; Personal communications, Company Director, 2010).

Despite these early trends, recent years have witnessed a renewed interest in plantation-based investments—with at least seven companies having commenced or in the process of establishing dedicated biofuel feedstock plantations. While production volumes of biofuels and biofuel feedstock at the time of research was limited, with these companies having collectively secured access to close to 700,000 ha of land and recent enactment of blending targets, significant expansion is anticipated. Although jatropha remains the predominant feedstock, sugarcane and oil palm also feature as feedstocks in these investments.

7.3 Understanding targets: Policy aims for the Zambian biofuel sector

In this paper, we focus on three key sets of policy aims that reflect a number of cross-cutting policy aims and for which evidence on performance may be leveraged at this early stage:

- (1) Fostering of national economic development through reduction in the fuel import bill, domestic fuel production and consumption, job creation and citizen participation in the value chain;
- (2) Fostering of rural economic development through smallholder participation in biofuel feedstock production and employment;
- (3) Mitigation of negative social and environmental effects.

While these aims are not framed as such in Zambian legislation, they do reflect a set of themes for which a great deal of overlap is found between sectoral strategies and extra-sectoral policies and legislation currently in force. This enables the evaluation of early performance as it draws on well-established legislation for which implementation has matured. These three aims are therefore used to frame the analysis that follows.

The first policy aim is apparent in the anticipated benefits of biofuels set out in the National Energy Policy (NEP) and draft Biofuels Industry Strategy. These include security of energy supply, reduced dependence on petroleum imports, stabilization of fuel prices through reduced dependence on petroleum in the transport sector, foreign exchange savings, and employment creation (MEWD 2008; Republic of Zambia (RoZ) 2008). These policy aims are also echoed in Zambia's national development plans (RoZ 2006a, 2011). The Citizens' Economic Empowerment Act (RoZ 2006a) also seeks to promote the empowerment of citizens whose access to economic resources and development capacity has been constrained.

The second policy aim, rural economic development, is apparent in national development plans and sectoral policies for the agricultural and energy sectors. The overarching policy aims and anticipated benefits from biofuels established in the NEP and draft Biofuels Industry Strategy include the following: economic empowerment of Zambian citizens through their involvement as shareholders and producers and employment creation; integrated development through cross-sectoral linkages between the energy and other sectors, including agriculture; and agricultural and rural development through new market demand (MEWD 2008; RoZ 2008).

The final policy aim, mitigation of negative social and environmental effects, is apparent in overarching environmental protection legislation (RoZ 1997). It is also apparent in sectoral legislation, where it features in the primary objective set out in the NEP and the Sixth National Development Plan's vision for the energy sector through a declared commitment to create conditions to ensure the availability of adequate supply of energy from various sources "at the *lowest economic*,

financial, social and environmental cost consistent with national development goals" (MEWD 2008; RoZ 2011, emphasis added)⁶. The NEP also places emphasis on avoiding negative impacts on food security and environmental sustainability, protecting local people involved in the subsector against exploitation, and reducing the negative environmental and health effects of energy production, transport, and use (RoZ 2008). Finally, the draft Biofuels Industry Strategy emphasizes climate change mitigation, an increase or stabilization in biodiversity, and other environmental co-benefits (MEWD 2008).

7.4 Understanding mechanisms: Legislation and strategies to leverage sectoral policy aims

The analysis of mechanisms to leverage identified policy aims includes both the identification of strategies in place or envisioned within sectoral legislation, and relevant extra-sectoral legislation and strategies.

7.4.1 Sectoral legislation and strategies

Sectoral strategies envisioned to achieve key policy aims may be found in three key policy documents: the NEP of 2007, Statutory Instrument 42 legalizing biofuels in the national fuel mix, and the draft Biofuels Industry Strategy of 2008. Mechanisms envisioned within each document that map onto the three sets of policy objectives chosen for analysis are highlighted in Table 7.1. It should be noted that those in italics are highlighted in the draft strategy and have therefore not yet been approved.

The envisioned policy mechanisms for achieving the three policy aims profiled in this paper are relatively far-reaching—with each policy aim having multiple strategies through which it is to be achieved. It illustrates that a lot of thought has gone into how to translate policy intentions into reality. That said, there are a few notable disconnects between the aspirations enshrined in the NEP and the mechanisms highlighted in the draft Biofuels Industry Strategy to achieve these. These include aspirations for which mechanisms are limited (e.g. environmental protections restricted to best practice guidelines and conditional licensing) and mechanisms in excess of policy commitments (e.g. promoting domestic consumption, investment promotion, and protection). The most notable gap is found in the mechanisms envisioned for mitigating negative social impacts, which are restricted to efforts to avoid negative effects on food security. Other possible social risks associated with land allocation to investors, labor standards, and engagement of smallholders in contract farming schemes are left unaddressed. It should be noted that proposed mechanisms to safeguard food security (channeling biofuels to degraded, abandoned, and underutilized land) are meant to be financed by government or consumers through price premiums and public finance rather than by investors.

Finally, there seems to be a significant imbalance between the role proposed for the state in investment promotion and protection, on the one hand, and rural economic development, on the other—with extensive provisions to provide finance, incentivize investments in production and processing, and protect investors against risk. Ensuring effective participation of smallholders in the emerging industry is a task that is largely left to other agencies and sectors. This could, in part, be explained by the significant role the Biofuels Association of Zambia (BAZ) and its members have played in policy formulation processes and the relative absence of the voice of small-scale farmers in national policy debates.

7.4.2 Extra-sectoral legislation and strategies

As the emerging biofuel feedstock industry will be governed not only by newly formulated sectoral policies and legislation but by long-established extra-sectoral legislation and strategies, it is important to understand provisions within the latter to achieve identified policy aims. Legislation and strategies around investment promotion and protection, land allocation, rural development and citizens' economic empowerment, and environmental protection are of particular relevance to the emerging biofuel feedstock sector.

Investment promotion

Investment promotion and protection instruments are key in efforts to leverage the potential of foreign and domestic investment to stimulate national and local economic development through capital injection into primary production and value addition, job creation, and economic and technological spill-overs to domestic industry. The main legislation governing investment in Zambia is the Zambia Development Agency (ZDA) Act of 2006. The act establishes the ZDA as a one-stop facility for a host of investment-related functions: disseminating information on investment opportunities; forging strategic alliances between foreign investors and Zambian enterprises; creating a secure investment climate, supporting investors in securing licenses, exemptions, and land; concluding investment promotion and protection agreements with prospective investors; and supporting the creation and participation of micro-scale and small-scale enterprises.

The act also establishes a wide range of incentives to investors based on levels of investment (Table 7.2). It also provides for free repatriation of profits and dividends and a host of nonfiscal incentives (licensing, immigration, land acquisition, utilities, communications) (RoZ 2006c; ZDA 2009). These incentives complement a set of general incentives laid out in other legislation (Customs and Excise Act, Income Tax Act, Value Added Tax (VAT) Act), such as corporate tax discounts for the first year of company listing, duty-free imports on most agricultural equipment, a reduced corporation tax rate on income from farming, provisions for carry for-

ward of losses, and reduced VAT in tax free zones (ZDA 2009). The Ministry of Energy and Water Development is working with ZDA to explore how the biofuel industry can benefit from additional incentives through the declaration of biofuels as a priority sector (Personal communications, senior official, Ministry of Energy and Water Development 2010).

Table 7.1: Policy mechanisms envisioned for achieving policy aims for the biofuel sector

Policy aim	Policy mechanism
1. Fostering of national economic development	<ul style="list-style-type: none"> Investment promotion and protection: existing and sectoral fiscal incentives and standards¹; legal framework establishing rules for sector entry/exit, ensuring security of investment, and creating a conducive business environment¹; public finance to offset the risks of bringing underutilized land into production; initial protection of local manufacturers against cheaper imports (e.g. via import duties)²; price guarantees for biofuel producers in oil company contracts.² Domestic production: fund research on first- and second-generation technologies and agronomics^{1,2}; stimulate research and innovation on appropriate extraction and processing technology¹; provide tax credits, loan guarantees, and/or fixed price guarantees to stimulate investments in processing.² Domestic consumption: establish biofuels as tradable commodities³; establish mandatory E¹o and B₅/B²o blends or sales targets for the transport sector^{1,2}; research the economic feasibility of using biofuels¹; build capacity to monitor and regulate biofuel production and use¹; require that biofuels feature in fuel supply contracts to government and parastatals²; reduced fuel excise taxes for biofuels (while adjusting taxes on other fuels to retain stable revenues)²; consider carbon taxes employing full life cycle accounting.² Citizens' economic empowerment: support Zambian shareholding¹; a legal framework establishing rules for sector entry and exit, promoting participation of Zambians in the industry, and facilitating funding to local investors¹; create a Biofuel Development Fund (from cost line in the petroleum price) to fund local farmers and investors.²
2. Fostering of rural economic development	<ul style="list-style-type: none"> Local participation in the value chain: Facilitate funding to local farmers to promote equitable participation¹; promote agronomic research on alternative biofuel feedstock¹; employ existing agricultural support programs to train farmers and support local participation in the value chain (including technical dimensions, contract negotiations)²; leverage the potential of parastatals in financing small-scale growers²; establish a Biofuel Development Fund to facilitate funding to "local farmers and investors" to promote equity participation.²
3. Mitigation of negative social and environmental effects	<ul style="list-style-type: none"> Mitigating negative environmental impacts: a legal framework for environmental protection (e.g. invasive species, waste disposal, ESIA compliance) and land allocation for biofuels¹; support research on new/alien species of energy crops prior to dissemination¹; develop best practice guides/management plans (on soil, irrigation, biodiversity).² Mitigating negative social and food security impacts: a legal framework to protect local people against exploitation; safeguard food security by targeting land that is underutilized or incapable of supporting food crops (e.g. through a fixed margin scheme) and excluding maize for bioethanol production (until the capacity for underutilized land to produce biofuel feedstocks is determined and mechanisms to safeguard against industry-linked food inflation are in place)^{1,2}; use biofuel feedstock to rehabilitate degraded and abandoned land²; provisions in contracts between biofuel producers and oil companies to ensure feedstock are grown only in designated areas.² Monitoring and compliance: strengthen environmental compliance through licensing procedures²; monitoring of environmental and social impacts, "primarily" through the licensing of producers and wholesalers.²

¹ RoZ (2008); ² MEWD (2008); ³ Statutory Instrument 42 (2007)

Mechanisms to protect national interests and enhance benefit capture from foreign investment include a set of criteria the ZDA Board should consider when reviewing applications for investment licenses. These include investment contributions to economic development, employment, human resource development, technology spillovers, and exports, and the likely environmental impacts. Draft Investor Promotion and Protection Agreements (IPPAs) issued by the ZDA also include clauses requiring compliance with Zambian laws (with special reference to labor and environmental laws) encouraging employment of qualified Zambian nationals and support to citizen-owned companies and enabling access by government representatives to facilities and environmental assessments. While investment licenses are not a requirement to do business, they are required to benefit from incentives—thus, creating an incentive for investors to register with ZDA and comply with the aforementioned conditions. The ZDA also reserves the right to revoke an investment license if the investor fails to comply with the conditions set out in the IPPA (without reasonable justification) or other licenses and to retain the land title until implementation commences⁷. Finally, a self-reporting system helps ZDA keep track of actual investment levels and employment creation vis-à-vis stated commitments. The agency is also considering an innovative district level, multiagency monitoring system to track whether investors are doing what they are licensed to do.

Table 7.2: Investor incentives established in the Zambia Development Agency (ZDA) Act

Investment thresholds	Specific entitlements
> US\$ 10 million in priority sector/product	<ul style="list-style-type: none"> Investor may negotiate with government for additional incentives over what they qualify for under the ZDA Act and other legislation Exemption from custom duties on imported machinery/equipment
> US\$ 500,000 in priority sector/product	<ul style="list-style-type: none"> 0% tax on dividends for five years 0% tax on profits for first five years Taxation of 50% of profits for years 6 to 8, and 75% for years 8 to 9 0% import duties on raw materials, capital goods, machinery for five years Deferment of VAT on machinery and equipment Exemption from custom duties on imported machinery/equipment
Micro and small enterprises	<ul style="list-style-type: none"> Income tax exemption for the first three years (urban enterprises) Income tax exemption for the first five years and exemption from custom duties on imported machinery/equipment (rural enterprises)
< US\$ 500,000 invested in priority sector or product	<ul style="list-style-type: none"> Exemption from custom duties on imported machinery/equipment
Investment of any amount in non-priority sector or product	<ul style="list-style-type: none"> None (only general incentives apply)

Land allocation for biofuel expansion

Legislation governing the processes through which land may be acquired by foreign and domestic investors have a bearing on business models pursued by industry (industrial plantations versus contract farming schemes), the ability of

households displaced from land they rely on for their livelihoods to reconstruct their livelihoods (e.g. making employment, livelihood reconstruction, or compensation conditions of transfer), and ultimate impacts of agro-industrial development. According to the Lands Act of 1995, all land in Zambia is vested in the president, who may alienate land to any Zambian or to non-Zambians who are permanent residents, hold investment certificates with the ZDA, hold less than 25 percent of shares in a Zambian company, or have received the president's consent in writing (Personal communications, senior official, ZDA, 2010).

The Lands Act classifies all land as either state land or customary land, categories that are, in turn, governed by leasehold and customary tenure, respectively. The draft Land Administration and Management Policy of 2006 establishes a third category of reserve land for public uses. A legacy of the colonial period, leasehold tenure runs for 99 years and is renewable if there is no breach of conditions in the existing agreement (Mutale 2004). The market-based land reforms enshrined in the controversial 1995 Land Act recognized customary rights but also made it possible for foreign investors to convert land in customary areas to state land under leasehold title. While state land is widely seen as more attractive to investors due to land quality and/or accessibility to infrastructure, the limited availability and higher cost of such land makes land under customary tenure the obvious choice for most large-scale investors. The Private Sector Development Reform Program, a multi-donor-funded initiative of the Zambian government, established a Land Bank Identification Programme and a Land Reform Working Group (LRWG), with representatives from the Zambia Development Agency (ZDA) and the Ministry of Lands, to facilitate the identification and acquisition of suitable customary land for investors (Private Sector Development Implementation Committee, 2006).

Formal mechanisms for investors to access customary land include the following (RoZ 2006b; Personal communications, Director, Ministry of Lands, 2010):

- (1) *Negotiating with chiefs the transfer of customary land to leasehold tenure* (Statutory Instrument 89 of 1996): involving consent from the chief (with prior consultation of village headmen), physical demarcation of the area in the presence of village headmen, and (depending on the land area) approval by the district council, Commissioner of Lands and the president⁸.
- (2) *Accessing land through previously established land banks*: in this case, the ZDA holds land in trust on behalf of the state and may sublease land to investors for a period of 2 to 5 years⁹. Given the reported prevalence of land speculation by investors, in 2009, the ZDA began giving investors provisional usufruct rights pending evidence of productive use of the land (Personal communications, senior official, ZDA, 2011).
- (3) *Through compulsory acquisition by the president*: when the president "is of the opinion that it is desirable or expedient in the interests of the Republic so to do". This is subject to consultation of the chief, local authority, and any other

person whose interest might be affected and to financial or in-kind compensation (RoZ 1995, no date).

While the government is encouraging the formal titling of customary land (RoZ 2006b), the Zambia Land Alliance is advising against it due to the cost, the subsequent application of land rents, and the risk of landlessness (Zambia Land Alliance 2007). As the Lands and Deeds Registry Act of 1914 requires that land be transferred to state land before leasehold title may be acquired by investors, extra-legal means of land acquisition (e.g. direct negotiations between investors and chiefs) are the only pathway for avoiding a permanent transfer of land away from customary ownership and control (German *et al.* 2011a).

Mechanisms for ensuring downward accountability to customary land-users include a written declaration from the Chief stating that 'members of the community' were consulted and were unaware of any conflicting rights; and a requirement that both the Chief and the District Council "shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights have not been affected by the approval of the application" (Administrative Circular No. 1, 1985, Article D(vi)). This, therefore, implies that all formal land acquisitions, with the exception of compulsory acquisitions by the state, cannot produce displacement and dispossession.

Citizens' economic empowerment and rural development

Outside of the agricultural extension system, two extra-sectoral initiatives are of particular relevance to the emerging biofuel industry: citizens' economic empowerment and the farm block scheme. The Citizens' Economic Empowerment Act of 2006 established the Citizens' Economic Empowerment Commission (CEEC) and charged it with the empowerment of marginalized or disadvantaged citizens whose access to economic resources and development capacity has been constrained. This is to be achieved through the following: advice on legislation; economic empowerment measures by state institutions and private companies; thresholds for preferential public procurement from citizen influenced companies¹⁰; the reservation of specific areas of commerce, trade, and industry for targeted citizens and citizen-empowered companies (with licenses granted on the basis of citizen involvement); the provision of concessions and incentives to companies implementing broad-based economic empowerment programs; and establishment of a fund to finance citizen-empowered companies and economic empowerment programs. While the act provides ample scope for leveraging greater benefits from the biofuel industry, the commission has yet to target biofuels as a program area (Personal communications, Director, Citizens' Economic Empowerment Commission, 2010). However, provisions for preferential procurement in the Citizens' Economic Empowerment Act (2009) are an explicit component of the draft Biofuels Industry Strategy.

In an effort to kick-start the long-desired shift to industrialized agriculture among policy makers, the Ministry of Agriculture and Cooperatives (MACO) re-

cently established a Farm Block Scheme to stimulate primary production and value addition in designated areas. In a bid to attract investors, the government is committed to providing basic services such as roads, bridges, and electrification to targeted areas. Each farm block has a standardized design—with one core venture of 10,000 ha, commercial farms of 1,000 to 5,000 ha, and smallholdings of 30 to 300 ha each, designed to bundle larger investors with smaller farming units that would supply to the larger operators. One farm block had been identified by MACO in each of the nine provinces ranging in size from 45,000 to 155,000 ha—with a total land area of 892,000 ha (around 1 percent of Zambian territory). Biodiesel and ethanol production are highlighted as one of the opportunities for value addition (MACO 2010).

Environmental Protection

Legislation related to environmental impact assessment procedures is of importance for prior evaluation of environmental risks of a prospective investment as well as the identification and mitigation of negative socioeconomic impacts. Depending on the nature of the project and the scale of anticipated environmental impacts, the Environmental Council of Zambia (ECZ) may demand that either a "project brief" or an "environmental impact assessment" be concluded. According to Environmental Protection and Pollution Control Regulations of 1997, a project brief is required for "land clearance for large-scale agriculture", "clearance of forestry in sensitive areas", and "food processing plants with more 400 tons output per year". An environmental and social impact assessment (ESIA), on the other hand, is required for projects "located in or near environmental sensitive areas", such as "wetlands", "indigenous forest", and "zones of high biological biodiversity". As such, large-scale biofuel feedstock projects do not require a comprehensive ESIA unless located in areas that are of especially high environmental value. The project brief entails a less comprehensive analysis of impacts than the ESIA, including lesser depth of analysis, use of secondary data, and less rigorous and independent procedures for selecting consultants and informing the public and affected communities of the project's purpose and anticipated impacts (Table 7.3).

7.5 Understanding effects: Preliminary evidence on implementation and performance

In this section, early performance is assessed according to the three cross-cutting policy aims framing this paper.

Table 7.3: Content requirements for the Project Brief and the ESIA

Content of the Project Brief (Article 4)	Content of the ESIA (Article 11)
The site description of the environment;	A description of the project, and reasonable alternatives, which may begin or increase operations to provide materials or services to the proposed project;
The objectives and nature of the project and reasonable alternatives;	A description of the proposed site and reasons for rejecting other alternative sites;
The main activities that will be undertaken during site preparation, and construction and after the development is operational;	A brief description of the site and the surrounding environment specifying any information necessary to identify and assess the environmental effects of the project;
The raw and other materials that the project will use;	A description of the raw material inputs into the project and their potential environmental effects;
The products and by-products, including solid, liquid, and gaseous waste generation;	A description of the technology and processes that shall be used;
The noise level, heat, and radioactive emissions from normal and emergency operations;	A description of the products and by-products of the project;
The expected socioeconomic impact of the project and the number of people that the project will resettle or employ, directly, during construction and operation;	The environmental effects of the project, and reasonable alternatives, including the direct, indirect, or cumulative, short-term and long-term effects;
The expected environmental impact of the project, taking into account the provisions of paragraphs (3) to (7);	The socioeconomic impacts of the project, such as resettlement of affected people;
The expected effect on the biodiversity, natural lands, and geographical resources and the area of land and water that may be affected through time and space;	An impact management plan containing a description of measures proposed for preventing, minimizing or compensating for any adverse impact, and enhancing beneficial effects, and measures to monitor effluent streams or important environmental features that may be affected by the project;
A description of adverse mitigation measures and any monitoring programs to be implemented.	An indication of whether the environment of any neighboring state is likely to be affected.

Source: Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations of 1997.

7.5.1 National economic benefits

The extent to which existing instruments are effective in leveraging equitable participation and enhancing benefit flows from FDI to Zambians can be explored through an analysis of the likelihood of key policy provisions to stimulate domestic production and consumption and early performance in terms of domestic shareholding and employment generation.

While Zambia's recent declaration of blending targets will provide significant new incentives for investors, even in the absence of these incentives, investor interest remained high. Despite some fluctuations in investor activity following the global economic downturn and the poor performance of some early investments (most notably, in jatropha), at the time of writing, many of the early investors in the sector remained active and a number of large-scale investments were beginning. There are an estimated 10 large investments that remain active at this time, with at

least one already processing biofuels and at least seven others with plans to do so. While it is difficult to ascertain the relative influence of global market forces and the national legal and institutional framework on investor behavior, this interest suggests that current frameworks (even prior to the establishment of blending targets) do not serve as a deterrent to investment and may even be conducive to it.

The question of the extent to which national interests are protected in the process of supporting investment is less certain. While efforts to enhance the participation of citizen influenced companies represents an opportunity to facilitate reinvestment of profits within Zambia, there are a number of shortcomings within existing and proposed legal and institutional arrangements to ensure this occurs. First, the absence of a mechanism for monitoring the actual benefits derived from the conditions stipulated within IPPAs may undermine their effectiveness in practice. Second, provisions for foreign investors to repatriate all profits and dividends and 0 percent corporate tax rates during start-up in the absence of any conditionalities on things like employment may be a case of offering too much for too little. The ability of large-scale investors to negotiate their own incentives outside of legislative provisions also raises concerns for transparency and accountability. Finally, the proposal for establishing licensing thresholds for biofuel processing at a 5,000 L/day minimum is likely to have the effect of restricting small-scale biofuel companies to the local market, effectively excluding them from contributing toward national blending targets or participating in the export market. This could undermine policy aims related to equitable benefits capture and citizens economic empowerment as only larger, more capitalized (largely foreign) companies will be able to occupy this economic niche. A look at current ownership structure (Figure 7.1) also suggests a tendency toward foreign ownership, a trend that is likely to be far more striking if data on the relative value of shares held by domestic and foreign investors was available.

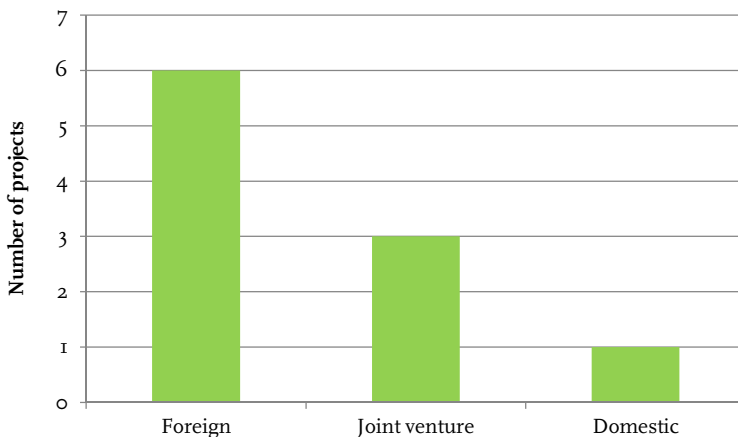


Figure 7.1: Ownership structure of Zambian biofuel investments

Yet can the value of the emerging industry be justified on other grounds, such as the stimulation of rural and urban employment? Based on official pledges and company projections, individual investors aim to employ anywhere between 13 people from what is presumably a highly mechanized sugarcane operation on 21,000 ha and a projected 50,000 people for a 700,000-ha jatropha venture in Northern Province (for investments valued at US\$ 3 million each). Given such wide variation in employment pledges, it is important to look at the actual performance of investments vis-à-vis original pledges from investors. Data from the ZDA, based on corporate reporting, suggest both investment and employment levels to be far lower than originally declared in the agricultural and manufacturing sectors (where biofuel investments are classified by ZDA) (Table 7.4).

Such underperformance, particularly in the agricultural sector, raises the question of how to strengthen the accountability of investors to national policy aims in these and other sectors. Efforts by Zambia to establish provisional leases of 14-year durations to verify investor performance before issuing 99-year leases is a move in the right direction; however, earlier and more frequent monitoring and compliance efforts are needed if such efforts are to have any real influence on investor behavior.

It is worth noting that the limited ability of the mining sector to stimulate economic development through revenue generation and reinvestment of profits in-country has been the subject of intense debate in the country. While it is impossible to evaluate the macroeconomic performance of the biofuels sector at this early date, similar sets of incentives for investors (provisions for full repatriation of profits, generous tax breaks for corporate income), and limited provisions to protect domestic industry (outside of minimum investment levels to qualify for incentives) are likely to hinder the performance of the biofuel sector in this regard (Schoneveld *et al.* 2011).

Table 7.4: Investment performance, 2007–09

Monitoring variable	Implementation Rate (Actual, as % of Pledge)		
	2007	2008	2009
<i>Investment Levels</i>			
Agriculture	36	20	-
Manufacturing	56	28	-
<i>Employment levels</i>			
Agriculture	21	11	10
Manufacturing	94	15	82

Source: Official statistics of the Zambia Development Agency.

7.5.2 Rural economic development

The extent to which the sector is likely to deliver on policy aims related to rural economic development may be assessed through the extent of smallholder participation in the emerging industry, the extent to which extra-sectoral initiatives are effectively supporting the integration of smallholders into the emerging biofuel industry, and the extent to which the interests of small-scale growers are being represented within national policy fora.

In the early years of the Zambian biofuel industry, investors actively engaged smallholders as growers. Two large outgrower companies engaged an estimated 25,000 and 21,000 farmers, respectively—suggesting Zambia was outperforming its neighbors in terms of smallholder participation in the sector. None of these pioneers, however, has been able to meet their early commitments to outgrowers. They were either forced to exit the market or downscale as a result of their inability to obtain financing, poor agronomic performance, or lack of downstream demand for final products. As a result, many thousands of smallholders throughout the country are now left with seed-bearing plants for which they are unable to find a market. These projects have therefore carried environmental costs (in the form of forest conversion) and required significant labor inputs, without corresponding economic benefits to smallholders (German *et al.* 2011b). Unfortunately, existing legislation does little to protect smallholders from bearing the risks of an uncertain industry. Fixed prices are designed to protect biofuel producers from price-setting by oil companies rather than feedstock growers, and conditions of producer licensing focus exclusively on ensuring biofuel feedstock expansion occurs only in designated areas¹¹. With the exception of giving MACO a mandate to support the negotiation of outgrower contracts (a function that has yet to be realized), social considerations are largely absent. Finally, there is no envisioned role for research or monitoring platforms for determining the conditions under which meaningful benefits flow to small-scale farmers or rural communities. At present, while several companies claim to be pursuing hybrid business models involving both nucleus estates and outgrower schemes (Figure 7.2), only one company is known for its active pursuit of smallholder-based feedstock production (albeit with questionable financial viability)¹². This suggests that producers could be scaling back their early interest in smallholder-based business models, raising the question of how smallholder participation in the industry is to be ensured.

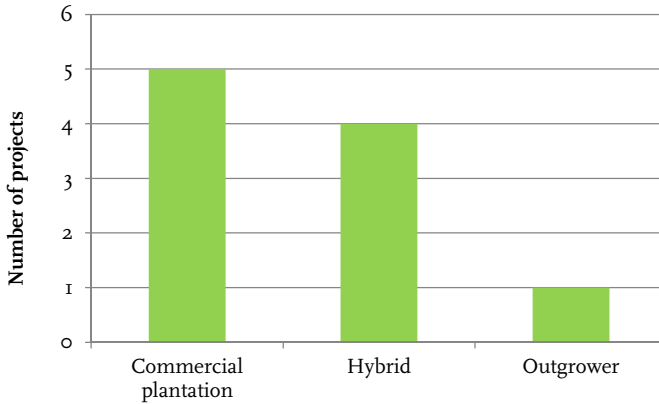


Figure 7.2: Business models employed by Zambian biofuel investors

Government programs represent another option for supporting smallholder engagement. The CEEC has yet to declare biofuels as a program area as policy directions in the biofuel sector are still being formulated. Yet despite no formal commitment to the sector, members of the BAZ and Brazilian investors have reportedly approached the CEEC to explore opportunities for finance, with a few members of the BAZ having applied for support "in the 15-billion Kwacha range"—a level that the CEEC is unable to support. Efforts by the CEEC to leverage greater benefits to small-scale growers seem to have failed. After encouraging BAZ members to develop outgrower schemes to enable the CEEC to channel support via small-scale farmers, the BAZ reportedly lost interest. While the CEEC has supported partnerships between local farmers and mining companies for the provision of agricultural produce to the mine, efforts to leverage smallholder-industry partnerships of mutual benefit continue to present significant challenges. According to Mable Mungomba of the CEEC, "They need to partner as equals. As of now, they are given junior positions where they don't have decision-making muscle". While the farm block scheme is too nascent to evaluate its capacity to support small-scale operators, biofuel investors have, to date, shown limited interest in the scheme. At the time of research, only one investor was identified as having secured 10,000 ha of land for jatropha cultivation within a farm block (Personal communications, Serenje District official, Ministry of Agriculture and Cooperatives, 2010). While another 10,000 ha have been set aside for 250-ha plots, the scale of investments required to take advantage of the scheme is far beyond what smallholders are likely to be able to afford. Finally, interviews with provincial officers of MACO suggest that no official mandate had been designated to them in supporting smallholder production or market integration, thus undermining the roles envisioned for extra-sectoral programs in achieving sectoral aims as well as any formal support to smaller producers.

In addition to analyzing the effective engagement of smallholders in the biofuel industry to date, it is important to explore the extent to which this interest

group is effectively organized and represented and thus likely to be effective in shaping future opportunities in the sector. According to some civil society actors engaged in the biofuel sector, there is no institution in Zambia that is effectively representing the needs of small-scale farmers. The BAZ and the Zambia National Farmers' Union reportedly have a lot of political muscle, yet this is primarily leveraged in support of the interests of commercial farmers—as was illustrated by their efforts to derive benefits from the CEEC and the views of several stakeholders. The Peasants and Small-Scale Farmers' Association of Zambia, organized to represent this constituency, is largely absent from key debates (Personal communications, Oxfam and the Civil Society Biofuels Forum, 2010). The Northern Province Biofuels Association (NPBA), an association of small-scale farmers and entrepreneurs, is affiliated with the BAZ, but the BAZ does not appear to be representing their interests (ibid). The NPBA was, however, effective in raising awareness among chiefs in the Northern Province about large-scale land transfers to investors. After visiting a minister, permanent secretary of Northern Province, and paramount chief and issuing a press statement against the large-scale plantation model, the paramount chief is reported to have issued a statement to all his chiefs warning them of the risks associated with the same.

7.5.3 Safeguarding against social and environmental risks

The primary mechanisms through which social and environmental risks are mitigated are through land allocation and environmental impact assessment processes. With most major investments involving industrial-scale plantations and the predominant size of land acquisitions and projected expansion falling in the 10,000 - 100,000 ha range (Figure 7.3), risks of displacing rural livelihoods and areas of high conservation value are very real. This section explores the effectiveness of existing mechanisms to safeguard against the risks associated with such large-scale land use changes, with emphasis on processes within Zambia's Copperbelt and Northern Province.

Land allocation practices

Government efforts to promote large-scale investments in agriculture were found to be widespread in Zambia, but with a particularly high concentration in the Northern Province. The abundance of suitable agricultural land along a major transportation corridor (the TAZARA railway), which links Zambia to the Tanzanian ports, attracted many investors to this region. Moreover, the government pointed at the prevalence of shifting cultivation in the area as justification for alienating land for investment in the region (based on the widespread perceptions about the damaging environmental effects of fire).

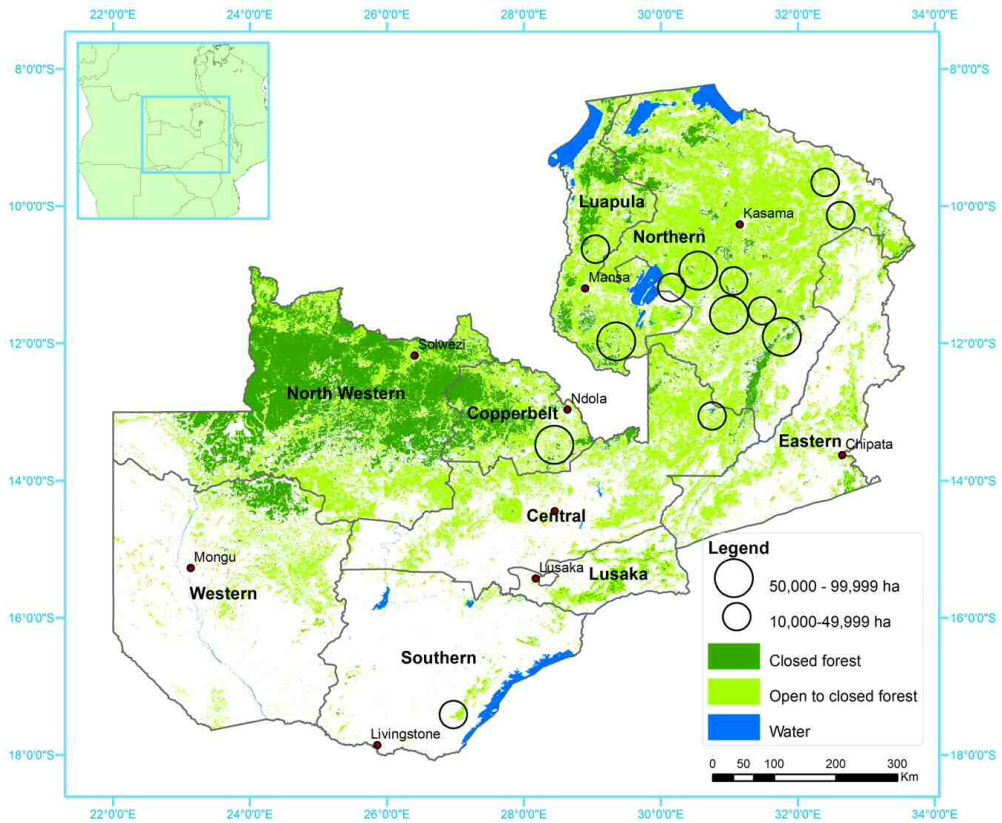


Figure 7.3: Distribution of land acquired for Zambian biofuel investments

Source: Author's representation, with land cover based on ESA (2009)

Two of the four companies studied in this research directly engaged with chiefs to acquire customary land in the province. Both companies, however, relied heavily on support from government intermediaries, notably from the LRWG. The LRWG helped the investors identify suitable land and convince chiefs to alienate land for investment. In the absence of national-level land-use planning to guide such initiatives, limited consideration was given to land availability. One company acquired in this manner at least 303,749 ha in Mpika District, from 5 different chiefdoms, for the cultivation of *jatropha*¹³. At the time of research, the other company, also for *jatropha*, was awaiting finalization of the titling process for 79,300 ha in Nakonde and Isoka District¹⁴.

While chiefs and their constituents have no legal rights to compensation, agreements were in most cases found to be made between chiefs and the investor to lubricate the alienation process. In some chiefdoms (such as in Mpika District), this took the form of new 'palaces' for the chiefs. It is unclear what role these government intermediaries played in negotiating these terms and conditions of alienation, and what proportion of these agreements were committed to paper. In both

cases, the leasehold title was (in the process of being) allocated to the ZDA, which holds land in trust for the investor for the first two to five years before the long-term lease is granted. The ZDA was adopting the same sub-lease construction with two other major investors that were not profiled in this research. At face value, it appears that the district government followed procedures correctly. For example, government surveyors had developed site plans for endorsement by the chiefs and the District Councils had recommended alienation to the Commissioner of Lands.

At the time of research, while one of the investors was titling land from only three chiefdoms, all 11 chiefs in Luwingu, Nakonde, Chinsali, Isoka and Mporokoso Districts had conceded to alienating land by signing initial letters of offer. In addition to the LRWG, members from an industry-led biofuels association and the Ministry of Agriculture and Cooperatives (MACO) reportedly attended negotiations. The company declined some of the offered land due to its distance from key transportation routes, and any land not going to the company was incorporated into the government land bank for allocation to future investors. This suggests that in Zambia, in contrast to land banks held by investment promotion agencies in most other African countries, the government was seeking to transfer portions of customary land to state land irrespective of an expression of interest in specific locations by investors. This clearly reflects the government's strong desire to enhance its role in land control and administration. The President and the Minister of Land, together with other key government officials, have repeatedly urged traditional authorities to release land for investment; they argue that customary land is insufficiently utilized and should thus be put to more productive use through large-scale commercial investments. The question of what constitutes a more 'productive' use, and for whom, remains unanswered.

This orientation reflects Zambia's shifting economic and political ideology, which is also clearly reflected in the FNDP and National Agricultural Policy of 2004 and by the various initiatives to implement these policies. Moreover, this orientation seems to be premised on the assumption that large-scale (predominantly foreign) commercial investments will contribute to sectoral upgrading and modernization. When one of the chiefs in Mporokosho District initially refused to cede land during the LRWG's visit to the area, the Minister of Commerce and Industry personally intervened, leading eventually to the Chief's acceptance¹⁵. That the Minister originated from the district and reportedly "did not want his district to be left out" illustrates the implicit belief among public officials in the beneficial nature of such projects.

The Provincial Administration (through the Office of the Permanent Secretary) was also found to play an active role in large-scale land acquisitions in the province. In 2008, it held an investment promotion workshop where chiefs reportedly made commitments to give out 10,000 ha each (Personal communication, Provincial Agricultural Coordinator of Northern Province, Ministry of Agriculture and Cooperatives, 2010). Members of Parliament were also said to be facilitating large-scale land acquisitions in Chinsali and Mporokoso Districts (Personal com-

munications, Kasama-based staff, Stichting Nederlandse Vrijwilligers (SNV), 2010).

Given the frequent portrayal of 'land grabs' as driven largely by foreign governments and corporations, the heavy-handed role of the government is interesting. The most concerted of these efforts is the Farm Block Development Programme. The ZDA should though be credited for more recent efforts to assimilate some pitfalls associated with its role as a facilitator of large land transactions¹⁶. However, their role in the process certainly does not put them in a position to be neutral mediator in a process in which customary authorities retain the right to say no. When government agencies position themselves alongside investors in seeking to wrest land away from customary authorities for government land banks, the risks associated with large-scale land acquisition are amplified. Moreover, with a government agency becoming such a large landholder, further conflicts of interest could arise, especially when sub-leasing land can so easily become an opportunity for rent-seeking (see, for example, O'Brien 2011 for an account of Kenya's experiences in 'large-scale land graft'). Given that land alienation involves the conversion of customary to leasehold tenure and a permanent loss of customary land rights, it also raises serious concerns over how the objective of recognising and protecting customary rights set out in the 1995 Land Act can be achieved.

The role of traditional and ex-district authorities has also been instrumental in shaping the nature of land transactions. For example, while chiefs are legally required to consult their constituency before alienating land, there was little evidence they had done so comprehensively. In most cases the chiefs involved village headmen; however, these were reportedly token consultations with little opportunity to shape decisions. In the Mpika case, a Village Development Committee consisting of nine members was called upon following the negotiation process to agree whether to welcome the 'development'. It decided to endorse the project without any further consultations. Chiefs appear to be easily swayed by prospects of development and by the 'homage' typically provided by the investor; in almost every case, this involved at the very least a new 'palace' for the chief, but sometimes also cash payments and new vehicles.

Furthermore, conflict of representation and interest appear to be common at the district level. To illustrate, an ex-District Commissioner of Isoka (who accompanied the investors) reportedly prepared an initial letter of offer without tabling the land transfer for discussion by the Council, thus circumventing legislated procedures. The Chief declared, "We came to agree because the DC said, 'this is part of development', and we are behind in development in Isoka District". The above case also involved a one-sided land delineation process by government surveyors, following an initial letter of intent from the chief in which the area and boundaries of land were not specified. This suggests a gap in the consultation of even the Chief himself; he later questioned the agreement when the map specifying the area implicated was presented to him, presumably by the LRWG and investors. Since the conditions of land access are private arrangements determined 'on the side', and

outside of the legislated land acquisition process, the conditions of land transfer are at the discretion of both the investor and subject to the negotiation skills of customary rights holders.

One of the most crucial legal mechanisms to protect customary right requires both the chiefs and District Councils to certify that people's 'interests and rights are not being affected by the approval'. Little value can be placed on this assurance, however: in all the case-study sites, the land allocated to investors was certified as free of encumbrance yet was otherwise actively used for shifting cultivation and various forestry-related activities. This in essence relegates these processes designed to protect customary rights to mere technicalities. In the Farm Block Development Programme, many of the areas, being located in accessible, prime cropland areas, were found to be actively used by communities (Ministry of Lands 2009). Moreover, given that this process results in an official declaration that the land is 'free', it precludes the ability of affected land users to seek redress.

For the land acquisition process for an oil palm project in Mpika District, the involvement of government, though also evident, was less pronounced. The current investors, one of Zambia's largest agribusinesses, acquired the project in 2008 in its inception phase. Although the original investor had already completed an ESIA for the project in 2006, the President had rejected the 2007 land acquisition request on the grounds that it was "too large for one project". The Anti-Corruption Commission opened an investigation of the case to explore the role of the former Minister of Science and Technology's in facilitating the land deal. Despite the issues encountered during the initial land acquisition process, the leasehold title for 20,101 ha of land was approved soon after the take-over, on a 99-year lease. In contrast to the two other cases, however, the leasehold title was directly allocated to the company; since it was not provisional, the title was essentially incontestable. The absence of implementation conditionalities creates greater risk that, if the investment fails, it will not be allocated to other productive uses and/or be used speculatively. Although the majority of land occupied by the plantation falls within wetland areas, 45 families were resettled for project development and two villages located near the nursery site reported to have lost agricultural land¹⁷. Although the company did compensate resettled households in cash and in kind, other affected households were not directly compensated. Otherwise, the company seems to have taken its corporate social responsibilities seriously. It provided an ambulance and a vehicle for one of the chiefs, installing him on the company's board with a monthly salary of approximately US\$ 205; royalties were also deposited into a Community Development Trust (Personal communications, company representative, 2010). Yet while the contributions seem to be comparatively significant, the land acquisition affected no one from the Chief's village directly and the Chief and those close to him are perceived to have captured the bulk of the benefits. Moreover, a complaint was also raised that the company tends to employ people from outside the local community rather than those from affected communities.

In the case of a large-scale plantation project in Mpongwe District, a leasehold title had already been allocated to previous operators. Thus land was not directly acquired from the chiefs or government. Before the current investor acquired the 45,457 ha of land in 2008, the company's three estates were formerly state farms and then, for over two decades, run by a foreign-owned development finance institution (Personal communications, company representative, 2010.) When the company took over, the previous owners had developed only 34 percent of the area, making it vulnerable to encroachment. As the company sought to develop jatropha plantations on the unutilized land, it rekindled a land conflict that had begun under the earlier leaseholder. A second conflict with encroachers also ensued under the new leasehold. The courts settled both conflicts in favor of the company (one prior to the recent land acquisition, and one following it)⁸.

In Kalulushi District on the Copperbelt, when a mining company purchased a large idle commercial farm for development into an industrial zone, an entire village of encroachers was displaced without compensation (Schoneveld *et al.* 2012). Thus, while in theory the purchase of long-standing leasehold titles should minimize land-use conflicts, with many old commercial farms defunct even these lands are rarely free of occupation in practice. With no legal provisions to protect encroachers, they often have fewer legal avenues than customary land users to contest displacement.

Land acquisition procedures were found to have been carried out in most, if not all, cases – even if implemented in a way that was haphazard or against the spirit of legal provisions. Although these regulations provide a number of important checks and balances to protect customary land rights and manage adverse community impacts, their effectiveness is questionable at best. The effectiveness of these procedures is undermined by at least three factors: conflicts of interest on the side of the government, opportunities for personal enrichment by chiefs and the widespread underlying faith in the potential of large-scale investments. Furthermore, the phrasing of legislation as 'actor X must declare' rather than 'outcome Y must be ensured' leaves much wiggle room for those operating in their personal interest.

Compounding the implications of these processes on the livelihoods of customary land users are lack of both legal literacy and access to mechanisms to contest infringements on rights. For example, the Lands Tribunal, which was developed as a mobile and accessible means to deal with land conflicts, has lacked sufficient funds to deal with cases involving customary rights or to become accessible to people outside of Lusaka (Brown 2005, Committee on Agriculture and Lands 2009). High expectations of customary land users regarding long-term development impacts also undermines the fairness of negotiations. There also appeared to be no awareness about the duration of the land lease or that alienation could be permanent.

Environmental safeguards and the ESIA process

Provisions in policies and legislation to mitigate social and environmental impacts are, in large part, in line with internationally accepted standards. However, a number of concerns may be raised about the existing or proposed legal and institutional framework for biofuels. One concern is that the MEWD commits to regulatory oversight for feedstock processing but not for production. According to the executive director of the Energy Regulation Board (ERB), sustainability concerns are upstream and thus not the mandate of the ERB—raising questions as to how such fragmented responsibilities will be effectively coordinated across different government agencies. It is unclear whether and how the energy sector will remain accountable to the social and environmental effects of the large-scale transformations in land and rural livelihoods induced through their policies. While MEWD is proposing a lead role in establishing legal and institutional frameworks for diverse impacts, responsibilities for ensuring local people are protected from exploitation and minimizing negative environmental impacts are seen as those of other ministries (MEWD 2008). The discussion of blending levels also focuses largely on the capacities of the vehicle fleet, with little to no attention on the area of land required to supply fuel from different feedstock and for different blending levels, where this land would be sourced from, and how the consequences of shifts in land use and cover (e.g. food security, displaced livelihoods, environmental impacts) would be regulated or managed.

Yet what about the effectiveness of environmental impact assessment processes in safeguarding against social and environmental risks in Zambia? Based on online searches, the ECZ archives, and stakeholder interviews, we were able to find evidence of only three projects having completed an ESIA or project brief—despite at least six companies having plantation or hybrid business models in operation prior to the time of research. While this may, in part, be due to the early stage of development of many of these ventures, several companies were found to have established plantations in the absence of an ESIA. It is also questionable whether the ESIA process, when duly followed, is sufficient to safeguard against risks. The most significant loophole is the ability of most projects to get by with a project brief, for which key provisions for transparency and independence are absent. Another shortcoming is the ability of project briefs to adequately identify social and environmental risks. The project brief of the large Mpika project acknowledged loss of farmland but argued that "food security will increase due to labor income, which will more than compensate for loss of land area" and "the business-like approach of this project will also help to replace the dubious policy of food-self-sufficiency". Since the project brief considers the project to be "highly positive" in economic and social terms, no impact mitigation measures were proposed outside of an human immunodeficiency virus/acquired immune deficiency syndrome (HIV/ AIDS) program. The rigor and validity of this process is thus debatable, considering how the report assesses potential socioeconomic impacts on the basis of untested and ide-

logically tinted assumptions, in the absence of a baseline survey. Finally, with only 12 inspectors responsible for monitoring compliance of permit holders throughout the country for all sectors, the ECZ also lacks the human resources to carry out its duties effectively (Personal communications, Director, Environmental Commission of Zambia). These factors together suggest that the effectiveness of environmental regulations in curtailing negative impacts from biofuel investments in Zambia is severely constrained.

7.6 Conclusion

This paper seeks to evaluate the extent to which domestic legislation and strategies in Zambia are likely to be sufficient in leveraging the purported social and economic benefits of the emerging biofuel industry. It does so by exploring policy commitments, mechanisms, and early performance around three key policy aims associated with the emerging biofuel industry in Zambia—namely, contributions to national economic development, local livelihood benefits, and the mitigation of negative social and environmental impacts. It does so through the review of key sectoral and extra-sectoral policy documents, key informant interviews with a diversity of stakeholders, and data from company Web sites and key government agencies.

Findings suggest that while the country has been relatively successful in outlining a host of strategies for achieving key policy aims and attracting investments into the sector, capacity to leverage purported benefits to national and local economies and mitigate negative social and environmental impacts is currently limited. The predominance of foreign-owned and -controlled companies, generous investment incentives, and limited ability to hold investors accountable to investment and employment pledges have limited the ability to leverage national economic benefits from the fledgling industry. And while the country's performance in attracting smallholder farmers to the industry through contract farming schemes was remarkable in the early stages, the actual performance of these schemes has been rather dismal. Existing legislation and mechanisms for farmer representation in national policy debates have done little to protect smallholders from bearing the risk of an uncertain industry (German *et al.* 2011b). While the jury is still out on the ability of land and environmental protection policies to safeguard customary rights, the way in which negotiations have been carried out has largely undermined the potential to mitigate negative effects on local livelihoods while leverage the potential of the industry to support livelihood reconstruction for those most affected (see also German *et al.* 2011a). According to some authors, this situation reflects broader structural conditions related to economic reform and the liberalization of land markets, which have created inherent tensions between customary and private land rights (Mpundu 2007). Environmental protection efforts, a complementary mechanism for safeguarding local rights and environmental values, are unlikely to make

up for the shortcomings of land policies and land allocation practices that are stacked up in favor of investors.

It is interesting to note that the debates around large-scale land acquisition and foreign investment within Zambia are far less polarized than the international debates surrounding these same issues. Local debates, even among key civil society organizations, are seemingly characterized by a more nuanced and relatively supportive position toward government and industry. It is difficult to tell whether this is due to a weak civil society and conciliatory attitude toward more dominant players, to the desperate need for "any kind of investment" expressed by affected communities, or to a culture of respectful dialogue among key stakeholders. One clear answer to this question, however, is an apparent shared commitment to stimulating investment in rural areas. While this paper highlights a host of challenges facing Zambia in its efforts to leverage the potential of the emerging biofuel industry, its intention is not to frustrate the hard-working individuals within and outside of the government bureaucracy seeking to leverage investment for the benefit of Zambians. Rather, its aim is to pinpoint opportunities in this early stage of sector development for the country to better leverage the potential of the emerging industry to generate net benefits as well as distributional equity. This may be done by finding ways to monitor investments and hold investors accountable to commitments outlined in IPPAs (while broadening the scope of what is monitored), to channel meaningful levels of public finance, incentives, services, and protections toward smaller operators and related business models, to strengthen the quality and independence of land negotiations, and to leverage the potential of emerging market-based instruments to support the challenging task of ensuring compliance with national legislation.

Notes

- 1 In June 2010, the price of diesel stood at more than US\$ 1.40/l. Zambia phased out fuel subsidies in 2008.
- 2 While pasture per se does not appear to be a primary contributor to global land use change, the cultivation of soy for feed does. Thus, irrespective of whether soy is classified as a feed, food, or biofuel crop, demand for feed must also be considered a globally significant driver of land use change.
- 3 Root causes of this are multiple, including the high degree of political momentum favoring private investment in rural areas, limited legal literacy of affected land users and those negotiating deals on their behalf, limited downward accountability of chiefs and government officials involved in land negotiations, unrealistic expectations of the benefits that would come from investment, and ignorance about the long-term consequences (including the permanence of land alienation).
- 4 *Jatropha* is a perennial crop with seeds yielding nonedible oils and has received great interest in the region due to its purported adaptability to suboptimal growing conditions and to the ease with which the crude oil may be used as a liquid fuel (German *et al.* 2011b).
- 5 The form these have taken in Zambia, contract farming and outgrower schemes, involve pre-agreed supply agreements between farmers and buyers—whether processing companies or large estates (Vermeulen and Cotula 2010). In exchange for sales guarantees, growers are generally provided off-take commitments and inputs that are charged against the final purchase price—often at a specified price or formula (*ibid.*).
- 6 Vision 2030 has a slightly different emphasis, with a focus on “universal access” to energy that is “clean, reliable and affordable” (rather than simply “dependable”).
- 7 This is reportedly required to minimize the practice of hiding behind a claim of investment in order to speculate in land.
- 8 This provision is not stated in Statutory Instrument 89. In practice, this is applied only to areas of land greater than 1,000 ha. Under 250 ha, the chiefs are reportedly empowered to sign off on land deals directly, without the approval of the Minister of Lands.
- 9 While the ZDA may hold land designated for “development” by making a formal request to lands to hold title, they currently hold no land.
- 10 Zambian legislation defines three categories of investments based on the level of shareholding by Zambian citizens: citizen-influenced (5 - 25 percent ownership), citizen-empowered (25 percent), and citizen-owned (50.1) Available at <http://www.ceec.org.zm/> [accessed on October 25, 2011].

- 11 The Draft Biofuels Industry Strategy states that contracts between processing companies and farmers “will come with an obligation to supply approved crops grown only in designated areas.” What is meant by “designated areas” is unclear.
- 12 See German *et al.* (2011b) for details.
- 13 The 10 sites specified in the company's Environmental Project Brief (2010) amounted to 510,183 ha, though geo-referenced site plans were provided for an area covering 303,749 ha.
- 14 The company was actively seeking to acquire more land. While media reports suggest 2 million ha were requested, according to the ZDA, the company would gain access to approximately 300,000 ha (Personal communications, senior official, ZDA, 2011).
- 15 The visit was originally to focus exclusively on districts along the TAZARA railway, where the investor had expressed an interest, but the Minister reportedly insisted that Luwengo and Mporokoso also be included.
- 16 As observed by changes in awareness and orientation that seem to have occurred between two periods of field research conducted in May/June 2010 and November 2010.
- 17 Reported impacts included loss of orange groves and cassava fields in the uplands, and the loss of sugarcane and mango trees and a declining fish population (from the establishment of pump irrigation for the nursery) in the swamps.
- 18 In the conflict that was rekindled, affected households that had moved back into the area were given transport, food and tents to support the relocation in an extra-legal settlement; in the other, settled in the Supreme Court following a repeal of an earlier ruling by the company; the only ruling in the community's favour was reportedly a grace period to allow crops to be harvested prior to relocation.

Conclusion

Outcome Determinants and Implications for Governance

8.1 Introduction

The case studies examined in the previous five chapters have highlighted the diversity of contexts in which large-scale agricultural investments are promoted, facilitated, and established. The case studies suggest that such investments are typically accompanied by high local costs associated with displacement, dispossession, and environmental degradation. Not only does this give reason to question the general potential for sustainable and responsible agricultural investment, but it also casts doubt on the capacity of host countries to effectively regulate these investments. In this regard, the uniformity of outcomes is an interesting conundrum: can this be attributed to systematic deficiencies in the content of the law, or is the law rendered meaningless by poor implementation and enforcement, or are there other structural contributing factors outside formal governance structures? The case studies have illustrated that an answer can be found in all three.

By means of a cross-country assessment, this concluding chapter will further explore the different outcome determinants. Section 8.2 will proceed to compare project outcomes and highlight the various similarities between the countries. Section 8.3 then seeks to explain these outcomes and proposes eight key explanatory variables. Since these findings have implications for sector governance, section 8.4 will reflect on different governance instruments at both the national and international level. This section will show that sustainable and responsible agriculture investments are only achievable through far-reaching substantive and institutional

reforms. However, it raises a number of concerns regarding their political and technical viability.

8.2 Project outcomes

Despite differences in the regulatory, procedural, institutional contexts (see Annex A4 for a comparative analysis), the analysis of large-scale agricultural projects in the four countries reveals striking parallels in terms of local outcomes. Many of these outcomes emanate from the long-term alienation and expropriation of important livelihood resources. Of the 38 projects assessed across the four countries, all involved loss of access to either forest-, pasture-, or farmland (see Table 8.1 for a country-disaggregated overview). The majority of projects are located within forest-agriculture mosaics, characterized by patches of farmland used for land extensive smallholder agricultural production systems, such as shifting cultivation and flood-retreat agriculture, and secondary forests, which is typically an important source of non-timber forest products (NTFPs). Five projects in Ethiopia, two in Ghana, and one project in Zambia are located within (flooded) grass-/shrublands, which are typically dominated by agro-pastoral production systems. In Ethiopia and Nigeria there is a greater tendency for Greenfield projects to avoid densely populated areas; though in Nigeria this did not apply to areas where land users have no formal user claims (e.g. protected areas and defunct state farms).

Only in five cases was there evidence of (plans for) compensation payments. Where compensation was payable, these were only for loss of individualized land-holdings and not for loss of access to common property resources such as forest, pasture, water, and sites of cultural and social significance. In one case in Ghana, replacement lands that were cleared by the investor was offered to some farmers within the estate in lieu of monetary compensation; though these lands were reportedly inadequately (owing to rocky soils and limited extent) to maintain output levels.

Table 8.1: Projects involving loss of access to land and compensation

Nature of loss	Ethiopia (n=10)		Ghana (n=9)		Nigeria (n=14)		Zambia (n=5)		Total (n=38)	
	A	C	A	C	A	C	A	C	A	C
Loss of access to farmland	9	2	9	2	12	1	5	0	35	5
Loss of access to pastureland ^β	5	0	2	0	0	0	1	0	8	0
Loss of access to forestland	3	0	8	0	11	0	4	0	25	0
<i>Total involving loss of access</i>	10	2	9	2	14	1	5	0	38	5

A= number of projects where land users have been affected by a particular type of loss

C= number of projects where land users have been compensated for a particular type of loss

^β Pastureland includes only lands which are used permanently and exclusively for grazing purposes

It should be recognized that during early phases of project development, adverse effects associated with loss of access to land tends to outweigh possible developmental effects related to *inter alia* employment generation, technological spillovers, and infrastructure development. Particularly in the absence of compensation, project affected persons tend to experience some difficulties in adapting to loss of traditionally important livelihood resources and in capitalizing on new opportunities. With 89 percent of sampled projects established less than five years before field research activities, some negative biases may be present in the findings.

Notwithstanding the caveat, findings do expose a number of important patterns that are worthy of further consideration. Firstly, where the loss of access to farmland had taken place, project affected persons often experienced difficulties in regaining access to new farmlands of similar extent and quality, which typically resulted in a decrease in agricultural output. Similarly, the destruction of forests from which NTFPs are harvested reduced cash income derived from marketing NTFPs and weakened its role in smoothing consumption. Although the effect on pastureland was more limited at the time of research, particularly in the Ethiopian case studies, insufficient suitable pasture is available outside project areas in order for pastoralists to retain herd size. As a result, project affected persons are in most cases required to abandon or downscale traditional livelihood activities. Findings suggest that the most vulnerable and marginalized sub-groups, notably women and non-indigenes, are disproportionately impacted by this loss of access to resources.

While the generation of new employment opportunities is generally the earliest and most direct project benefit, project affected persons rarely consider these opportunities to adequately offset lost production. Casual labor is the most abundant and locally accessible form of employment, offering between two to five months of employment per year (typically during planting, weeding, and harvesting). This type of employment offers little security and no secondary benefits; in contrast to contract laborers, which are hired for more technical and managerial posts. Despite the relative abundance of casual employment opportunities, the participation of project affected persons was found to be limited; often taken up only by 'idle' household members. Particularly in Ethiopia and Nigeria, waged employment was often also not a socially desirable occupation. The largest proportion of employment opportunities tended to be allocated to 'outsiders' with more technical or manual experience in plantation agriculture. Although three investors agreed to implement preferential hiring policies, only one investor in Ghana lived up to these agreements.

Frequently lauded technological and market spillovers were also rarely observed at the sampled projects. For example, none of the projects incorporated smallholders into their value chains in the form of outgrower or tenant farming schemes (see Table 8.2 for an overview of investor initiatives in support of affected communities). Although two investors in Ghana had plans to provide agricultural inputs to project affected persons to support intensification in the context of rising

land scarcity, after more than four years of implementation, initiatives to that effect were yet to materialize. In Nigeria, three companies did offer some limited training and development, though this was limited to one-time tertiary education scholarships to one or two individuals per affected community. Developmental interventions to compensate for loss of livelihood resources were similarly rare; with only one company in Ethiopia supporting alternative livelihoods. Here, 250 beehives were allocated to affected communities to offset the loss of access to NTFPs. While new market opportunities could hypothetically be derived from the influx of project employees, at none of the projects did affected communities consider these benefits discernible. This was mainly attributed to lack of surplus production or price differences with traditional marketing channels.

Table 8.2: Investor initiatives

Type of initiative	Ethiopia (n=9)	Ghana (n=6)	Nigeria (n=8)	Zambia (n=4)	Total (n=27)
Contract farming schemes	0	0 (1)	0 (1)	0	0
Provisions of inputs	0	0 (2)	0	0	0
Training and development	0	0	3	0	3
Alternative livelihood initiatives	1	0	0	0	1
Preferential hiring policies	0	1 (1)	0 (1)	0	1
Physical infrastructure	1	0	1 (1)	0	2
Community development funds	0	0	0	1	1
Periodic royalties	0	6	5	0	11
<i>Total number of investors engaged in one or more activities</i>	1	6	5	1	13

Note: Planned initiatives are depicted by brackets. Since initiatives are investor-, rather than project-, specific, data is depicted by investor.

The most frequently observed community contributions were in the form of royalty payments. In Ghana and Nigeria, most investors agreed to make annual payments to traditional authorities for use of their land. In most cases, these payments were fixed and predetermined, though in two cases in Ghana, these took the form of profit-sharing arrangements. However, only in two communities in Nigeria were these revenue flows used for the benefit of the wider community - typically for the rehabilitation or construction of community infrastructure, such as schools and community centers.

Besides high socio-economic costs and limited development contributions of investment projects observed across countries and case studies, these projects also tend to threaten ecologically and culturally significant landscapes (Table 8.3). As indicated above, most projects encompass forested areas. While the case studies in Ghana and Zambia were mostly located within open to closed canopy woodlands, a number of projects in Ethiopia and Nigeria also extended across primary tropical forests. Particularly in the latter two countries, many projects were partly or wholly

located within nationally-designated protected areas. In Ethiopia, many projects also encompassed wetland areas and UNESCO World Heritage sites¹.

Therefore, in sum, large-scale agricultural investments exhibit little compatibility with customary property and production systems. Rather than contributing to local productivity, these investments instead tend to crowd out local systems of production. With few apparent synergies, early evidence suggests that investments are unlikely to make meaningful contributions to sustainable and equitable rural development.

Table 8.3: Projects located within ecologically and culturally significant landscapes

Type of landscape	Ethiopia (n=10)	Ghana (n=9)	Nigeria (n=14)	Zambia (n=5)	Total (n=38)
Secondary forest	0	8	5	3	16
Primary forest	3	0	7	1	11
Wetlands	3	1	0	1	5
UNESCO World Heritage site (cultural)	4	0	0	0	4
Protected area	5	1	7	0	13
<i>Total projects located within one or more landscapes</i>	9	8	12	5	34

Note: Some project extend across numerous types of landscapes, thus are entered multiple times. Only for secondary and primary forests are project counted once. For example, a project that encompasses both primary and secondary forests will be entered only under the 'primary forest' category.

8.3 Key outcomes determinants

The findings summarized in the preceding section suggest that, despite some variations, large-scale farmland acquisitions across the four countries are predominantly characterized by similarities: customary rights over land are extinguished without adequate redress; few benefits accrue to affected communities; and ecologically and culturally significant landscapes are being converted. In other words, as per the description in the introduction, large-scale agricultural investments in the case study countries are unable to effectively reconcile environmental conservation, social equity, and economic objectives in a manner that respects basic human rights. Considering that the consent of different local interest groups was in none of the cases sought, the right to choice and self-determination has across the board been heavily compromised. This section will try to explain this uniformity of outcomes. It will touch on the deficiencies in the law (Section 8.3.1) and highlight the institutional factors contributing to the implementation gap (Section 8.3.2 - 8.3.5), which is analyzed in detail in Annex A4. Along with issues of governance, this section will also consider structural social and economic factors (Section 8.3.6 - 8.3.8).

8.3.1 Deficiencies in the law

As illustrated in Annex A4, the legal underpinnings for regulating large-scale farmland investments exhibit numerous deficiencies. Three major issues though deserve further emphasis. The first, and arguably most important, issue relates to the rules that govern customary land (use) rights (see Table 8.4 for an overview). For example, all four countries lack sufficiently comprehensive provisions to consult and elicit the consent of land users about impending land alienations. Although Ghana and Zambia in theory offer land users some degree of protection from involuntary expropriation by conveying customary land management institutions (e.g. traditional authorities) with alienation rights, in the absence of clearly defined duties and accountability structures, land users are subject to the goodwill of these institutions to act in their interests. Only in Zambia are conditions for alienation specified; for example, chiefs should consult affected persons and must declare that no interests in land are adversely affected by alienation. Although Ethiopia and Nigeria lack such representation structures, unlike Ghana and Zambia, land users are granted the right to be compensated for unexhausted improvements to the land - albeit in Ethiopia this is in practice confined to holders of land certificates. The limited legal rights to subsequent land revenues, such as ground rent, which in all cases except Ghana is appropriated in their entirety by government, further deprives project affected persons from an opportunity to recover lost assets. These threats are compounded by the long duration of leasehold titles in the absence of conditionalities (e.g. in Ghana, Nigeria, and Zambia), the permanent reclassification of land (e.g. to state land in Zambia and for investment use in Ethiopia), and the lack of limits on land size (e.g. in all countries except Ethiopia).

Table 8.4: Summary of key parameters on customary rights protection

Type of provision	Ethiopia	Ghana	Nigeria	Zambia
Customary ownership recognized	X	YES	X	X
User rights are protected from expropriation for investment	X	X	X	YES
Consent of community representatives required	X	YES	X	YES
Consent of community required	X	X	X	X
Community consultations required	X	X	X	YES
Right to compensation for loss of farmland	YES	X	YES	X
Right to compensation for loss of settlements	YES	X	YES	X
Right to compensation for loss of common property resources	X	X	X	X
Right for communities to share in land revenues	X	YES	X	X
Performance conditionalities in title	YES	X	X	X
Maximum allowable size of title	YES	X	X	X

The second issue relates to weaknesses in the procedures for identifying land. In Ghana, Nigeria, and Zambia, no comprehensive procedures are in place that direct investors to those lands where land use conflicts can be kept to a minimum. Only in Ethiopia are there formal criteria and procedures for identifying land appropriate for agricultural investment. However, all countries lack cross-sectoral land-use plans to support such efforts. Additionally, customary land has in none of the countries been properly surveyed and demarcated. Therefore, the only areas off limit to agricultural investors are protected areas, such as forest reserves and national parks.

The third issue relates to the limited mechanisms to capture the potential developmental opportunities of these investments. For example, except for the AISD in Ethiopia, there are no government institutions that are expressly mandated to promote spillovers. Furthermore, none of the countries have legislation in place that stipulate investors' obligation to community development or that requires provisions to such effect to be incorporated into land contracts or investment permits.

It should though be noted that deficiencies in land and investment law are in part compensated by more progressive environmental law. Since all countries adopted Environmental and Social Impact Assessment (ESIA) procedures modeled after international best practices, there remain alternative legal avenues for addressing the aforementioned issues. Albeit often selectively enforced, the ESIA process is not only meant to inform project siting, but is also intended to capture issues related to the protection of customary rights, such as community consultation and compensation, and, as part of the ESIA's impact mitigation requirements, for formalizing investor commitments toward community development. The excessive reliance on the ESIA process to address such a wide array of investment-related risks and opportunities does though betray the limitations of the laws that are principally intended to address issues of tenure security and poverty reduction.

8.3.2 Elite capture

The absence of sufficiently rigorous checks and balances on the conduct of traditional authorities in Ghana and Zambia exposes the land alienation process to iniquitous and exploitative conduct. In practice, customary elites were found to reap substantial benefit from the alienation process; even in Nigeria where chiefs have no legitimate authority over land. The negotiation encounter was typically characterized by significant opacity and secrecy, with outcomes rarely made public. In each of the three countries, chiefs tended to point to customary law in justifying what can otherwise be perceived as rent capture. For example, when 'outsiders' pay homage to chiefs this customarily takes the form of schnapps and commodities such as sugar, meal, and cooking oils; however, in the case of the alienation of large areas of land, chiefs have been shown to demand large monetary or material contributions. In Ghana, most investors made one-off cash payments; in Nigeria,

'consultation and traditional rites fees' were demanded, and in Zambia, chiefs often required, besides cash, new 'palaces' and vehicles.

While Nigerian and Zambian land laws restrict chiefs from profiting from land transactions and the Ghanaian constitution requires that most land revenues be distributed between stools and lower tiers of government, the fuzzy boundaries between what could be considered a 'sales price' or 'land revenue' and 'custom' reveals some of the fault lines of these pluralistic legal systems. Chiefs are able to capitalize on these legal ambiguities to derive maximum personal gains from alienation. In Ghana, chiefs are, as a result, more inclined to accept large one-off 'homage' payments than formalize more substantial annual rent payments, most of which it has to relinquish to government. Regardless, both one-off and periodic payments are rarely disseminated within the community or reinvested and put into productive use, further illustrating the limited downwards accountability of chiefs². In all three countries, chiefs exhibited considerable personal entitlement to land and its proceeds. Considering that most chiefs failed to negotiate terms favorable to their constituency also highlights that many chiefs likely prioritized individual over collective interests.

As most case study communities expressed a strong sense of alienation from government, it is unsurprising that government actors were more inclined to act as facilitators rather than regulators of land alienations. Although each government has made numerous attempts to rein in the political power of chiefs and undermine its institution, the absence of the state from the countryside continues to bestow on chiefs important political functions. Therefore, in practice, government was observed to actively foster chieftaincy relations as a means to mobilize people and influence perception. Since traditional institutions offer the only real space for political participation, chiefs wield, as 'vote-brokers', significant political leverage. As a result, most local governments are reluctant to interfere in chieftaincy affairs, which undermine the opportunity and their potential to act as community representatives when negotiating equitable terms of alienation or approving leasehold titling.

Although in Ghana, the government was largely absent from the negotiation encounter, in Nigeria and Zambia, they frequently played a prominent role. Highly placed politicians, including ministers, commissioners, and members of parliament, were often found to support investors in acquiring land; often without clarity in what capacity they acted. When faced by recalcitrant chiefs, such officials often played important roles in wooing chiefs into acceptance. Although it is difficult to ascertain that personal gain is derived from their participation, in both countries skepticism as to their roles abound. The alienation process is generally perceived to be an important opportunity for government elites to capture rent; in a number of cases in Nigeria, numerous officials have allegedly received substantial payments to facilitate land deals. The approval of a large number of deals that are not legally eligible for alienation further points at widespread processes of rent-seeking within different levels of government³.

Issues of elite capture were not apparent to the same extent in Ethiopia. Although this can partially be credited to the absence of local landed elite, it can also be ascribed to the recentralization of land allocation functions to the federal level. For example, prior to 2010, when regional and district governments were still the primary agents of alienation, corruption in the alienation process was reportedly rampant. This related in particular to the allocation of land to 'non-investors', who were interested more in the extraction of timber resources than investing in land development. The near elimination of this practice suggests that there may be some merits to a coherent, centralized allocation system. Moreover, with the location of land earmarked for investment and most leasehold agreements made available to the public, the Ethiopian land allocation process is considerably more transparent and, therefore, less prone to rent-seeking.

8.3.3 Co-optation and conflicts of interests

In all the countries except Zambia, lower levels of government are the primary recipients of most, and in some case all, land revenues generated from investment. Within these decentralized governance structures - where district and regional governments are increasingly held accountable for fund raising - district officials are incentivized to facilitate land-based investments. With most investors making commitments towards the construction of physical infrastructure, the alleviation of the burden of service delivery further reinforces this tendency. However, such processes undermine the central condition of decentralization: effective representation. Therefore, where local government in theory should be downwardly accountable to customary land users and could in that capacity play an important role as an intermediary in the alienation process, conflicts of interest result instead in stronger alignment with investors. In all four countries, local government was, accordingly, observed to be primarily an investment facilitator; even, or perhaps especially, in Zambia, where district councils have the most explicit regulatory role.

In Zambia also, since the ZDA is increasingly positioning itself alongside investors to wrest away land for land banks, it has compromised its mandated role as a neutral mediator⁴. With a government agency becoming such a large landholder, further conflicts of interest could arise, especially when sub-leasing land can so easily become an opportunity for rent-seeking. In Ethiopia, conflicts of interests are also evident within the AISD, which is, on the one hand, charged with investment promotion and facilitation while, on the other, also being allocated responsibilities for the ESIA process and compliance monitoring. Also in other countries, since investment promotion agencies (IPA) are often responsible for appraising the economic viability of business plans, it is questionable whether the necessary rigor is applied given their promotional mandates.

The aforementioned conflicts of interest are arguably exacerbated by co-optation and cronyism. For example, in all four countries, investors were found to

have offered well-remunerated positions to ex-politicians or to later hire government officials involved in enabling their land acquisition. In Ghana and Nigeria, there were even incidences where government officials were hired as 'consultants' while in public service. In Nigeria, key posts within the state administrations are rarely merit-based; the majority of commissioners were found to be rotating between different commissioner or director posts. Not only does this result in a close circle of political elites disinclined to denounce one another, but also creates situations where commissioners responsible for facilitating a land deal are later placed in a position where they are mandated to regulate the investor⁵. Efforts to develop a more transparent land bank received significant internal resistance, since this it was argued would limit opportunities for rent capture.

Such activities are not only limited to government - numerous chiefs, or relatives of chiefs, were too found to have rather conflicting roles. In Nigeria and Zambia, for example, some chiefs or their kin filled salaried positions at projects, sometimes in the somewhat dubious position as company-community liaison. In Ghana, it was relatively commonplace to have chiefs also be project shareholders. Such appointments confound existing accountability and incentive structures and serve to compromise those that are mandated to regulate investments.

8.3.4 Capacity constraints and cross-accountability

While self-interested behavior is a key outcome determinant, it must be acknowledged that issues of capacity and intra- and inter-organization collaboration also played an integral role. Such issues are particularly evident during the ESIA process, specifically, and in environmental protection, more generally. For example, in all four countries, environmental protection agencies (EPA) tend to be critically understaffed and underfunded. As a result of these constraints, none of the EPAs were in a position to monitor whether projects had met their ESIA requirements. For instance, 10 of the 38 sampled projects had completed an ESIA at the time of research (see Annex A4 for a more detailed discussion on implementation issues within the ESIA process). In Ethiopia and Nigeria, these agencies even lacked the resources to carry out any compliance monitoring activities. Lack of complementarities between sectoral agencies further contributes to an institutional framework devoid of enforcement capacity. In Ghana, Ethiopia, and Zambia, for example, the EPAs could in theory benefit from ministries of land or agriculture, IPAs, or even local government, and they also from one another, to identify investors requiring an ESIA and related legal violations. Without clear accountabilities and collaboration mechanisms between agencies, in practice, EPAs are rather isolated. In Ethiopia, the AISD even appears to purposefully keep various environmental authorities uninformed; ostensibly out of concerns that their intervention may jeopardize investor progress.

In Nigeria, on the other hand, EPA ignorance, or ignorance of any other government entity for that matter, cannot be claimed, since, as a result of strong interpersonal relations between senior officials, there appears to be high levels of general awareness of investors and related implementation issues⁶. With large numbers of new investment lands also located within protected areas, the failure of environmental authorities to address such issues points at variable capacities to intervene. Even though many investors in Nigeria are in clear violation of numerous federal laws, due to the reluctance to implicate fellow officials (and related career ramifications), officials within environmental ministries and agencies were inclined to turn a blind eye. In Ethiopia, environmental authorities were similarly unwilling to contest AISD allocations within protected areas. Such examples highlight the importance of power differentials relative to formal authority in shaping inter-institutional behavior.

Although the countries have adopted relatively progressive environmental policies and regulations during the 1990s, they do not appear to be adequately institutionalized. Even the environmental authorities jest at their own purpose; the director of the Zambian EPA, for example, considered the EPA to be "primarily a place for interns to gain work experience", while, in Nigeria, a senior official within the Ministry of Environment characterized the ministry as a being merely a "trash-collection enterprise". With all four countries being signatories of numerous conventions emanating from the 1992 Rio Summit, most environmental policies and the ESIA procedures are not products of internal domestic pressures, but largely of multilateral politics and technical support. Not only does that imply that context-specific realities are not adequately captured in procedural and institutional design, but that newly formed institutions like the EPAs are not budgetary priorities and other institutions have insufficiently internalized the merits of the ESIA to be willing to lend support to it⁷.

8.3.5 High modernist ideologies

The actions or lack of actions are typically produced, justified, and legitimized by rationalizing narratives on the virtues of private sector investments. Without exception, agricultural investments are touted by government for their potential to contribute to an array of official policy objectives; ranging from macro-economic objectives related to food security and foreign exchange earnings to poverty reduction objectives through market and technological spillovers and employment generation⁸. This discourse is fed and nurtured by hegemonic multilaterals that view minimal state interference in agricultural (input) markets and agricultural FDI as integral to reinvigorating Africa's ailing agricultural sector. The much criticized World Bank (2008) report *Agriculture for Development* elucidates this line of thinking; contending that the future of smallholder agriculture lies predominantly in global productive integration - facilitated, for example, by fostering linkages with

large agribusiness (Akram-Lodhi 2008, Oya 2009, Michael and Schneider 2011). With past smallholder-oriented interventions failing to achieve objectives and considering the gradual decline in public and aid spending on the sector, government receptiveness to new capital inflows comes as no surprise. In each of the four countries, high project costs, elite capture, and legal violations were regularly justified in the name of 'development'.

Discriminatory ideologies about customary land-use practices often provide further credence to these views, with assumptions that land without houses or permanent crops is 'unused' and 'unproductive' and land uses involving fire or itinerancy are by definition environmentally destructive. In Zambia, for example, government actors strongly condemned the predominant slash-and-burn practices, while in Nigeria, smallholders were viewed as being innately opposed to technological progress. In Ethiopia, land extensive livelihood systems, notably agro-pastoralism, and tribal practices were widely perceived as 'backwards' and 'uncivilized'. In justifying lack of community participation, many government actors argued that transitions to more (capital) intensive forms of production can only be achieved through the demonstration of modern agriculture practice.

The discussion in the Ethiopia chapter on why 'high modernist' interventions continue to have such political traction, despite its long history of failings, becomes quite relevant here. In all four countries numerous large-scale rural interventions - in the form of state farming and resettlement schemes, for example - have been tried and tested without any notable success between the 1960s and 1980s. In trying to understand why projects so similar in nature continue to garner such support, valuable insights can be drawn from Foucault (1979) and Scott (1998). Both argue that governments tend to organize their subjects in such a way as to make them more amenable to state intervention; to transform society into a more legible and administratively convenient format⁹. With most communities studied here poorly articulated to state and market, opportunities to exert greater territorial authority over non-state spaces could, therefore, also be an important factor underlying receptivity to farmland investments. Following this reasoning, it could be posited that since state-led experiments in social and economic engineering have lost their viability in the context of liberalization and democratic reforms, the state is increasingly embracing the private sector as a source of capital and inertia for rural transformation - signifying merely a change in approach, not objective.

While such discourses resonate strongly across the various layers of government, highly westernized notions of modernity also dominate within affected communities. In almost all communities, barring some agro-pastoralists communities in lowland Ethiopia, respondents were found to be exceptionally sympathetic to investment. Typically, high expectations were expressed of well-remunerated employment, improved access to physical infrastructure, such as school, hospitals, electricity and clean water, regional prominence, and urban amenities. Such expectations often serve to legitimize elite capture, undermine contestation, and discourage affected persons from demanding just compensation.

8.3.6 Limited contestation of rights infringements

In Ghana and Zambia, dispossession was found to be rarely contested. While high expectations of future development prospects were an important inhibiting factor, collective action was also actively suppressed by local district government and chiefs. They were, for example, observed to readily exploit these expectations by warning discontented persons that any conflict may deter the investor from continuing with their project or discourage them from fulfilling their developmental promises. Fear of the latter was regularly expressed as a primary reason for not demanding that their rights be respected. Although in some cases community resentment was directed at village-level chiefs for not adequately representing community interests, deference to the authority of senior chiefs responsible for land alienation (e.g. paramount chiefs) often confined such conflicts to intra-community affairs. Moreover, since chiefs are typically considered to be the 'custodians of tradition', by holding the power to define what constitutes customary law - for example, in justifying their authority to alienate or lack of consideration for community interests - it is difficult to hold chiefs accountable through customary conflict resolution channels.

Although Nigerian social structures strongly resemble those of Ghana and Zambia, community responses were more varied in intensity. Associational life in Nigeria is comparatively strong - with empowered youth and women councils providing important countervailing forces to chiefs. In communities with relative weak chiefs and/or those chiefs dissatisfied with company contributions, youth councils, in particular, were responsible for rallying communities against companies (e.g. in demanding compensation or better employment conditions), which in one case bore fruits. In the majority of communities, however, autocratic chiefs, whose power was often found to be consolidated by politically-influential kin within the public administration, were generally successful in warding off community opposition.

The strongest contestations were observed in Ethiopia, where three of the ten projects experienced one or more violent altercations with affected communities and at least six became object of protests; typically, as a direct result of dispossession or displacement. It could be argued that due to the absence of politically-legitimate customary institutions that could be co-opted, community discontent could not be subdued in the manner evident in the other three countries. However, with companies lacking any real accountability to communities (as discussed below) and local government admonishing discontented communities for being 'anti-development', contestation in Ethiopia failed to bring any tangible results.

In similar fashion to chiefs, in the four countries, local government was, despite their representative functions, rarely found to side with communities. This highlights a serious gap in customary rights protection in all the countries, namely that there are few viable independent pathways for affected land users to seek redress beyond the pathways through which land was originally acquired (e.g. chiefs

and government). Although in theory, many communities did have legal grounds for contesting rights infringement before the judiciary, only in one case in Zambia (which was ruled in favor of the investor) were any such actions taken. By and large, lack of 'legal capacity to claim', along with chiefly deference and high future expectations, greatly contributed to failure to pursue legal action.

Civil society organizations (CSOs) could play an important role in assisting communities in overcoming these barriers to contestation. Additionally, and perhaps more importantly, CSOs could function as an impartial community representative in negotiating fair terms of alienation or opposing alienation prior to the fact. In practice, though, CSOs were rarely found to become involved in such land-related conflicts and if they did they often missed the most important window for contestation (e.g. prior to alienation). This can partially be attributed to the opacity of the negotiation encounter and the inability of outsiders to become aware of land deals in a timely manner. Even so, in the case of Ethiopia and Nigeria, the state also actively resisted CSO participation - in Ethiopia through new regulatory obstacles and in Nigeria through intimidation of both CSOs and the communities they represent. Despite this, CSO advocacy was stronger in Nigeria than the other countries. However, the two campaigns that did take place were both compromised as community representatives typically withdrew their support following alleged political interference. Whether this is a result of threat or co-optation is unclear.

8.3.7 Incompatibility of 'traditional' and 'modern' production systems

As noted in the outcome section, few affected communities effectively capture potential project benefits. With employment, it was observed that most households were unprepared to sacrifice important livelihood activities or considered employment to carry social stigmas. This has multiple reasons, such as social identities derived from traditional livelihood activities, fear of loss of (nutritional) self-sufficiency, insecurity of employment, and low salaries. Since employment opportunities also tend to be particularly abundant during their own most intensive farming months, employment is largely an activity thrust upon those household members that are not actively engaged in other economic activities. Thus, in practice, the burden of lost production largely falls on women and youths, who may have other important productive engagements (e.g. household duties and schooling). As a result, household labor shortage is an important factor limiting community participation in employment. In Ghana, youth participation in plantation employment in some cases also gave rise to intra-community conflicts. This was largely the result of the inability of plantation workers to perform traditional community labor obligations, notably collective field clearance activities.

Although affected households expressed greater interest in the participation in contract farming schemes or in supplying investors on an arm's length basis, at the time of research none of the investors had implemented initiatives to that effect.

Although some investors expressed plans to implement such schemes in time, their feasibility appears to depend on crop and market-specific factors. In the Ethiopian cotton and the Nigeria rubber sector, for example, most investors did not wish to encourage smallholder cultivation. Since these crops have little domestic value without a well-articulated market, by creating off-take opportunities, investors feared estate theft would be promoted. Faced by similar market conditions, this could also apply to jatropha investors in Ghana and Zambia.

In Nigeria, on the other hand, communities had a long history of oil palm cultivation, processing, and marketing. Since communities are active throughout the value chain, including value addition, investors were perceived rather as competitors than new market outlets, especially since investors were only interested in purchasing fresh fruit bunches. Such examples illustrate that many of the assumed spillovers are unlikely to be materialize due to inherent social and economic conflicts between small and large-scale systems of production.

8.3.8 Misalignment of corporate accountability

One of the primary factors underlying the limited investor regard for principles of social justice is the lack of meaningful accountability mechanisms. For example, in Ethiopia and Zambia, and in many cases in Nigeria, the state is the only contractual counterpart of investors and in that capacity bears a number of responsibilities to investors. For example, in Ethiopia and Nigeria, it is the responsibility of the state to ensure that the land is free from encumbrance and all existing interests in land are dealt with before allocation. Similarly, in Zambia, with investors increasingly sub-leasing land from the ZDA, unresolved land conflicts are the burden of the ZDA, not the investor. In the absence of tripartite agreements, many investors in these countries were unwilling to accommodate or engage with discontented communities and would instead refer these to the government. Since leasehold contracts rarely detail any far-reaching commitments towards host communities and with government more inclined to hold investors accountable on the basis of economic, rather than, social performance, companies have few incentives to actively foster company-community relations. As also noted by Peluso and Lund (2011), investors are becoming the new landlords; though, in contrast to the traditional landholding class, investors are much less 'personable' to communities.

That said, the comparatively strong local institutions in Nigeria did prompt many investors to actively seek a 'social license to operate'. However, engagements to that effect were often found to be directed at powerful (and previously co-opted) community groups, such as the chiefs and youth councils, with capacity to appease community concerns. Similar observations were also made in Ghana, where chiefs too are the primary negotiation counterparts. Here, it was observed that as a result of an inequality of arms and lack of (state) intermediations, investors were generally able to negotiate highly one-sided contracts that would see social demands rele-

gated to mere verbal commitments. Therefore, it can be concluded that the vast majority of case study investors appeared to be disinclined to adopt elaborate and inclusive CSR strategies when these are not required by their contractual obligations.

In this regard there appeared to be no significant differences between companies of European or North American origin and companies of, for instance, Asian or Middle-Eastern origin (in contrast to how the media tends to portray the latter). Similarly, with few spillover effects, no discernible difference can be observed between type of crop or end-market (e.g. food or biofuel). What the studies do suggest is that commitments to international roundtables (e.g. Wilmar to the RSPO), trade prospects with countries with sustainability standards (e.g. a number of biofuel companies in Ghana and Zambia that explicitly target the RED regulated EU market), and subjection to more stringent due diligence practices (e.g. companies financed by the IFC and the Development Bank of Ethiopia) did influence regulatory compliance. For example, eight of the ten projects that completed an ESIA were subject to one or more of these market/trade instruments, in contrast to one of the other 28 projects that failed to complete an ESIA at the time of research. Whether this is necessarily positive from a social perspective can though be debated - particularly since having an ESIA is no guarantee for good corporate citizenship. For example, two major investors in Ghana and Zambia opted for less forested land and to protect areas of high conservation value in order to meet the EU RED carbon savings requirements. However, the remaining land suitable for conversion was almost exclusively part of the subsistence farming system¹⁰.

8.4 Implications for governance

As discussed in the introductory chapter, three political perspectives can be applied to the governance of land deals, namely (a) regulate to facilitate, (b) regulate to mitigate negative impacts and maximize opportunities, and (c) regulate to stop and roll back land deals. Highly polarized perspectives underlie this categorization, as is perhaps best reflected in the different positions on codes of conduct. This has pitted organizations such as the World Bank, IFPRI, FAO, and the ILC (in the facilitate or mitigate camp) against left-wing academics *cum* activists sympathetic to radical peasant movements such as La Via Campesina (in the stop and roll back camp). This has, unfortunately, tended to downgrade governance debates to 'for' or 'against' land grabbing discussions, since to those fundamentally opposed to codes of conduct any attempts to regulate impacts implicitly implies one is condoning land grabbing practices (see, for example, Borras and Franco 2010b; Li 2011; de Schutter 2011a; McMichael 2012). The proposed alternative is to contest capitalism, the corporate food regime, and prevailing class and power dynamics through mass mobilization of rural poor around principles of food and land sovereignty and agrarian and environmental justice (Patel 2009; Borras and Franco 2010b, 2012).

This brings us to the level of the development paradigm; leaving no space for deliberation on the merits of different governance instruments to regulate large-scale farmland investments.

Though findings would compel one to be sympathetic to these views, findings also give us reason to question their practicality. Most fundamentally, in the context of the development of new market frontiers, the increasing commodification of land gives new meaning to alienation rights; without land markets, such rights have no value. In Ghana, Nigeria, and Zambia, this serves to further consolidate and entrench chiefly control over land and provide new avenues for elite capture by both customary and modern elite. With the state in practice empowering traditional institutions, which simultaneously also function to absolve the state from responsibility, there is incentive to maintaining the status quo. Such power and control structures would in practice likely quell nearly all organized resistance movements against land-based investments or any peasant revolution (in favor of redistributive land reform, for instance) that threatens to destabilize these structures, as the case studies have also illustrated. In Ethiopia, a strong developmental state known to resort to military intervention in case of internal strife would neither be the most desirable political environment for contesting developmental fundamentals. Moreover, a radical realignment of local, national, and international political processes would be necessary - unlikely in a context where development discourse promoting investment-driven development, specifically, and market liberalization, more generally, continue to justify and legitimize the influx of agribusiness. Excessive indulgence in (what is often antagonizing) counter-narratives, therefore, threatens to retard a more constructive debate on impact management; a luxury most dispossessed land users cannot often entertain.

Since I therefore resign to the fact that large-scale agricultural investments are in this political-economic context inevitable in many developing countries, a further reflection on the implications of findings on governance is warranted. While I do not subscribe to the somewhat naive 'win-win-win' perspective that, according to Borrás *et al.* (2013), characterizes the mitigate tendency - with evidence suggesting that from a local social and environmental perspective, the vast majority of investments are inherently unsustainable - I do consider that the nature, magnitude, and distribution of impacts, be it positive or negative, can be partially controlled by effective, multi-scalar, investment governance architectures. While many of the recommendations in this chapter may not be immediately viable in the present context, greater awareness of required actions and the complexity of their implementation could help stimulate a more constructive, evidence-based debate. This section will, therefore, briefly reflect on a number of governance instruments, at both the national and international level.

8.4.1 Host country governance

The importance of human agency in shaping outcomes points at the pivotal role of institutions in 'making or breaking' customary rights and environmental protection. This gives cause to wonder whether - as Alden Wily (2011) has argued - the law really is to blame. The Ghanaian case is an important case in point; widely recognized as having one of Africa's most progressive land laws, outcomes do not differ materially from Ethiopia and Nigeria that are generally regarded as having some of the most draconian land laws. This applies equally to Zambia, where land laws provide the most explicit protection of individual user claims; since community consultations are mandated and no interests in land can be adversely affected by alienation. Similar observations have been made elsewhere with collaborators in an assessment of Mozambique and Tanzania - two of the other best-practice cases (German *et al.* 2013). This illustrates that in entertaining legal reform, structural issues relating to implementation and enforcement would need to be resolved, or one risks a situation similar to the ESIA process, where the rapid superimposition of an excessively stringent legal regime has rendered it almost meaningless. Moreover, resistance to circumscribing historically entrenched structures of power and control has had particular bearing on the effectiveness of land reforms (as exemplified by the sluggish implementation of Customary Land Secretariats in Ghana) (see Ubink and Quan 2007; Amanor 2008; Peters 2009; Sikor and Lund 2009). Rather than prompting land reforms, the land rush has slowed down land reform processes of the 1990s almost to a stopping point (Alden Wily 2012a) and in some cases even rolled back reform initiatives (Hall 2011; German *et al.* 2013).

Legal reform should by implication be preceded or accompanied by institutional reform that strengthens important regulatory, rather than facilitating, functions of the state (e.g. in contrast the market-oriented structural adjustment reforms of the 1980s and 1990s). However, since institutions are deeply embedded in society, asking for institutional reforms is almost like asking for societal reforms; in my case studies, all the more relevant with vested interests, co-optation, and power asymmetries strongly shaping institutional behavior. As pointed out by Rodrik (2006), in practice, profound institutional changes only really take place at historical junctures; in the aftermath of (civil) wars and revolutions, for instance.

Despite these pessimistic reflections, for the purpose of furthering our conceptual understanding of host country governance and examining implementation complexities, it may be relevant to highlight some practical implications of findings. Firstly, findings point at four, recursively constituted, institutional conditions that need to be fulfilled to close the implementation gap and accommodate legal reform:

- (1) *Mandate*: Institutions require clearly defined mandates that inhibit conflicts of interests and are legally protected. For instance, IPAs with investment promotion and compliance monitoring mandates and district governments with regulatory and fundraising mandates will create situations where one of the two

functions will be compromised. Moreover, avenues for rent-seeking and political interference could be minimized by restricting individuals and institutions from acting beyond their call of duty, whether that is in a formal or informal capacity. The absence of clear responsibilities regarding benefit capture suggests also that the creation of new mandates would be appropriate, which can be embedded, for example, within relevant sectoral ministries.

- (2) *Capacity*: Human and financial resources are key to effectively carrying out the different mandates. As the case of the EPAs has shown, inadequate manpower and funding severely limit the effectiveness of potentially valuable instruments such as the ESIA. However, consideration should be given to whether the need to generate internal revenues to build or maintain capacity does not threaten to compromise regulatory functions (such as in the case of the Forestry Commission in Nigeria and various district governments). Besides capacity in the resource endowment sense, here it is also referred to as the capacity to act without repercussion upon granted authority/mandates (unlike the various environmental agencies in Ethiopia and Nigeria). The fulfillment of the other three conditions would hypothetically protect institutions from those sorts of power manipulations.
- (3) *Incentive*: Incentives - the measures designed to motivate and promote desired behaviors (UNDP 2006) - is at the center of this governance debate and is closely related to capacity (e.g. motivation is an integral component of capacity). In this case, reforms to incentive structures are as much about the removal of unwanted incentives as the introduction new incentives. In case of the former, of particular urgency is the removal of the myriad of perverse and distortionary incentives that encourages the state to wrest away land from the customary domain. These are partly economic (e.g. direct revenue generation, corruption), political (e.g. expanding territorial control over non-state spaces), and ideological (e.g. faith in the modernization project). While some can be controlled through appropriate accountability structures and legal reform - such as the allocation of all land revenues to communities and the reversion of land to the customary domain upon completion or cancellation of leasehold title - the underlying modernization discourse will remain an important bottleneck. However, a number of key behaviors should be incentivized; these include, but are not limited to, inter-institutional collaboration, pre-alienation engagement of communities, community representation in the negotiation encounter, post-implementation monitoring, and promotion of benefit capture. This can be partially realized through clarity of mandate and capacity building, but also necessitates the implementation of new incentive structures. This could, for example, consist of non-financial merit-based incentives linked to specific performance outcomes (e.g. local developmental outcomes related to investment) (see Buchan *et al.* (2000) and Hicks and Adam (2001) for discussions on different types of incentive structures).

(4) *Accountability*: Although accountability can shape incentives and vice versa, it is conceptually distinct. It can be used to imply rights of authority involving a social exchange (e.g. in the sense of being 'called to account'), but it can also refer to formal checks and balances or an innate sense of responsibility (Mulgan 2000); therefore, referring to control mechanisms in the broadest sense. As the findings have illustrated, downward accountability of state actors and traditional authorities is a key determinant for the level of consideration for land use conflicts in the land identification and acquisition process. In this regard, improving accountability involves both the implementation of new rules relating to community engagement and representation and enhancing community capacity to demand participation and hold actors accountable when those rules are not respected (e.g. through greater transparency and more accessible conflict resolution channels). Additionally, within institutions, checks and balances are needed to ensure that individuals and institutions complicit in legal violations are held accountable; for example, in the case of sectoral ministries who allocate land located within protected areas, chiefs and district councils who falsely declare no interests in land are adversely affected, failure to reprimand investors who fail to conduct an ESIA, and state actors acting outside their official capacity.

Findings, however, provide inconclusive insights into the institutional structure most conducive to realizing these conditions. While decentralization is widely supported for enhancing state responsiveness to society and enhancing downwards accountability (Mamdani 1996; Ribot 2002; Crook 2003), in the context of large-scale land alienation, few such benefits are discernible. In the four countries, without meaningful popular participation and, in some of the cases, with the mediating influence of traditional institutions, more responsibilities and greater access to funds appear to have rather decentralized rent-seeking/corruption¹¹. Moreover, within a decentralized governance system, the political imperative to conform to international social and environmental standards is significantly weaker (McCarthy *et al.* 2012). Despite serious design and implementation flaws, the centralized investment governance system in Ethiopia does have some merits; for example, in harmonizing land identification and allocation practices and compliance monitoring. This also eliminates the conflicting interests of district government - by depriving them of an investment facilitation role - and the capacity of investors to engage in 'forum-shopping' - for example, to seek out those local state and non-state actors most amenable to rent capture and co-optation. However, such a system would undermine the hypothetical gains in downwards accountability that can be realized through more socially-embedded institutions. Also, without a strong state with a clear development vision like Ethiopia, there may be a risk that centralized implementation merely serves to concentrate power and promote rent capture.

When examining the effectiveness of legal underpinnings in the four countries, a number of important lessons can be learnt. For example, the two countries with the least protection of customary rights, Ethiopia and Nigeria, somewhat par-

adoxically, exhibit the greatest consideration for anthropogenic land use conflicts. This is partly a reflection of the ineffectiveness of many customary land management institutions in protecting the user claims of their constituency, but also the result of farmland being a 'compensatable good'. Governments appear to be disinclined to target those lands where land users have legal rights to compensation - largely to prevent incurring unnecessary costs. Nevertheless, this inclines government to instead target common property resources, more vulnerable land users who have no legal claims (e.g. encroachers, migrants, and (agro-)pastoralists), and land of high conservation value. Therefore, the leakage and displacement effects of greater protection of certain user claims can only be offset with comprehensive cross-sectoral reform; involving the recognition of the entire system of rights, including secondary, overlapping, and periodic rights, and adequate enforcement of environmental protection laws.

Individual/household rights to fair compensation (which could also entail the right to share in land revenues) when accompanied by cross-sectoral reforms could thus play an important role in shaping land identification decisions, while also contributing to asset and livelihood restoration. However, for most commentators, any discussion about compensation should be preceded and accompanied by community consultations and consent; with the level at which consent is sought conforming to the nature of the right to be alienated¹². It is widely assumed, typically without any qualification, that formalizing the principles of free, prior, and informed consent (FPIC) is paramount (von Braun and Meinzen-Dick 2009; de Schutter 2011b; Toulmin *et al.* 2011; Borrás *et al.* 2013). The principles of FPIC form the basis of numerous voluntary certification systems and international declarations and have gained universal acceptance as a tool for strengthening indigenous rights, improving local bargaining power, and promoting more equitable outcomes when dealing with more powerful state or corporate actors (see Colchester and Ferrari 2007; UN 2007; Hill *et al.* 2010). With right to FPIC derived from the right to self-determination and sovereignty over land and its resources, it also sits comfortably with more radical movements. Notwithstanding, findings suggest that in practice FPIC may be a troublesome concept. Considering the widespread desperation for 'development' among land users, even when impartial actors adequately inform communities of project risks, high receptiveness to developmental commitments will in many cases easily sway communities into relinquishing their landholdings. This will, consequently, only serve to legitimize and justify land alienation and deter communities from demanding just compensation. Moreover, in the context of common pool resources, what constitutes a 'community' and 'community consent' is a fuzzy concept; communities are not homogenous and consist of social hierarchies with layers of rights that could have substantial bearing on consensus forming processes. Therefore, a 'shared will' will unlikely be an outcome of FPIC. The widespread deference to chiefly authority and subordination of minority groups (such as in the Nigerian and Ghanaian cases) brings numerous complications to operationalizing and formalizing FPIC¹³. As the complete disre-

gard for the legal consultation requirements in Zambia illustrates, there may also be substantial institutional barriers to implementation. On the other hand, if such issues can be overcome, these processes could hypothetically be valuable in influencing location decisions and project design and in defining the nature and magnitude of compensation payments and developmental interventions.

Since principles of FPIC, or consultation and consent processes more generally, were not applied in any meaningful manner in my case studies, more research is clearly needed to gain additional insights into this dilemma. However, findings suggest that more stringent land identification protocols could partially compensate for deficiencies in customary rights protection and FPIC implementation. In this regard, identification processes should go beyond mere agronomic and economic suitability assessments, to consider various aspects of availability. Such a process should involve the development of clear criteria (that stand up against 'pro-investment' communities) and a procedural framework that guarantees the participation of different stakeholder groups in identifying customary systems of rights and land uses, including groups with subsidiary claims. A similar system should be developed to direct compliance monitoring activities. Contracts that clearly detail investor responsibilities, including leasehold conditionalities, and the ability of the land to revert back to its previous status in the case of non-compliance and project failure would further contribute to more effective investment governance¹⁴.

8.4.2 International governance

The most hotly debated non-state governance instrument is arguably the code of conduct. This has unfortunately overvalued its intent and given it excessively stigmatic connotations. On the basis of my own participation in both processes, the purpose of the Principles on Responsible Agricultural Investment (PRAI) and FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security is to act as a reference framework to give guidance to government, investors, and civil society and to mobilize support for good and against bad practices (see also FAO *et al.* 2010; Liversage 2010). Considering these codes of conduct as being the 'dominant objective' of its proponents (Borras *et al.* 2013) or merely a means to renew their legitimacy (McMichael 2012) would be grossly over-simplifying the purpose of supporting organizations. Despite some procedural shortcomings in their formulation, formal endorsement of the Voluntary Guidelines by the UN Committee on World Food Security (CFS) in May, 2012, illustrates the potential utility of these codes of conduct; all the UN agencies are now required to support its implementation, for which monitoring mechanisms are under development¹⁵. In October 2012, the CFS also adopted terms of reference for a two-year consultation process to develop more inclusive PRAI with a view to future endorsement. These are important first steps in institutionalizing investment-related sustainability principles and addressing,

through multilateral frameworks, for example, host country governance deficiencies.

Of greater immediate relevance is perhaps the growing role of market-based instruments (MBI). According to Pacheco *et al.* (2011), MBI are "instruments and processes driven by state and/or non-state actors for which price or other economic incentives are used to promote particular patterns of behaviour" (p. 4). Instruments that govern production and trade are some of the most pertinent. These include, for example, third-party certification and labeling systems related to specific crops or sectors, such as the RSPO, Bonsucro, Round Table on Responsive Soy (RTRS), and Roundtable on Sustainable Biofuels (RSB), and consumer country sustainability standards, such as the EU RED and the US Renewable Fuel Standard (RFS 2) (see Annex A5 for an overview of sustainability criteria for different instruments). Although adoption of these instruments is voluntary, certification is gaining reputational value; as, for example, the increasing adherence of major oil palm investors to the RSPO criteria has shown¹⁶. Since most certification schemes require investors to respect host country laws and actually introduce social and environmental safeguards absent in many host country regulatory regimes, such as consultation, consent, and compensation mechanisms, when adopted, these schemes have an important complementary function¹⁷. However, in Africa such schemes have to date failed to gain critical mass, with only one investor in Sierra Leone having successfully gained certification under the RSB and no plantation companies under RSPO - even well established oil palm producers in Central Africa that have certified plantations in Southeast Asia have neglected to seek RSPO accreditation. This could be ascribed to two factors: large import-dependent national and regional markets where the marginal value of certification is negligible and the relative complexity of land property relations that complicates adherence to rights-related criteria¹⁸.

The EU RED provides for an interesting model for lending quasi-regulatory state support to these private schemes and help them gain critical mass in Africa¹⁹. For example, the most feasible avenues for proving compliance with EU RED sustainability criteria is through third-party certification with an EC approved voluntary scheme. Since coming into force in 2011, RED-complaint versions of major multi-stakeholder schemes, such as RSB, RSPO, RTRS, and Bonsucro, along with nine other newly created, mostly industry, schemes, have been approved for this purpose (EC 2013a). Considering the prominent role of EC biofuel mandates in driving African land investments, as illustrated in Chapter 2, the EU RED could have a significant long-term influence over investor practices. However, as argued by German and Schoneveld (2012), since the EU RED sustainability criteria only relate to environment variables, such as carbon balance and conservation value, perversely, investors are encouraged to target fertile farmlands (as earlier examples have shown). Although the approved multi-stakeholder schemes provide many important social safeguards, a number of approved schemes do not require any compliance with important parameters such as food security and land rights - the

French industry scheme 2BSvs not even requiring that host-country laws are upheld (*ibid*). As a result, the potential contribution of EU RED is compromised and will, by way of stimulating the development of numerous competing schemes, only serve to dilute the potential of more progressive schemes becoming *de facto* standards as investors can easily opt for the 'lowest common denominator'.

According to an EC staff working document (2008) "the inclusion of social criteria raises technical issues, administrative issues and issues connected with international law (and therefore) it is not recommended to include social criteria in the sustainability scheme" (p. 132). The underlying argument for exclusion rests on the assumption that social impacts cannot be easily attributed to a specific biofuel consignment and, therefore, any interference could constitute a breach of World Trade Organization (WTO) rules. The International Food and Agricultural Trade Policy Council (Charnovitz *et al.* 2008) highlight numerous legal uncertainties associated with determining whether social standards in trade are motivated by altruism or protectionism - a key distinction for determining WTO compliance²⁰. Although every two years the EC is required to report to the European Parliament on the social impacts of EU RED, in its first report, the EC (2013b) appears adamant to downplay social implications: despite strong evidence to the contrary, the EC concluded "that between 0.05 and 0.16 Mha of land deals with concerns about socioeconomic impacts and land-use rights could be linked to the EU market" (p. 302)²¹. This highlights some of the legal/political complications of developing more progressive consumer country regulations that govern extra-territorial production and trade.

Another area where the adoption of sustainability standards is prevalent is further upstream in the value chain in project finance. Financial support that enabled projects involving unacceptable negative externalities encouraged many (multilateral) financial institutions to adopt sustainability policies in the 2000s to guide lending decisions and manage reputational risk (Wright and Rwabizambuga 2006; Schepers 2010)²². The IFC Performance Standards on Environmental and Social Sustainability, formally adopted in 1998 and revised in 2006 and 2012, is widely considered to be the gold standard for project finance (see Annex A5 and IFC 2012b for details). It is applied to IFC and Multilateral Investment Guarantee Agency (MIGA) financing decisions and adopted by the Equator Principles (EP), an industry-led voluntary code of conduct developed in 2002 in collaboration with the IFC (Goetz 2013). By March, 2013, 76 private banks have committed to adhering to the IFC Performance Standards under the EP rubric (EP 2013). In contrast to intentional statements undersigned by private banks, such as those by the United Nations Environment Programme Finance Initiative (UNEP FI) and the Principles for Responsible Investment (UNPRI), the EP is based on measurable, reportable, and verifiable criteria and indicators (van Gelder and Kouwenhoven 2011).

Van Gelder and Herder (2010) though note that project finance is merely a niche market that accounts for only two percent of corporate financing. With most project finance directed at infrastructural projects and extractive industries, it plays

an insignificant role in the agricultural and biofuel sector (van Gelder and Kouwenhoven 2011)²³. Moreover, the effectiveness of the EP in promoting sustainable practices has been widely disputed, primarily since its weak (self-)governance structure and lack of audit and disclosure requirements undermines its system of accountability (Scholten and Dam 2007; Schepers 2010). Although the formation of the World Bank Inspection Panel in 1994 greatly enhanced the financial accountability of World Bank institutions (van Putten 2008), in contrast to media portrayal, these institutions or even other development banks are not prominent financiers of agricultural investments in Africa²⁴. Considering, therefore, the comparatively insignificant role of project finance, bank-specific policies governing their various financing activities within particular sectors are of greater relevance. However, in their study of 49 major international banks, van Gelder and Herder (2010) found that only two banks developed policies on agriculture with clearly specified commitments. Therefore, most financial flows to agricultural investment are not governed by measurable, reportable, and verifiable sustainability standards. This has become especially troublesome in the context of the rapid rise of dedicated alternative investment funds, which are typically not subject to the same disclosure requirements as publicly traded companies and banks (FIAN 2010; HighQuest Partners 2010; Merian Research and CRBM 2010; Buxton *et al.* 2012; Bergdolt and Mittal 2012).

Although no jurisdiction in the world requires banks to comply with sustainability standards, BankTrack, a network of NGOs focusing on the sustainability of the financial sector, has highlighted the feasibility of integrating sustainability criteria into international regulatory frameworks, such as the Basel Capital Accord (BCA) or the EU Capital Requirements Directive (CRD) (BankTrack 2010)²⁵. Moreover, as the emergence of the EP has illustrated, the responsiveness of the financial services sector to reputational risks highlights the potential gains that can be realized when these institutions are exposed to greater public scrutiny. In this way, financial institutions could, for example, be encouraged to make financing conditional on commitments to third-party certification systems. This though is contingent on greater transparency requirements; an area where consumer country governments can make great advances without becoming entangled in host country sovereignty issues - such as in the case of social sustainability criteria within the EU RED framework.

As a closing note, I wish to (re)address a substantive issue common to most of the instruments discussed in this section: the use of FPIC. In addition to PRAI, Voluntary Guidelines, RSPO and RSB, even the 2012 revision of the IFC Performance Standards has mandated FPIC for acquisitions involving customary land. Considering previously raised concerns, FPIC should not be used as the sole determinant for evaluating the legitimacy and viability of land alienation. Additional safeguards are necessary to ensure that projects do not compromise food and income security or disproportionately disadvantage specific stakeholder groups. Rather than such parameters getting lost in ESIA reports, it may be advisable to

introduce also simple and quantifiable social and economic criteria for appraising land suitable for conversion; similar to what is already used to evaluate carbon savings or high conservation value landscapes. This would resolve the precarious situation involving 'encroachers' on, for example, defunct estates or minority subgroups that in the absence of legally and socially recognized rights are either excluded from or sidelined in consultation and consent activities. Active farmland density could be a usable indicator to that effect.

8.5 Conclusion

This concluding chapter has illustrated that the impacts of large-scale farmland investments are highly similar across the case study countries. The pathways leading to those outcomes, however, appear to be more diverse. While analysis of the legal underpinnings has revealed numerous deficiencies in land and investment law, the apparent ease with which statutory safeguards are ignored points at more important underlying institutional issues. Such issues include conflicts of interest, co-optation, elite capture, insufficient inter-institutional coordination, inadequate capacity, and pro-investment ideologies. The extent to which specific issues play out is strongly shaped by country context. In Ethiopia, for example, issues related to conflicts of interest, inter-institutional coordination, and pro-investment ideology strongly influence outcomes, while in Nigeria, issues of elite capture and co-optation are of particular relevance. Regardless of the pathways, the consequent lack of effective regulatory enforcement exacerbates the threat of underlying structural issues related to, for example, deference to local hierarchies, easily raised community expectations, the incompatibility of production systems, and the absence of an innate sense of local accountability by many investors. Since the case study countries represent a relatively diverse cross-section of African governance systems, similar processes can be anticipated in most other important investment destinations, as suggested by the outcomes observed in countries such as Cameroon, Liberia, Mali, Mozambique, Sierra Leone, and Tanzania (see, for example, Chachage 2010; Habib-Mintz 2010; Nhantumbo and Salomão 2010; Andrew and van Vlaenderen 2011; Baxter 2011a, 2011b; German *et al.* 2011a; Balachandran *et al.* 2012). The conclusion is then that sustainable and responsible agricultural investment in sub-Saharan Africa is by and large a paradoxical concept, unless well-functioning checks and balances are put in place.

Considering the pivotal role of host country institutions, there are two logical implications to this conclusion: reform those institutions or strengthen extra-territorial oversight. Evaluation of both options has shown that neither provides simple solutions. Entrenched domestic structures of power and control work to undermine forces that threaten the established order and sovereignty issues inhibit consumer countries from undue interference in host country affairs. The most significant innovations are taking place in the market, with growing numbers of non-

state MBIs, particularly the third-party certification schemes, taking on state-like functions. While not addressing structural obstacles to development and of limited direct relevance due to low adoption rates in Africa, such schemes do theoretically have the potential to fill various (implementation) gaps. While consumer country schemes like the EU RED could in theory make meaningful contributions to promoting their uptake (e.g. by capitalizing on their capacity to incite profound shifts in corporate behavior through market and fiscal incentive mechanisms beyond the reach of third-party certification schemes), they instead foster greater competition between schemes and threaten a race to the bottom. However, regardless of their substantive scope, such instruments do provide new avenues for public scrutiny and civic participation. This, in turn, could also serve to reinvigorate internal (policy) debates on structural social and environmental issues (Bernstein and Cashore 2012) and compel local actors to challenge clientelistic regimes (McCarthy *et al.* 2012).

Although findings have offered new insights into some of the political-economic complexities of developing more effective and equitable (investment) governance systems in Africa, its main contribution lies in furthering our understanding of the different processes across scales that drive outcomes; thus linking what has to date been rather narrow and disjointed areas of inquiry. In so doing, this research has shown that discussions on governance cannot be meaningfully held without a thorough understanding of the dynamics of underlying socio-political systems and the arenas in which those systems manipulate, (re)produce, and legitimize power and control structures. Since inflowing (foreign) capital typically attaches itself to, and by so doing strengthens, powerful strategic coalitions, irrespective of whether these coalitions are bound by vested interests or modernization ideologies, sector sustainability lies in unraveling and disentangling this state-elite-agribusiness complex. The four institutional dimensions (mandate, capacity, incentive, and accountability) discussed previously could in such contexts be applied both as a diagnostic and as a design tool; used, on the one hand, to gain a better understanding of institutional outcome determinants and on the other to identify specific institutional conditions conducive to realizing genuinely pro-poor and pro-environment governance reforms. Only then will essential legalistic reforms, related, for example, to land use planning, customary rights protection, and investment conditionalities, have meaning.

This research has also exposed unique weaknesses in the land tenure systems of the four countries when these are subjected to new market forces. Both modern and customary elite are able to capitalize on ambiguities in the land law and asymmetric 'bundles of powers' to capture and internalize market opportunities. This in turn serves to articulate and advance the interests of (international) capital at the expense of investments into domestic productive capacity; for example, towards enhancing the productive use of land in ways that respects and may even promote customary tenure security. There is a risk that when this form of capital over time becomes more entrenched and the state further aligns itself with and

becomes increasingly reliant on it (e.g. through associated land and tax revenues that it often fails to capture from the rural population), not unlike rentier economies such as Nigeria, the loss of necessity to adequately represent its constituency and establish legitimacy may rather strengthen lines of patrimonial inclusion and exclusion. Such processes could, consequently, further undermine investment sustainability and broaden the rural inequality gap as rent distribution becomes increasingly contingent on differentiated local capacities to maneuver within patron-client networks and/or find alignment with new forms of productive capital. This could put in motion a paradigmatic shift in emphasis from inclusive and livelihood-oriented rural development strategies to one where 'creative destruction' is justified in the name of capitalist and high modernist economic accumulation.

Such processes are a general reflection of how many institutions within developing economies interface and coalesce with global capital and markets, and of the threats these alliances pose to sustainable and equitable rural development. However, it must be recognized that such institutions are (re)produced by a geopolitical system that rewards (land) market liberalization, deregulation, and global productive integration. With this system also (re)producing the capital that gives meaning to such policies, local regimes within comparatively isolated frontier markets become increasingly articulated to global, at the expense of local, political and economic spaces. Therefore, the increasing geographic penetration of neoliberal principles and capital exposes the inimicality of the global system of accumulation to customary property and production systems. As a result, the relationship of much of contemporary Africa with the global economic system is increasingly characterized by resource privatization, exploitation and extraction, benefiting select local groups at the expense of the rights and livelihoods of its more vulnerable population. Since this capital has no societal mandate and domestic institutions fail to adequately prescribe responsibilities, much of the developmental potential global productive integration could have had has been lost.

Notes

- 1 The Ethiopian case studies in South Omo valley are all located within an area designated as a UNESCO World Heritage site for its paleo-anthropological significance.
- 2 There were a few cases in Nigeria where consultation and traditional rites fees were allocated towards construction of physical infrastructure and annual royalties were split between different community groups.
- 3 In Zambia, the District Council should confirm that no interests in land are adversely affected; however, since in all sites interests were in fact adversely affected points at the potential role of power manipulation and/or rent capture. This too can be observed in Nigeria, where leasehold titles are approved for lands that are located within protected areas, which is illegal under federal law.
- 4 For example, the ZDA was observed to accompany investors to land alienation negotiations. Any lands investors were uninterested in were acquired by the ZDA for its land bank.
- 5 For example, a Commissioner of Lands responsible for facilitating a number of land deals within protected areas became a Commissioner of Environment charged with environmental protection duties.
- 6 The Ministry of Environment, for example, was aware that none of the agricultural investors had completed an ESIA. Similarly, the Forestry Commission and the Nigerian National Parks Service were also aware that a number of concessions overlapped with forest reserves and national parks.
- 7 With ESIA frameworks largely modeled after European and North American precedent (and therefore freehold interest in property), the complex land relations receives no special attention in any of the countries.
- 8 For more detailed discussions see section 3.2.2 (Ethiopia), section 5.2.2 (Ghana), section 6.4.1 (Nigeria) section 7.2 (Zambia).
- 9 As discussed in section 3.2.1, waged employment, sedentary and intensive systems of production, and greater market integration brings communities into the domain of the state, enabling a range of interventions, such as service delivery, political surveillance, and tax collection.
- 10 As discussed by German and Schoneveld (2012), socio-economic trade-offs of EU RED are high, since biofuel consignments are only required to meet environmental sustainability criteria and not socio-economic criteria.
- 11 Although few critical studies have explored in details the merits of decentralization, issues relating to corruption and special-interest politics have been examined by Arikan (2004), Lentz (2006), and Véron *et al.* (2006).
- 12 For example, individual consent should be sought for the acquisition of individual farmland and structures and community consent for common property resources. Since individual farmlands typically comprises all farmlands

- held by the household, issues relating to intra-household power dynamics add an additional layer of complexity - particularly in relation to subordinate women rights, which, the research has shown, are often the first to be sacrificed.
- 13 See Masaki (2009) for an insightful evaluation of the pitfalls of implementing FPIC in the lowlands of Western Nepal.
- 14 See Cotula (2010, 2011a) for a comprehensive assessment of contract terms conducive to sustainable development.
- 15 Although a more than three-year consultation process preceded the finalization of the voluntary guidelines, involving state, private sector, and civil society actors, their finalization was a purely political process. According the FAO representatives, a number of proposed provisions relating to indigenous and women rights were watered down in the final version. However, the decision making format of the CFS, which enables full participation of civil society and social movements, ensured that the guidelines had a broad support base (McKoen 2013).
- 16 By the end of 2012, almost 10 percent (1,526,273 ha) of the global acreage under oil palm cultivation was RSPO certified. The two largest oil palm conglomerates, Sime Darby and Wilmar, both active in Africa, accounted for 49 percent of the total area certified (RSPO 2013).
- 17 This is not to say that these schemes are without defects. This includes, for example, barriers to participation for smallholders, excessive costs, and excessive reliance on civil society to report violations. Particularly the latter issue is of concern in contexts where civil society is weak, such as in many African countries and in frontiers, thereby resulting in a 'free-rider' effect. Moreover, since most such initiatives are borne out of a multi-stakeholder process, principles and criteria are based on negotiated outcomes, which tend to reduce their substantive scope.
- 18 Considering the external dependence on important agricultural commodities of most African markets, such as grains, sugar, and vegetable oils, and high domestic market prices, few companies are initially targeting export markets (see section 2.5.3 for a discussion).
Some major oil palm investors have sought RSPO certification, but as a result of unresolved land conflicts were denied RSPO approval to engage in new plantings. This includes, for example, Sime Darby and Golden Veroleum in Liberia, Wilmar in Nigeria, and Herakles Farms in Cameroon. Considering that all four companies are nevertheless engaged in planting activities indicates that future RSPO ambitions may have been abandoned.
- 19 Although EU RED is a regulatory instrument, it is technically an MBI since only incentives are used to realize regulatory targets. For example, only biofu-

- els meeting its sustainability criteria are counted towards member state emission reduction targets and are eligible for financial incentives.
- 20 The conditions of different countries have to be taken into account; for example, by allowing exporters to satisfy conditionalities through alternative standards, including equivalent domestic regulatory standards or relevant international standards (Charnovitz *et al.* 2008).
- 21 Data presented in Chapter 2 suggests that at least 5.9 million ha in sub-Saharan Africa alone is directly attributable to EU-based biofuel companies. An earlier version of the chapter was published in early 2012, as part of an EC commissioned study on biofuels, which it neglected to acknowledge in its report.
- 22 The Polonoroeste road project in Brazil and the Narmada Dam project in India were two high profile World Bank-funded projects that prompted greater consideration for social and environmental issues in World Bank and IFC banking decisions (Schepers 2010). The public campaign of the Rainforest Action Network against Citigroup similarly propelled private banks to recognize the importance of this type of due diligence - eventually leading to the establishment of the EP (*ibid*; Spitzeck 2009).
- 23 The EP only applies to loans in excess of US\$ 10 million - further reducing its scope of application. Also, of the 10 largest banks in terms of value of project finance loans (Thomson One 2013), four are not EP signatories, including the two largest, and none of the remaining six reported any EP-relevant loans for agricultural projects.
- 24 Of the 526 projects sampled in Chapter 2, only five received financing from the IFC and two from the African Development Bank and three an investment guarantee from MIGA.
- 25 In the context of the revisions to Basel II, BankTrack submitted a proposal to the Basel Committee on Banking Supervision (BCBS) in which it argued that integrating sustainability requirements into its framework would strengthen financial regulation in three ways: (1) it would improve the bank's understanding of its financial risks and enable it to respond to those risks proactively; (2) it would prevent financiers from offloading financial risks onto other parts of the financial system; and (3) it could mitigate risks associated with destabilizing societal effects of unsustainable investment (BankTrack 2010). BankTrack made seven concrete proposals for introducing such criteria into Basel III.

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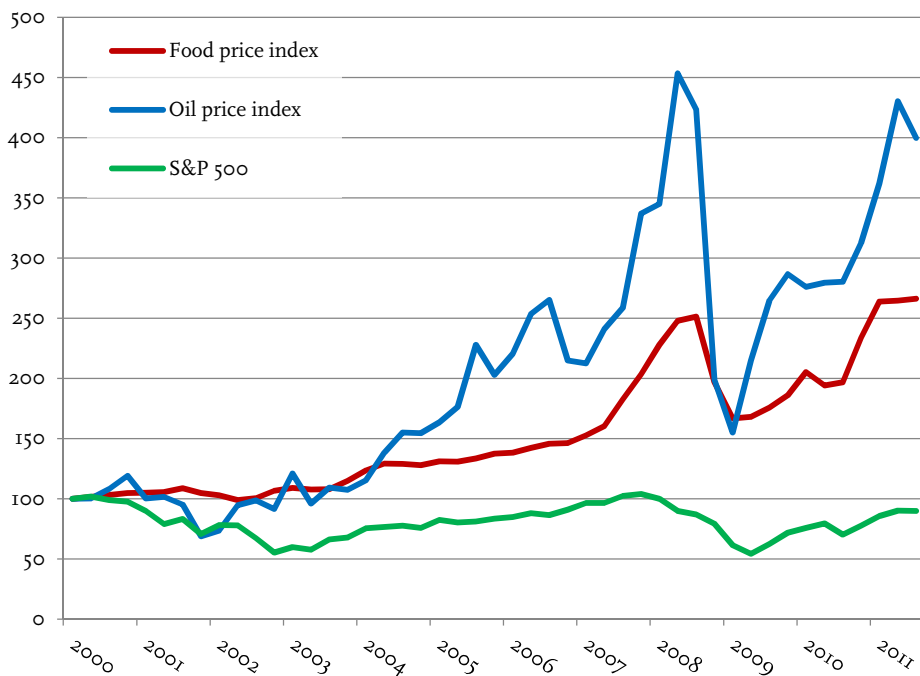
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Annex

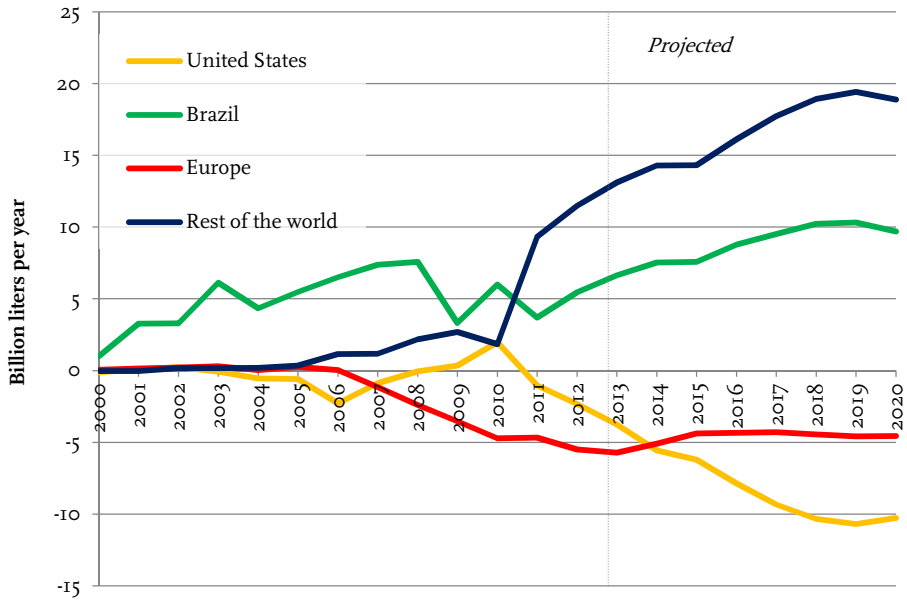
A1. Global market trends



Indices compared

Source: Food price index from FAO (2011); Oil price index from IMF (2011), S&P 500 index values from Standard and Poor's (2011).

Note: Indices are re-indexed for the purpose of comparison (base year = 2000).



Historical and projected trade balance for biofuels

Source: Derived from OECD-FAO (2012)

A2. Country-disaggregated investment flows

Investments by destination

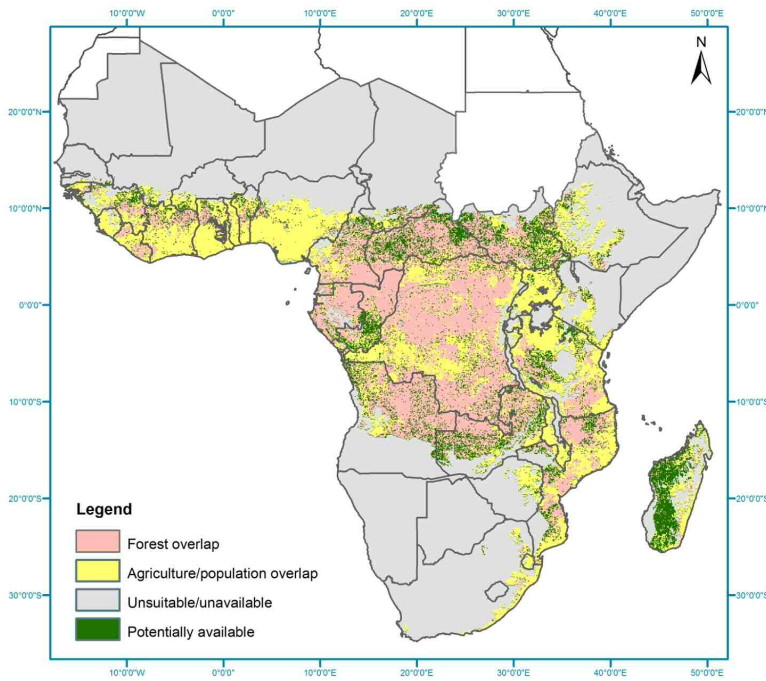
Target country	Category 1	Category 2	Category 1 (conditional)	Total	Number of projects
Gambia	0	10,000		10,000	1
Burkina Faso	2,000	3,000		5,000	2
Mauritius	2,500			2,500	1
Togo	2,700	3,023		5,723	2
Sao Tome & Principe	5,000			5,000	1
Central African Republic	5,137			5,137	1
Niger	15,922	8,472		24,394	3
Botswana	21,400			21,400	1
Rwanda	39,500	8,000		47,500	4
Swaziland	46,500			46,500	2
Mauritania	53,302			53,302	4
Malawi	74,302			74,302	4
Benin	98,288	200,000		298,288	3
Cote d'Ivoire	103,222	10,000		113,222	5
Uganda	110,449	65,000		175,449	13
Zimbabwe	149,913			149,913	3
Angola	165,150	86,000		251,150	12
Guinea	241,115	910,000	98,400	1,249,515	5
DR Congo	277,231	68,750	10,000	355,981	11
Cameroon	301,471	70,000		371,471	14
Kenya	313,705	36,885		350,590	8
Gabon	399,814			399,814	5
Namibia	460,000	10,000		470,000	4
Senegal	472,350	145,000		617,350	24
Nigeria	569,443	85,000	88,718	743,161	41
Tanzania	580,938	258,000		838,938	38
Mali	719,943	14,000		733,943	28
Republic of Congo	833,930	60,000		893,930	8
South Sudan	1,054,850	460,000		1,514,850	14
Liberia	1,075,903			1,075,903	11
Sierra Leone	1,116,030	18,000	5,000	1,139,030	16
Madagascar	1,522,100	244,100		1,766,200	26
Ghana	1,636,320	128,310	258,750	2,023,380	43
Mozambique	1,649,804	251,027		1,900,831	61
Ethiopia	1,695,613		466,000	2,161,613	83
Zambia	1,802,033	109,000		1,911,033	24
<i>Total</i>	<i>17,617,877</i>	<i>3,261,567</i>	<i>926,868</i>	<i>21,806,312</i>	<i>526</i>

Investments by origin of lead investor (non domestic)

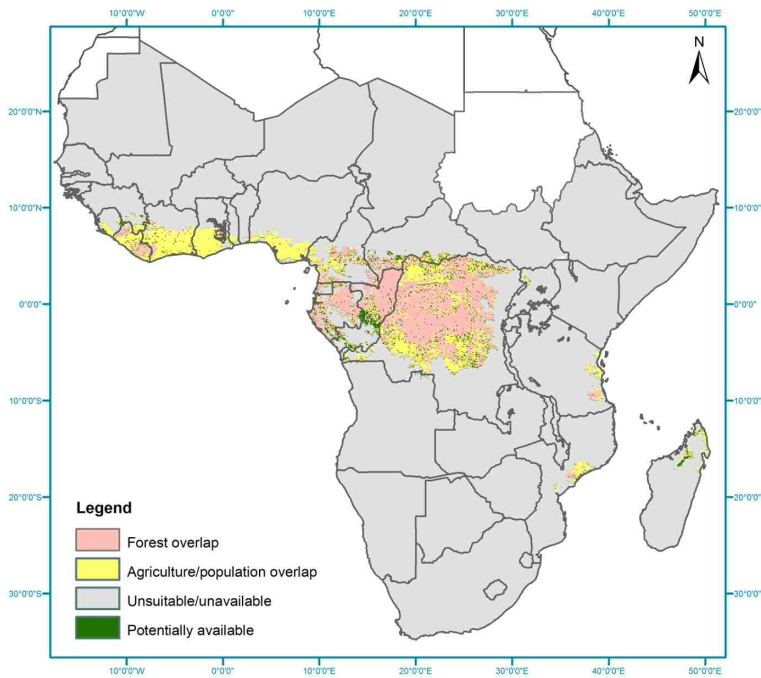
Origin of lead	Category 1	Category 2	Category 1 (conditional)	Total	Number of projects
South Korea	0	100,000		100,000	1
Vietnam	0	30,000		30,000	1
Mexico	2,000			2,000	1
Kenya	6,000			6,000	1
Australia	9,500			9,500	1
Austria	10,000			10,000	1
Burkina Faso	10,000			10,000	1
Cote d'ivoire	10,000			10,000	2
Sudan	11,302			11,302	1
Iran	12,117			12,117	2
Uganda	13,000			13,000	1
Zimbabwe	13,000			13,000	1
Turkey	16,000			16,000	2
Finland	19,600			19,600	1
Luxembourg	23,000			23,000	1
UAE	25,983			25,983	2
Pakistan	28,000		15,000	43,000	1
Nigeria	40,000			40,000	1
Japan	48,154	60,000		108,154	3
Cyprus	50,000			50,000	1
Mauritius	54,584	6,885		61,469	6
Spain	58,508	70,000		128,508	6
Djibouti	59,823			59,823	2
Brazil	73,100	75,000		148,100	7
Indonesia	80,000			80,000	1
Denmark	93,692			93,692	5
Lebanon	100,000			100,000	1
New Zealand	108,000			108,000	1
Egypt	127,000			127,000	2
Netherlands	135,732	20,000		155,732	11
Belgium	140,244		100,000	240,244	8
Libya	160,000			160,000	4
Saudi Arabia	333,885	20,000		353,885	16
Sweden	352,155			352,155	3
France	358,204	21,472	5,000	384,676	20
Switzerland	403,505	25,000		428,505	5
Canada	499,092	28,000		527,092	9
Portugal	504,800	55,000		559,800	12
Italy	515,363	1,012,505	88,718	1,616,586	22
Singapore	520,338	40,000		560,338	11
South Africa	537,599	100,174		637,773	22

Israel	538,000	0		538,000	7
China	542,394	50,000		592,394	17
Malaysia	812,487	90,000		902,487	5
Germany	911,272	3,023		914,295	17
Norway	983,659		291,865	1,275,524	12
India	1,344,112	245,300	351,000	1,940,412	45
US	1,787,935	484,750	98,400	2,371,085	38
UK	2,205,804	277,348		2,483,152	50
<i>Total</i>	<i>14,688,942</i>	<i>2,814,457</i>	<i>949,983</i>	<i>18,453,382</i>	<i>391</i>

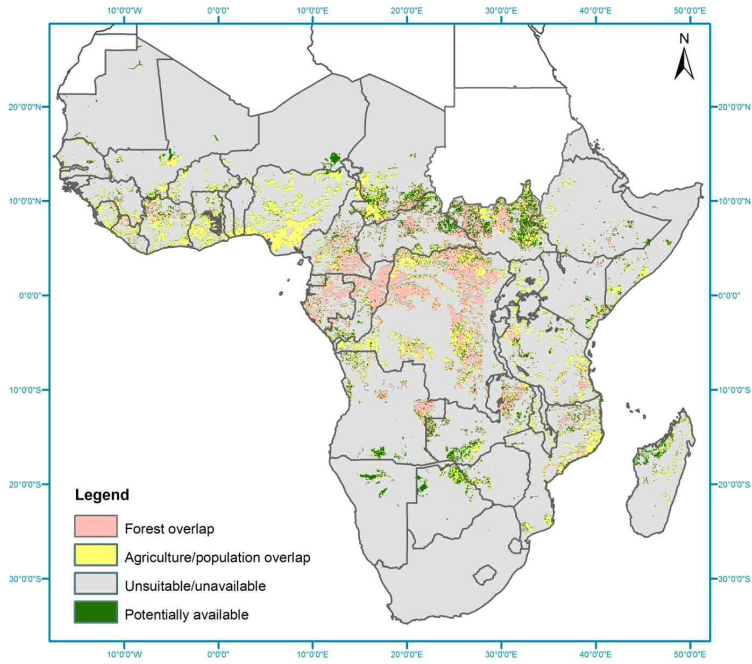
A3. Suitability overlap maps for key investment crops



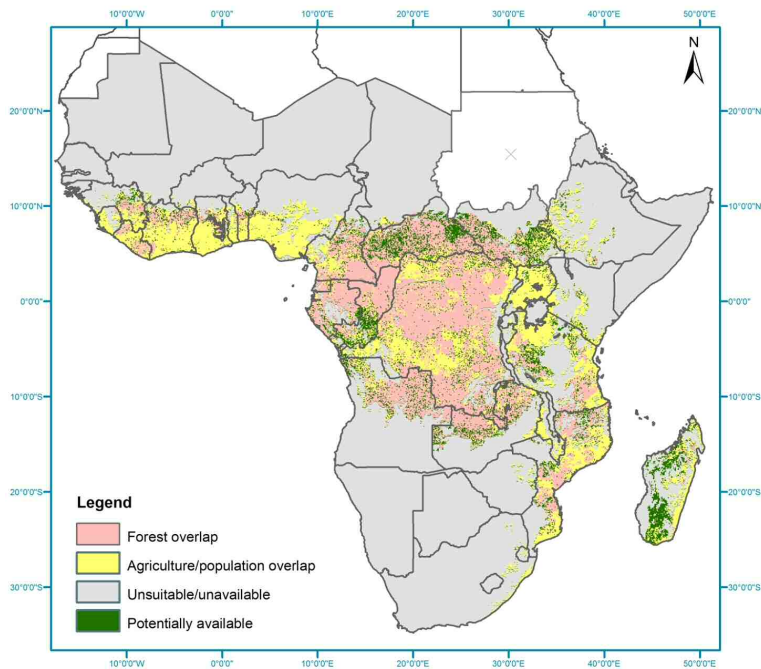
Suitability overlaps for jatropha



Suitability overlaps for oil palm



Suitability overlaps for rice



Suitability overlaps for sugarcane

A4. Governance of agricultural investments: theory versus practice

This annex compares the various facets of investment governance in the four countries and illustrates the nature of the implementation gap. It traces the project establishment process, from initial registration and land acquisition to post-implementation monitoring; contrasting the formal legal and procedural frameworks with implementation - the 'theory' versus the 'practice'.

Registration

Theory

When investors seek to establish a project, in all four countries foreign investors are required to register with investment promotion agencies (IPA) in order to obtain an investment license. In order to ensure investors have the necessary capacity to successfully establish a project, foreign investors in Ethiopia and Ghana have a minimum equity requirement of US\$ 100,000 and US\$ 50,000, respectively, while in Nigeria and Zambia only a business plan is required, which is not a requirement in Ethiopia and Ghana. The IPA's are not-for-profit government agencies responsible for the promotion, registration, and monitoring of investments. Marketed as 'one-stop shops', the IPAs all provide significant bureaucratic support to investors in, for example, acquiring land, applying for fiscal incentives, and in obtaining necessary export, employment, and environmental permits.

Practice

Although a number of prominent investors in Ghana and Nigeria completely bypassed IPA's, by and large they do play a pivotal role in helping investors navigate the regulatory landscape. Domestic investors in all countries are generally less inclined to make use of IPA services. In Nigeria and Zambia, business plans are evaluated by their IPA's, though evaluation criteria are generally absent'. Business plans are generally a poor indicator of development capacity, as these tend to exaggerate planned economic contribution and project viability, as is reflected in the major discrepancies between actual and realized capital and employment contribution in Zambia (see Table 6.4)

Land identification

Theory

Following registration, the next typical activity for investors is the identification and acquisition of suitable land. However, in Ghana, Nigeria, and Zambia, there is no comprehensive system or legislation in place to guide land allocation decisions, implying that investors are essentially free to identify and acquire land at their own volition. Although relevant IPAs can offer support to investors in identifying land and linking them with landholders willing to alienate land, they have no mandate to ensure those lands are in fact available. Other sectoral agencies also lack clear mandates in this regard. As a service to investors, the IPAs in Ghana and Zambia, in collaboration with their land ministries, both established land banks in 2008 and 2009, respectively. In Nigeria, plans are being forged to develop a similar system.

Of the four countries, Ethiopia has put in place the most comprehensive land identification system. Unlike the other three countries, investors can only acquire lands that have been previously identified by government as appropriate for investment. Prior to 2010, this process was relatively decentralized, as is often the case in a federal system; land was identified by the regional IPA offices in collaboration with the district and regional administration. However, in 2010 the federal Ministry of Agriculture and Rural Development centralized this process by transferring most regulatory activities relevant to agricultural investment, including land identification and allocation, to the newly established federal agency, the AISD. The AISD established a land bank, which is the only source of agricultural land for foreign investors and investments exceeding 5,000 ha. However, there are no legally specified criteria that guide their land identification efforts.

Although some regions in Ethiopia are in the process of developing land use plans, as in the other countries, multi-sectoral spatial plans have not played a role in land identification efforts at the time of research.

Practice

In Nigeria and Zambia, government, despite their poorly defined roles, did actively aid investors in identifying land. In Nigeria, most investors call on the Ministry of Agriculture, who identifies, on the basis of agro-ecological zones and land use maps, where the most suitable and available lands are located. Often in an unofficial capacity, senior representatives from the Ministry then accompany investors to the relevant local chiefs to seek their consent. In Zambia, a much wider array of government actors, ranging from central to district government, are involved in this process. Typically without conducting any prior suitability or availability assessments, politically influential actors have personally urged different chiefs to put their land under more 'productive use'. In this manner, every chief in the Northern

Province agreed to alienate at least 10,000 ha for agricultural investments; in most cases even before concrete investment commitments had been made. In contrast to Nigeria, where the precise area to be alienated is often clearly defined prior to engaging the chiefs, in Zambia, chiefs typically identify the areas to be alienated. In Ghana, it too is often the chiefs, as opposed to the government, that identifies land. Ghana does though fundamentally differ from Zambia in that its government is largely absent from this process. Although the GIPC was observed to have brokered a small number of deals, in all the case studies, investors directly engaged with chiefs - typically with support of well-connected local businessmen, rather than the government.

In Nigeria, lands newly identified by government were typically those not intensively cultivated by local land users. The only areas where these considerations were not taken, was when land users did not have legally recognized rights. This includes areas that have experienced heavy encroachment, such as degraded forests reserves and defunct state-owned farms, or are under communal ownership, such as pasture and forests. In Ghana and Zambia, the chief-identified lands were typically used intensively for agriculture - there did not appear to be any consideration for competing uses. Chiefs by and large neglected to seek the inputs of their constituency in identifying the most appropriate lands for alienation.

Although Ethiopia should be credited for being the only country to develop a coherent land identification and allocation system, in practice this has had little bearing on the magnitude of land use conflicts. The AISD does claim that it uses remote sensing analysis and collaborates with district and regional government to determine both suitability and availability; thereby avoiding all areas that are used for human settlement, wildlife, and forests. Although, in practice, the AISD avoids certified lands and the densely populated riversides, since most identified lands are either used intensively for cattle grazing or farming or are located within forest- or wildlife-rich landscapes, Ethiopia's land identification system ultimately fails to achieve its objectives.

Land acquisition

Theory

The legislated pathways for acquiring (e.g. gaining legal title over) land that has been identified for investment differ greatly between the countries (see Table 8.4 for a summary of key legal parameters relevant to the land acquisition process). In Ethiopia and Nigeria, where all land is vested in the government and only user, rather than ownership, rights over land are recognized, there are few legislative obstacles to acquisition. For example, potentially affected persons do not need to be consulted or provide their consent to acquisition plans. The ultimate decision to alienate the land for investment lays in the hands of government; in Nigeria this

typically being the state's Governor and in Ethiopia the administrations of any of the three tiers of government (district, regional, and federal)². In Ethiopia, compensation is only payable to households in "lawful possession over the land" - meaning only those with formal land certificates. Although Nigeria recognizes customary claims to land even when those are not formally registered, like Ethiopia these extend merely to settlements and farmlands and not 'undeveloped' land; customary claims over community forests and rangelands have no legal protection. As tenants of the state, monetary compensation is due only for unexhausted improvements.

Although land in Zambia is also vested in the government, Trust Land, as land within the customary domain is termed, continues to be administered by traditional authorities - unlike Ethiopia and Nigeria where land reforms in the 1970s crippled the legal authority of traditional land management institutions. While the government reserves the right to eminent domain, ordinarily, land transactions involving Trust Land are voluntary and require that both the chiefs that govern the land in question and relevant district governments formally approve the alienation. Both parties are required to 'declare' that communities have been consulted and their interest in land will not be adversely affected by alienation. Final approval is subsequently required from the central government: the Commissioner of Lands for Zambian investors and the President for non-Zambian investors. However, since, like Ethiopia and Nigeria, the nationalization of land was intended to curb land transactions for personal gain³, a leasehold title over land can only emanate from the state. The implication of this is that when land is voluntarily alienated the land permanently reverts to the state and communities lose all formal claims to land. Since land can only be alienated when it is free from competing interests, the law makes no allowance for compensation payment. Only in case of involuntary acquisition is compensation payable.

Ghana is the only case study country, and one of the few in sub-Saharan Africa, that explicitly recognizes customary ownership right over land. Traditional Councils, comprising of a paramount chief, sub-chiefs, and select community elders, hold the radical title to land, often referred to as the 'allodial' title. This title vests in the Traditional Council the right to negotiate over, transact and alienate land in accordance with customary law. Beyond the constitutional specification that land is to be governed for the benefit of the people and that chiefs are accountable as fiduciaries in this regard, there are, however, few checks and balances in the alienation process. For example, Traditional Councils are not legally required to consult and elicit the consent of potentially affected land users or compensate the same for loss of access to livelihood resources. In order to formalize the alienation, the approval of the Lands Commission at the regional level is to be sought. Like in Zambia, land users only have the right legally-specified rights to compensation when land is involuntarily acquired by the government.

Once alienations are approved by the relevant stakeholders, investors in all four countries are allocated leasehold titles - freehold titles over agricultural land are in all cases prohibited. These leaseholds differ in their duration, terms, and al-

lowable size. In Ethiopia, leasehold titles are allocated for between 25 years for annual crops and 50 years for perennial crops; in Ghana, for 50 years for foreign investors and 99 years for domestic investors; and in Nigeria, for 99 years irrespective of crop or investor origin. In Zambia, a 14-year provisional title is to be allocated before the standard 99-year title; this in order to provide a window for contestation, although the President does have the authority to allocate a 99-year title outright.

Most of the leasehold contracts are based on the annual payment of ground rents. In Ethiopia, this varies according to the distance from the nation's capital and on whether cultivation is rain-fed or irrigated, which ranges from approximately US\$ 6.30 in the peripheral lowlands to US\$ 174.50 per hectare per annum inside Addis Ababa. In Nigeria and Zambia, rents in rural areas are fixed; in Nigeria, rural land used for commercial purposes is rated at US\$ 1.91 per hectare per annum and in Zambia at US\$ 0.99 per hectare per annum. Rent in these cases is payable to government. In Ghana, the nature of land payments (e.g. whether it is based on a profit-sharing construction, annual rent payments, or a one-off 'sale' price) is solely dependent on the outcome of negotiations with Traditional Councils and not on legislative provisions. Land revenues should be shared with the government, which takes almost 60 percent of all proceeds.

Although full leasehold titles in Zambia are becoming increasingly conditional on early performance, only in Ethiopia are such requirements concretized in the leasehold agreement. For example, titles can be revoked if investors fail to develop the land in accordance with a predetermined work plan or exercise good environmental and social management. Concrete performance requirements are generally absent from leasehold titles in the other three countries. While not necessarily legislated, in Ghana Traditional Councils are though able to incorporate such provisions into the 'head of agreement' that specifies the leasehold terms. In Nigeria also, contracts governing the privatization of former state farms do contain provisions that enable the state to repossess the land in case of failure to adequately develop and maintain it.

Only Ethiopia implemented a cap on the allowable size of leasehold titles for agricultural investment, ranging from 150 hectare for vegetable production to 20,000 hectare for priority crops such as sugarcane, oil palm, and cotton.

Practice

In Ghana and Zambia, land for all the case studies was acquired directly from chiefs - the government did not exercise their right to eminent domain in any of the cases. Even though in Nigeria chiefs have no authority over land, the consent of chiefs is, nevertheless, actively sought when the government acquires land on behalf of investors. In practice, Nigerian chiefs do, therefore, reserve the right to decline a proposed alienation. While, legally speaking, chiefs have no right to transact in community land, in practice this also happens and is a widely condoned practice.

Although the preferable route for investors is to acquire land through the government, in some cases, particular for smaller areas of land, investors do 'purchase' land directly from chiefs. In Ethiopia, where such traditional institutions have lost its meaning (at least before the government), the consent of community representatives is rarely sought - in none of the case studies were such efforts apparent.

Although community consultations are not a legal requirement in Ethiopia and Nigeria, they do sporadically take place. However, since these consultations are often intended to quell local resistance, when consultations do take place, these largely have a promotional objective and, therefore, rarely genuinely seek community input or consent. In Nigeria, in making their decision to consent to acquisition, some chiefs do consult the wider community and actively seek their consent, though, in practice, most consultations are limited to the members of the Chiefs and Elders Council. In Ghana, where the law is most explicit about the fiduciary duties of the chiefs, community consultations were not observed at any of the case study communities. In Zambia, the only country where consultations are a legal requirement, rarely do chiefs in fact fulfill this obligation. Only in one case was a consultation observed, though this was merely to inform the community of the pending land alienation, rather than to seek their consent.

In similar vein to the consultation process, payment of compensation to project affected persons was rarely observed. In Ghana and Zambia, there was no evidence of any compensation payment being made by the chiefs or the government. In Ghana, two companies did offer compensation, though this was part of their CSR strategy and not a negotiated contribution. Although Ghanaian chiefs have complete freedom to negotiate leasehold terms, these terms tended to encompass only annual monetary contributions to the Traditional Council and not developmental contributions to the wider community. In practice, chiefs tend to favor a one-off informal sale of land instead of annual payments, since those revenues are not formalized as part of a contract and, therefore, cannot be claimed by government. There was no evidence that these one-off payments or annual contributions were shared with the wider community. In Zambia, where chiefs are not intended to profit from land alienation, in practice numerous contributions are made to gain their support.

In Ethiopia and Nigeria, some cases of compensation payment have been observed. In Ethiopia, the government paid compensation for land it acquired for two sugar projects. This was not technically required, since affected communities were not in possession of land certificates. New housing was to be constructed for resettled households and new farmlands allocated. Since most allocated land in Nigeria is not located on Customary Land, land users had no legal claims to land and, therefore, right to compensation. The only case where compensation was paid was when an investor directly acquired land from chiefs and bypassed the government. Nevertheless, the majority of investors did pay annual royalties to 'landlord' communities. However, like in Ghana, these royalties were largely captured by chiefs.

By and large, the actual process for formalizing leasehold titles followed protocol. In Zambia, however, 99-year leasehold titles are often allocated to the ZDA rather than the investor. The ZDA would in turn allocate 2 to 5 year provisional usufruct rights to investors, pending evidence of productive use of the land before signing over the 99-year title. In Ethiopia, it was also observed that a number of estates exceeded their legally allowable size; the land cap is in practice not followed.

Environmental permitting

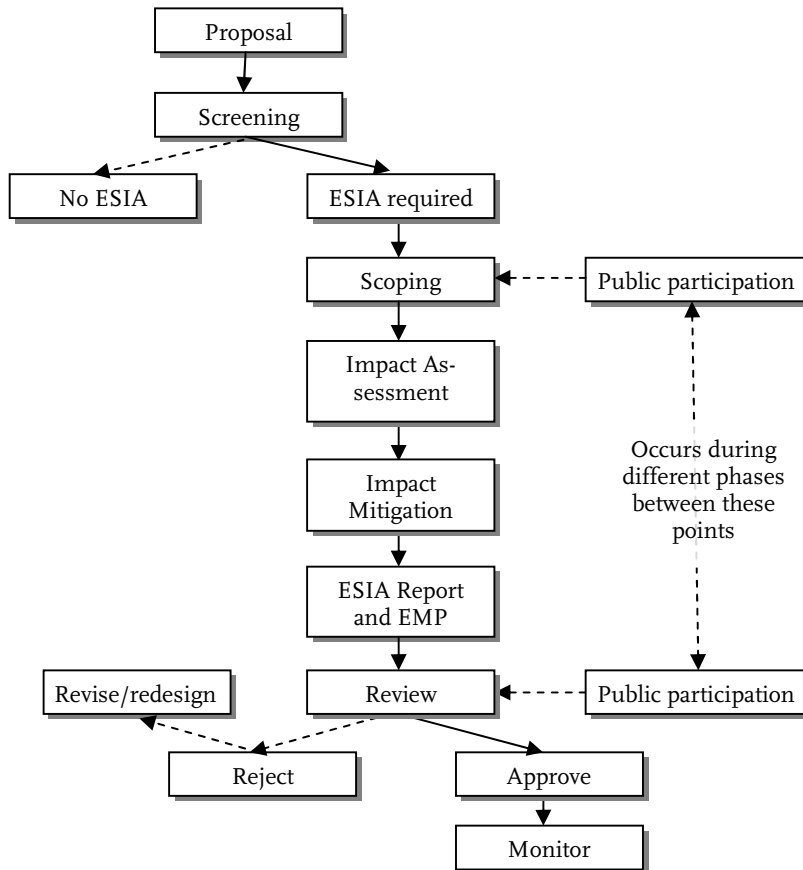
Theory

Before a project may commence operations, a number of permits must first be obtained. Typically, these relate to land use change and resource utilization (e.g. water) and extraction (e.g. timber and minerals). The most important for agricultural investments is the environmental permit that is obtainable through an Environmental and Social Impact Assessment (ESIA)⁴. The ESIA requires project proponents to conduct a thorough analysis of the project's potential (direct/indirect; short-/long-term) social, economic, and environmental impacts and propose appropriate mitigating mechanism and/or alternative project locations and designs. The ESIA's can only be performed by independent consultants approved by competent authorities.

In all four case study countries, agricultural investors are legally required to conduct ESIA's when the scale of development exceeds a legislated threshold or entail specific types of land conversion. This differs by country: in both Ethiopia and Nigeria, when more than 500 ha of land are converted or more than 100 households are to be resettled; in Ghana, when more than 40 ha of land are converted or when more than 20 households are to be resettled; and in Zambia, when projects are located within 'environmentally sensitive areas'. While ESIA's in Zambia are technically not mandated for projects not located in environmentally sensitive areas, 'large-scale agriculture' projects and irrigation schemes larger than 50 ha in extent are required to develop a so-called Project Brief. In contrast to an ESIA, where primary social, economic, and environmental data is to be collected, Project Briefs entail only a 'preliminary prediction of impacts' based on secondary data sources. The Ethiopian thresholds are based, however, only on draft ESIA guidelines and are, unlike the other three countries, yet to be transposed into law.

One of the primary objectives of the ESIA is to address problems in a timely and cost-efficient manner. As such, ESIA's are intended to be conducted during the conceptualization and planning phase of the project cycle, before major decisions and commitments are made (IAIA and IEA 1999; UNEP 2002) and should *inform* project siting and design (IFC 1998). The importance of the ESIA in this regard is implicitly recognized by environmental legislation in all four countries - with laws in each country stipulating that projects may not commence until the ESIA has

been concluded and an environmental permit is issued. In none of the countries, however, are there provisions that detail when an ESIA is to be conducted relative to the land acquisition process, which could hypothetically create situations where land is alienated to a project despite the project being denied the right to proceed on the basis of an unfavorable ESIA.



Typical ESIA procedural framework

Striking similarities can be observed when comparing ESIA procedures across countries, illustrating the prominent technical role of bilateral and multilateral organizations in the formulation of national ESIA regulations and guidelines. In all four countries, the ESIA procedural framework follows an identical structure (see above figure). First, a project proposal is submitted and screened by the competent environmental authorities to determine whether an ESIA is required. Subsequently, a scoping study is to be conducted to identify critical issues to be further explored during the full assessment. Research is then undertaken to identify potential impacts and appropriate mitigation mechanisms. The latter will be incorporated into an Environmental Management Plan (EMP) that is submitted alongside the

ESIA, which further details criteria and verifiable indicators to be used in compliance monitoring. In this regard, in all four countries project proponents are required to submit regular internal environmental audits and inspectors are to conduct periodic site visits. However, only Ghanaian law specifies the intervals at which these audits are to be conducted (annually), while all countries fail to specify the intervals for performing site visits. Therefore, the quality of compliance monitoring is largely contingent on the will of environmental authorities.

Between the scoping and ESIA review phase, some level of public participation is typically required. In all four countries, for example, the general public has the legal right to review and comment on the ESIA upon submission. These comments are, in turn, taken into consideration in the ultimate decision of relevant environmental authorities. In Ghana and Zambia, environmental laws require that in the case of substantial negative reactions, public hearings with concerned stakeholders are to be held. In all countries, any person aggrieved by a decision on the ESIA has the right to contest that decision. Only in Nigeria, however, does the law require that the public is engaged prior to ESIA submission; here they have the opportunity also to comment on the scoping report. Lack of public engagement during preliminary phases of the process could result in insufficient emphasis of the ESIA on issues of particular relevance to local stakeholder groups.

Practice

Although the four countries have relatively progressive ESIA laws and associated guidelines, the spirit of this instrument is in practice frequently undermined. For example, in all projects, except one in Zambia, the ESIA was conducted *after* the land had been acquired. This implies that the ESIA is, in practice, not a tool for informing land allocations. In Ethiopia and Nigeria, all case study projects that had submitted an ESIA had begun operations prior to its approval. More importantly, the vast majority of companies neglected to conduct an ESIA altogether, even though all sampled projects were required to submit one by law: only 10 of the 38 sampled projects across the four countries had completed an ESIA (four in Ethiopia and two in each of the other three countries).

Furthermore, the participation of stakeholders was found to be limited. In Ethiopia and Zambia, there was no evidence of any consultations with project affected persons or CSOs in any of the ESIA phases. In Ghana, community consultations were generally held during the research phase, though, in the absence of government or civil society representatives, these reportedly took on the character of a public relations forum. In Nigeria, post-submission hearings were held, though in practice these involved only technical presentations of findings.

Although impact mitigation strategies to be adopted as part of the EMP could offer an additional opportunity for project affected persons to be compensated for loss of access to livelihood resources, rarely were such requirements formalized in the EMP. To a large extent, this can be attributed to the tendency of the ESIAAs to

downplay project impacts and overestimate the direct economic spillovers of the project. In one case in Zambia, compensation was found to be an impact mitigation strategy. It should though be noted that this was one of the two cases where an ESIA was also conducted for the purpose of accessing IFC financing.

Issues of public accessibility to the ESIA's were also apparent in Ethiopia, Nigeria, and Zambia. In Ethiopia and Nigeria, despite laws to the contrary, ESIA documents are not available for public review, even upon request. Although Zambia has an environmental library that stocks some of the ESIA's, more contentious ESIA's are not available for public scrutiny. Transparency is only really observed Ghana; though being available only in its capital and not translated into local languages, it is questionable how accessible these are to project affected persons.

Although all completed ESIA's included an EMP, compliance monitoring is not only in law, but also in practice, an arbitrary concept. Ethiopia is the only country where monitoring activities of any sort are systematically carried out. However, these activities are principally intended to ensure projects develop at the rate specified in their leasehold contracts. Although social and environmental performance is appraised, in practice, there are no repercussions for underperformance on these dimensions and the EMP is not used as a performance benchmark.

Mechanism to capture gains

Theory

Only in Ethiopia have explicit mandates been assigned for the management of investment spillovers. In this case, the AISD is charged with promoting technological spillovers and contract farming schemes. It could though be argued that the impact mitigation strategies adopted under the ESIA may constitute developmental initiatives, though with the emphasis on mitigating costs, as opposed to capturing benefits, it cannot be perceived as an adequately substitute for dedicated initiatives.

Practice

Considering its weak legal foundation, it is unsurprising that few government institutions are actively engaged in ensuring the purported development contributions of investments are effectively captured and realized. The AISD, which has the most explicit mandate, was not found to have intervened in any meaningful manner. Where investor contributions to community development were observed, these were largely a product of investor goodwill or of negotiations over land with chiefs.

Dispute resolution

Theory

When project affected persons are aggrieved by a project - for example, by losing access to livelihood resources without (adequate) compensation - different avenues for contestation exist in the four countries. In Ghana, chiefs can be held accountable for chiefly misconduct before the House of Chiefs or for failure to act in the interest of its constituents before the judiciary. In Zambia, unlawful alienations can be brought before the High Court or the Land Tribunal. In Ethiopia and Nigeria, however, there are no clear legal grounds for contesting alienations, but many land users do have right to compensation. Cases involving the inadequate or non-payment of compensation can be heard by the courts. In all countries, aggrieved persons can contest the allocation of an ESIA before the environmental authorities. Infringements of labor rights are contestable in all four countries.

Practice

Although community agitation was apparent in a number of cases, only in one case in Zambia was legal action taken. Most conflicts were addressed informally, involving primarily lower level government or company representatives, though only in one case in Ghana and one in Nigeria did this yield tangible results. Surprisingly, CSOs were found to be largely absent from the land acquisition and environmental permitting process. The strongest CSO involvement was observed in Nigeria. Although CSO efforts in Nigeria have undoubtedly served to bring important environmental and rights issues to the public attention, campaigns ultimately failed to have direct bearing on outcomes.

Notes

- 1 In Ethiopia, only the AISD evaluates business plans. It does this primarily to assess the location and extent of land appropriate for the investor. An investment permit has typically already been approved.
- 2 In Nigeria, district government has the authority to allocate land for agricultural purposes up to 500 ha - only the Governor has the authority to allocated land in excess of that.
- 3 The ideology behind state ownership in the three countries are based around principles of social egalitarianism in which state ownership is viewed as the most appropriate means to protect citizens from markets forces (and thereby from expatriate interest and landed elites).
- 4 In some countries this is simply referred to as the Environmental Impact Assessment (EIA) or more elaborately as the Environmental, Social, and Health Impact Assessment (ESHIA). In practice and also often in law, despite different naming, they are not too dissimilar in breadth and depth.

A5. Sustainability criteria for selected international governance instruments

FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (Voluntary Guidelines)

The Voluntary Guidelines includes five overarching principles relating to the recognition, promotion, safeguarding of tenure rights and access to recourse mechanisms. Section 9 requires that the free, prior, and informed consent of indigenous communities is sought before initiating any project. Section 12 includes 15 specific provisions related to investment, abridged these include:

- (1) State and non-state actors should acknowledge that responsible public and private investments are essential to improve food security.
- (2) States should support investments by smallholders as well as public and private smallholder-sensitive investments.
- (3) All forms of transactions in tenure rights as should be done transparently in line with relevant national sectoral policies
- (4) Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights.
- (5) States should, with appropriate consultation and participation, provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights
- (6) States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.
- (7) States should ensure that all actions are consistent with their existing obligations under national and international law,
- (8) Laws should require agreements for investments to clearly define the rights and duties of all parties to the agreement.
- (9) States and other relevant parties should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance as required.
- (10) States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security
- (11) Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations. The negotiation process should be non-discriminatory and gender sensitive.

- (12) Investors have the responsibility to respect national law and legislation and recognize and respect tenure rights of others and the rule of law
- (13) Professionals who provide services to States, investors and holders of tenure rights to land, fisheries and forests should undertake due diligence to the best of their ability when providing their services
- (14) States and affected parties should contribute to the effective monitoring of the implementation and impacts of agreements
- (15) When States invest or promote investments abroad, they should ensure that their conduct is consistent with the protection of legitimate tenure rights, the promotion of food security and their existing obligations under national and international law.

Principles on Responsible Agricultural Investment (PRAI)

The PRAI cover seven principles relevant to all types of agricultural investment, including contracting farming arrangement that may not entail a transfer of land. These voluntary principles are:

- (1) Existing rights to land and associated natural resources are recognized and respected.
- (2) Investments do not jeopardize food security but rather strengthen it.
- (3) Processes relating to investment in agriculture are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.
- (4) All those materially affected are consulted, and agreements from consultations are recorded and enforced.
- (5) Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.
- (6) Investments generate desirable social and distributional impacts and do not increase vulnerability.
- (7) Environmental impacts of a project are quantified and measures taken to encourage sustainable resource use, while minimizing the risk/magnitude of negative impacts and mitigating them.

Roundtable on Sustainable Palm Oil (RSPO)

Oil palm growers must meet all principles and criteria in order to gain certification. A total of 39 criteria are grouped within eight principles:

- (1) *Commitment to transparency*
- (2) *Compliance with applicable laws and regulations.* Oil palm growers and millers can demonstrate their right to use the land legally, without affecting the legal

- or customary rights of other users. Land shall not diminish legal and customary rights without their free, prior, and informed consent.
- (3) *Commitment to long-term economic and financial viability*
 - (4) *Use of appropriate best practices by growers and millers.* This includes health and safety plan for workers and adoption of best practices that maintain soil fertility and reduce degradation of soils and water.
 - (5) *Environmental responsibility and conservation of natural resources and biodiversity.* Plans to reduce the negative aspects of plantation and mill management are implemented and monitored, including the protection of rare or endangered species, and high conservation value habitats.
 - (6) *Responsible consideration of employees, and of individuals and communities affected by growers and mills.* Transparent methods allow communities to communicate and deal with complaints and grievances and enable negotiations concerning compensation for loss of legal or customary rights. Employees have to right to collective bargaining and employment conditions meet at least legal or industry standards.
 - (7) *Responsible development of new plantings.* Results from social and environmental impact assessment are used for planning, management and operations of plantations. Plantings made after November 2005 cannot have replaced primary forest, or areas of High Conservation Value. No planting can be established on local peoples' land without their free, prior, and informed consent.
 - (8) *Commitment to continuous improvement in key areas of activity.* Growers and millers monitor and review their activities and demonstrate continuous improvement in their operations.

Roundtable on Sustainable Biofuels (RSB)

Biofuel feedstock growers must meet all principles and criteria in order to gain certification. A total of 37 criteria are grouped within twelve principles:

- (1) Biofuel operations shall follow all applicable laws and regulations.
- (2) Sustainable biofuel operations shall be planned, implemented, and continuously improved through an open, transparent, and consultative impact assessment and management process and an economic viability analysis.
- (3) Biofuels shall contribute to climate change mitigation by significantly reducing lifecycle GHG emissions as compared to fossil fuels.
- (4) Biofuel operations shall not violate human rights or labor rights, and shall promote decent work and the well-being of workers.
- (5) In regions of poverty, biofuel operations shall contribute to the social and economic development of local, rural and indigenous people and communities.
- (6) Biofuel operations shall ensure the human right to adequate food and improve food security in food insecure regions.

- (7) Biofuel operations shall avoid negative impacts on biodiversity, ecosystems, and conservation values.
- (8) Biofuel operations shall implement practices that seek to reverse soil degradation and/or maintain soil health.
- (9) Biofuel operations shall maintain or enhance the quality and quantity of surface and ground water resources, and respect prior formal or customary water rights.
- (10) Air pollution from biofuel operations shall be minimized along the supply chain.
- (11) The use of technologies in biofuel operations shall seek to maximize production efficiency and social and environmental performance, and minimize the risk of damages to the environment and people.
- (12) Biofuel operations shall respect land rights and land use rights, both formal and informal. Free, Prior, and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights

EU Renewable Energy Directive (RED)

The EU RED has put forth five different sustainability criteria related to biofuel consumption in member state. Although biofuels that fail to meet these criteria are not excluded from use, only biofuels that fulfill these criteria count towards the 2020 renewable energy target or are eligible for financial support. The sustainability criteria can be summarized as follows:

- (1) Greenhouse gas emission savings from biofuel consumption should be at least 35 percent, increasing to 50 percent by 2017. Installations that commence production after January 1, 2018, are required to reduce emissions by 60 percent.
- (2) Biofuels cannot be produced from raw materials obtained from land with high biodiversity value. This includes land that in or after January 2008 had the following status: (a) primary forest, (b) designated as natural protected area, and (c) highly biodiverse grassland.
- (3) Biofuels cannot be produced from raw materials obtained from land with high carbon stock. This includes land that in or after (a) wetlands that are saturated at least for a 'significant part of the year', (b) forest land with a canopy cover of more than 30 percent, and (c) forested land with a canopy cover of between 10 and 30 percent, unless it can be proven that greenhouse gas emission reduction targets can still be achieved following conversion.
- (4) Peatlands cannot be converted, unless it can be proven that it does not involve draining previously undrained soil.
- (5) The cultivation of agricultural raw materials should conform to the minimum requirements of good agro-environmental practices, as specified in Council Regulations (EC)No73/ 2009—relating only to EU farmers.

IFC Performance standard on Environmental and Social Sustainability

IFC's Performance Standards define clients' responsibilities for managing their environmental and social risks. Projects financed by the IFC are required to adhere to its eight standards, namely (see IFC 2012 for more detailed description of standards):

- (1) Assessment and Management of Environmental and Social Risks and Impacts
- (2) Labor and Working Conditions
- (3) Resource Efficiency and Pollution Prevention
- (4) Community Health, Safety, and Security
- (5) Land Acquisition and Involuntary Resettlement
- (6) Biodiversity Conservation and Sustainable Management of Living Natural Resources
- (7) Indigenous Peoples
- (8) Cultural Heritage

Summary

Chapter 1: Introduction

The increasing commercial interest in farmland, particularly for the purpose of plantation agriculture, has become the subject of much debate in the public and political arena. Since 2005, rapidly changing global market conditions have encouraged (foreign) private investors, and sometimes governments, to seek access to large areas of fertile agricultural land for the cultivation of food crops and biofuel feedstocks. Much of this rush for farmland is concentrated in sub-Saharan Africa.

While these investments could, in theory, make important contributions to Africa's macroeconomic and poverty indices, they are increasingly being perceived by many non-governmental organizations and academics as a 'neo-colonial land grab' that is threatening to deprive the rural poor of vital livelihood resources. Since most land in rural Africa is governed by systems of collective ownership under customary, rather than statutory, law, these concerns are certainly warranted. Despite efforts to extend legal recognition to customary rights in many parts of Africa, customary claims are rarely afforded the same legal protection as formal property rights and, therefore, remain susceptible to involuntary expropriation.

Research to date has highlighted how in the absence of effective governance mechanisms to regulate investments, negative social and environmental externalities tend to arise - to a point where these typically outweigh potential benefits. Given the absence of regional and international regulatory frameworks, the investment governance burden largely falls on host country governments, which in the African context are typically ill-equipped or disinclined to adequately regulate such socially and environmentally complex investments. Despite a growing body of research on trends, impacts, and, to a lesser extent, global governance instruments, host country governance issues, in contrast, remain grossly underexplored.

This research seeks to address some of these important gaps and unite what has to date been relatively disjointed and narrow areas of analysis. The point of departure is that investment impacts, be it positive or negative, should be viewed in the context of the processes that (re)produce them; only in this way can governance options and development pathways be meaningfully discussed. The focus is on identifying the factors that shape outcomes, with the ultimate aim of deepening our understanding of the conditions under which large-scale agricultural investments can be sustainable. It does this by examining a range of issues related to, for example, legal and institutional frameworks, institutional structures, implementation and enforcement, patterns of interaction between stakeholders, and local social, economic, and environmental impacts. This is done through primary research in four countries, Ethiopia, Ghana, Nigeria, and Zambia, which represents a diverse cross-section of African governance systems.

Chapter 2: Drivers of Investment

Serving partly to position and contextualize the country case studies, the second chapter explores in greater detail the key macro-level geographical and sectoral patterns of large-scale farmland investments, focused specifically on sub-Saharan Africa. It draws on these patterns to explore the potential implications for land use competition, customary tenure rights, and contribution to domestic market needs. With studies to date relying predominantly on speculative and unverified data, this analysis draws on a proprietary dataset developed by the author that classifies data on the basis of reliability and incorporates only data that meets minimum quality requirements. It documents 526 projects larger than 2,000 ha, which cover an area of 21,806,312 ha, equivalent to approximately 10 percent of the annual area harvested in the sub-continent.

Findings illustrate a high geographic concentration of investments, with more than half the area acquired by large-scale farmland projects located in just six countries (Ethiopia, Ghana, Madagascar, Mozambique, South Sudan and Zambia). It shows that the foremost driver of these investments is the perception amongst European investors, in particular, of a long-term demand for alternative sources of energy in industrialized countries. This demand is expected to be largely artificial, with favorable market conditions created by distortionary European and US renewable energy policies (e.g. biofuel mandates). Another important driver was observed to be the demand for food products in 'southern' countries, notably from Asia and the Middle East, who are especially exposed to volatility within global commodity markets due to high domestic land and water constraints and import dependency.

In West African countries, such as Ghana, Liberia, Nigeria, and Sierra Leone, the scale of these farmland acquisitions equates to a more than 80 percent of total suitable and potentially available land. Since most suitable land is already classified as forested or as cultivate land, in the absence of appropriate formal land use management mechanisms, land use change resulting from farmland acquisitions are especially likely to have detrimental social and environmental implications in these countries. Moreover, it is questionable whether these investments are sufficiently aligned with domestic market needs (e.g. excessive focus on biofuels and cash crops as opposed to staple food crops). Since few countries have mechanisms in place to ensure commodities serve local markets, many commodities will likely be destined for export; this due to price differentials and incentive policies within countries of investor origin. These findings highlight how many countries in sub-Saharan Africa are increasingly threatening to internalize the costs of growing external resource scarcity.

Chapter 3: Ethiopia

Smallholder-led agricultural industrialization has long been a guiding development strategy for the Ethiopian government. Since the late 2000s, with rising investor

interest in its fertile farmland, the government has though begun actively promoting plantation agriculture; under the assumption that technologically intensive commercial investments will contribute to the modernization of traditional production systems. Early evidence presented in this chapter, however, suggests that the relationship between these production systems is characterized by conflict rather than complementarities. Since all land is vested in the state and only the government is authorized to allocate land for investment, communities with insecure user claims are subjected to expropriation.

Ten projects were researched in three regions in Ethiopia: Gambella, Oromiya, and Southern Nations, Nationalities, and Peoples' Region. These case studies have shown that while procedures and protocols are in place to identify potential land use conflicts, allocations decisions in practice illustrate clear biases against particular land use systems. Ecologically significant landscapes and areas dominated by land extensive livelihood systems, such as pastoralism, hunting and gathering, and shifting/opportunistic cultivation, are disproportionately targeted for conversion. While financial motives partially underlie this phenomenon, biases reflect more importantly government's dismay over, what is regularly referred to as, 'backwards' and 'uncivilized' production systems. This is reflected not only by the allocation decisions, but also by high levels of awareness of land use conflicts, limited adherence to environmental regulations, the absence of consultation, participation, or impact mitigation mechanisms, and the refusal to engage communities in post-implementation dialogue.

However, findings show a widespread resistance to plantation employment and a reluctance to abandon traditional livelihood activities. This can in part be attributed to the deeply engrained social identities that are derived from these activities, but also to the perceived risks associated with increasing dependence on insecure income from casual employment and government resource supplies and sacrificing important safety net activities. As a result, land fragmentation and loss of access to vital livelihood resources is enhancing the risk of inter and intra-tribal conflicts and vulnerability to shocks. Many households will, therefore, over time be forced to abandon these activities and submit to development plans of the state. This suggests a growing disconnect between a developmental state in pursuit of agricultural modernization and normative human and citizenship rights. With the investment process being actively recentralized, the capacity of sub-national institutions to respond to the needs of its population is increasingly being challenged, thereby undermining principles of ethnic federalism enshrined in Ethiopia's constitution, notably their right to self-determination. Compounded by increasingly prostrate civil society organizations and the absence of mechanisms for community consultation and participation, rural communities have no real means to ensure that their development needs are accounted for or able to contest the appropriation of the commons.

Chapter 4 and 5: Ghana

Unlike Ethiopia, in Ghana, customary ownership rights over land are protected by statutory law, in what is considered as one of the most progressive land tenure systems in Africa. With most rural land located within the customary domain, the vast majority of investment land is acquired through negotiations with 'traditional' authorities who hold the ultimate right to alienate customary land. Although the Ghanaian government actively supports (foreign) agricultural investment - for example, in providing a liberal investment regime - they are largely absent from the negotiation encounter.

Nine projects were researched within the forest-savanna transition zone; an agro-ecological zone in central Ghana that hosts most large agricultural investments. The case studies show that in the absence of legal mechanisms to protect individual user rights and that place checks and balances on the conduct of customary elite, traditional authorities often fail to adequately consider conflicting user claims and negotiate alienation terms that address the needs of their constituency. Findings suggest that land alienation increases local resource scarcity, directly impacting on community food security and income earning potential. Vulnerable groups such as women and migrants tend to be disproportionately affected, since these are least able to recover lost livelihood assets.

Since the government tends to perceive customary land management as one in which citizens are responsible for holding their leaders to account on the basis of traditional practice, they do not play an active role as intermediaries or provide any oversight in the alienation process. While political motives partly underlie this phenomenon, it too can be ascribed to the perceived developmental potential of large-scale farmland investments. Often hiding behind narrow institutional mandates, many government stakeholders failed as a result to act upon (legal) intransigencies by both investors and traditional authorities. Capacity constraints, fragmented responsibilities, limited cross accountabilities, and perverse incentives further contribute to these outcomes. In particular, the decentralized governance structure, where the district government has few enforcement mandates, limited accountability to sectoral agencies, and is increasingly required to raise its own funds, arguably weakens the responsiveness of the state to local development needs.

Therefore, as a result of deficiencies in the regulatory regime and in the will and capacity to enforce relevant laws, the Ghanaian state plays only a marginal role in ensuring customary land users are protected from (the consequences of) land expropriation. The limited capacity of affected communities to claim their rights, unrealistic development expectations, and deference to customary hierarchies has the tendency to undermine collective action. This raises very real challenges for ensuring communities are sufficiently empowered to claim their full bundle of rights within the confines of a legal system in which tenure security rests on the goodwill of traditional authorities.

Chapter 6: Nigeria

With oil rents constituting the vast majority of government revenue in Nigeria, its rentier state is notorious for oil politics and patrimonial accumulation. Although its once thriving agricultural sector has since the rise of its oil economy suffered under decades of state neglect, since Nigeria returned to civilian rule in 1999 it is increasingly promoting private sector-led commercialization as a means to diversify its economy. However, with all land vested in what is widely perceived as a poorly embedded and self-serving state, large-scale agricultural investments threaten to generate unsustainable local outcomes.

Fourteen projects were researched within the tropical high forest zone of the southeast, which forms part of the Congolian forest belt. As one of the most densely populated countries in Africa, most large investments are located within such eco-regions due to their 'availability' of suitable land. The chapter shows that the rising participation of the private sector in agricultural production has come at the expense of both indigenous rights and conservation. This, however, is not simply a result of indiscriminate land alienations. For example, the state is disinclined to alienate customary land over which communities have legal claims and, therefore, right to compensation. As a result, the state has exclusively allocated land that falls under their own administration, regardless of the magnitude of land use conflicts, such as defunct state farms and land within forest reserves and national parks. Since most state farms have only been partially developed and have long experienced heavy encroachment, privatization of state farms entails widespread displacement and dispossession. Its failure to accommodate smallholder interests reflects not only state neglect for local land uses, but, more generally, investment-centric development strategies and discriminatory ideologies regarding 'inefficient' smallholder production systems. Furthermore, despite the region's conservation rhetoric and strict environmental laws, in practice these policies and laws are widely ignored and only selectively enforced. This raises very real concerns over the underlying motives and capacity to capitalize on carbon finance opportunities.

The interactions between state, agribusiness, and customary elites play an important role in shaping these outcomes. With chieftaincy institutions continuing to wield substantial political influence, the state and investors alike seek to legitimize their (lack of) actions and absolve their responsibilities by empowering and co-opting customary elites. This serves to quell local resistance and to alleviate the potential political ramifications of dispossession. The apparent ease with which chiefs are compromised reveals not only the patrimonial nature of chieftaincy institutions, but also the limited capacity of their constituency to demand accountability. This, in turn, severely undermines the capacity of civil society organizations to mobilize communities and engage in right-related campaigns. In similar vein to oil rents, the state's increasing reliance on fiscal revenues generated through agribusiness will continue to undermine the quality of societal representation.

Chapter 7: Zambia

As a landlocked, net oil importing country, the Zambian government has in recent years started to actively promote commercial biofuel investments. Although, like Ethiopia and Nigeria, all land has been nationalized, land cannot be alienated without the consent of local chiefs. Moreover, with land laws stipulating that land alienations should not adversely impact longstanding interests in land, individual user claims are theoretically protected from expropriation.

The research focused on five projects in the miombo woodlands eco-region of central-northern Zambia, which due to its agro-ecological suitability and strategic location has been the primary source of land for most Greenfield investments. The prevalence and discriminatory perception of 'unsustainable' slash-and-burn practices in this area was used to justify the allocation of land intensively used for subsistence agriculture to more 'productive' investment purposes. A special inter-agency working group was established to assist investors in identifying suitable land and convince chiefs to alienate land to the investors or its land bank. Other highly-placed politicians were also found to be actively engaged in facilitating the alienation process. In the absence of national-level land use planning initiatives to guide these efforts, limited consideration was given to land availability.

While chiefs are legally required to consult their constituency before alienating land, there was little evidence they had done so comprehensively. One of the most crucial legal mechanisms to protect customary rights requires both the chiefs and District Councils to certify that people's 'interests and rights are not being affected by the approval'. Little value can be placed on this assurance, however: in all the case study sites, the land allocated to investors was certified as free of encumbrance yet was otherwise actively used for shifting cultivation and various forestry-related activities. This in essence relegates these processes designed to protect customary rights to mere technicalities. Although communities and chiefs have no legal right to compensation, agreements were in most cases made between chiefs and the investor, typically involving large cash payments, new chief 'palaces', and vehicles. Community were not found to contest expropriation or chiefly misconduct; this due to lack of legal literacy and access to mechanisms to contest rights infringements and high expectations regarding long-term development impacts.

The heavy-handed role of the government in the process also raises a number of concerns. When government agencies position themselves alongside investors in seeking to wrest land away from customary authorities for government land banks, the risks associated with large-scale land acquisition are amplified. Moreover, with a government agency becoming such a large landholder, further conflicts of interest could arise, especially when sub-leasing land can so easily become an opportunity for rent-seeking.

Chapter 8: Conclusion

The case studies have highlighted the diversity of contexts in which large-scale agricultural investments are promoted, facilitated, and established. They suggest that investments are typically accompanied by high local costs associated with displacement, dispossession, and environmental degradation. In every project, locally important resources have been expropriated, typically involving a combination of farm-, forest, and pasturelands. With most projects neglecting to pay compensation or make any tangible contributions to community development and with employment opportunities considered inadequate to offset lost production or altogether undesirable, in the face of rising resource constraints, most affected households are unable to effectively reconstruct their livelihoods. Additionally, a number of projects also covered areas of high global ecological and cultural significance.

These outcomes not only give reason to question the general potential for sustainable and responsible agricultural investment, but it also casts doubt on the capacity of host countries to effectively regulate these investments. In this regard, the uniformity of outcomes is an interesting conundrum: can this be attributed to systematic deficiencies in the content of the law, or is the law rendered meaningless by poor implementation and enforcement, or are there other structural contributing factors outside formal governance structures? While analysis of the legal underpinnings has revealed numerous deficiencies, particularly in relation to various facets of customary rights protection, the apparent ease with which statutory safeguards are ignored points at more important underlying institutional issues. Such issues include conflicts of interest, co-optation, elite capture, insufficient inter-institutional coordination, inadequate capacity, and pro-investment ideologies. The consequent lack of effective regulatory enforcement exacerbates the threat of underlying structural issues related to, for example, deference to local hierarchies, easily raised expectations, the incompatibility of production systems, and the absence of an innate sense of local accountability by many investors. The conclusion is then that sustainable and responsible agricultural investment is a paradoxical concept, unless well-functioning checks and balances are in place.

Considering the pivotal role of host country institutions, there are two logical implications to this conclusion: reform those institutions or strengthen extra-territorial oversight. Evaluation of both pathways has shown that neither provides simple solutions. Entrenched domestic structures of power and control work to undermine forces that threaten the established order and sovereignty issues inhibit consumer countries from undue interference in host country affairs. The most significant innovations are taking place in the market, with growing numbers of non-state market-based instruments taking on state-like functions. Though not addressing structural obstacles to development and with very low adoption rates by investors in Africa, such schemes do theoretically have the potential to fill various (implementation) gaps.

Although findings have offered new insights into some of the political-economic complexities of developing more effective and equitable (investment) governance systems in Africa, its main contribution lies in furthering our understanding of the different processes across scales that drive outcomes; thus linking what has to date been rather narrow and disjointed areas of inquiry. In so doing, this research has shown that discussions on governance cannot be meaningfully held without a thorough understanding of the dynamics of underlying socio-political systems and the arenas in which those systems manipulate, (re)produce, and legitimize power and control structures. Since inflowing (foreign) capital typically attaches itself to, and by so doing strengthens, powerful strategic coalitions, irrespective of whether these coalitions are bound by vested interests or modernization ideologies, sector sustainability lies in unraveling and disentangling this state-elite-agribusiness complex. This chapter suggests that four institutional conditions should be fulfilled: clear mandates, adequate implementation and enforcement capacity, and well-aligned incentive and accountability structures. Considering observed implementation gaps, legal reforms will only be effective once these institutional conditions are in place.

However, it must be recognized that host country institutions are (re)produced by a geopolitical system that rewards (land) market liberalization, deregulation, and global productive integration. With this system also (re)producing the capital that gives meaning to such policies, local regimes within comparatively isolated frontier markets become increasingly articulated to global, at the expense of local, political and economic spaces. Therefore, the increasing geographic penetration of neoliberal principles and capital exposes the inimicality of the global system of accumulation to customary property and production systems. As a result, the relationship of much of contemporary Africa with the global economic system is increasingly characterized by resource privatization, exploitation and extraction, benefiting select local groups at the expense of the rights and livelihoods of its more vulnerable population. Since this capital has no societal mandate and domestic institutions fail to adequately prescribe responsibilities, much of the developmental potential global productive integration could have had has been lost.

Samenvatting

Hoofdstuk 1: Inleiding

De toenemende commerciële belangstelling voor landbouwgrond, met name voor de ontwikkeling van grootschalige plantages, is een onderwerp van discussie in de publieke en politieke arena geworden. Sinds 2005 hebben snel veranderende mondiale marktomstandigheden (buitenlandse) private investeerders, en soms overheden, aangezet om toegang tot vruchtbare landbouwgrond te verwerven voor de teelt van voedselgewassen en grondstoffen voor biobrandstoffen. Een groot deel van deze stormloop op landbouwgrond is geconcentreerd op sub-Sahara Afrika.

Theoretisch kunnen deze investeringen een belangrijke positieve bijdrage leveren aan macro-economische ontwikkelingen en armoedebestrijding in Afrika. Desondanks wordt dit fenomeen door vele niet-gouvernementele organisaties en wetenschappers in toenemende mate beschouwd als een 'neokoloniale landroof', met als gevaar dat rurale armen worden beroofd van belangrijke bestaansmiddelen. Gezien het feit dat het merendeel van het land in ruraal Afrika wordt beheerd via systemen van collectief eigendom volgens gewoonterecht, en niet door statutair recht, zijn deze zorgen zeker gerechtvaardigd. Ondanks inspanningen in vele delen van Afrika om wettelijke erkenning te bieden aan traditionele rechten, genieten deze rechten zelden dezelfde wettelijke bescherming als formele eigendomsrechten en blijven daarom gevoelig voor onvrijwillige onteigening.

Onderzoek tot op heden heeft laten zien dat negatieve neveneffecten op sociaal en milieugebied vooral ontstaan bij afwezigheid van effectieve bestuursmechanismen voor de regulering van investeringen - tot het punt waar deze niet meer opwegen tegen de potentiële voordelen. Bij gebrek aan regionale en internationale regelgeving komt de last van het reguleren van de investeringen grotendeels terecht bij de overheden van gastlanden. In de Afrikaanse context hebben deze doorgaans niet de capaciteit of motivatie om zulke sociaal en ecologisch complexe investeringen adequaat te reguleren. Ondanks een groeiende hoeveelheid onderzoek naar trends, gevolgen, en in toenemende mate globale bestuursmechanismen, is de problematiek van bestuursproblemen in gastlanden tot dusver onderbelicht gebleven.

Dit onderzoek richt zich op deze belangrijke gaten in kennis, en tracht te verenigen wat tot dusver is benaderd in relatief weinig met elkaar in verband gebrachte, beperkt gedefinieerde analyses. Het uitgangspunt is dat de effecten van deze investeringen, hetzij positief of negatief, moeten worden gezien in de context van de processen die ze (re)produceren. Alleen op deze manier kunnen bestuursopties en ontwikkelingstrajecten op betekenisvolle wijze worden besproken. De nadruk ligt op het vaststellen van de factoren die invloed hebben op de uitkomst, met het uiteindelijke doel inzicht te geven in de voorwaarden waaronder grootschalige landbouwinvesteringen duurzaam en rechtvaardig kunnen zijn. Het onderzoek

doet dit door een scala van onderwerpen te behandelen, waaronder de juridische en institutionele kaders, institutionele structuren, uitvoering en handhaving, patronen van interactie tussen belanghebbenden, en de lokale sociale, economische en milieueffecten. Dit wordt gedaan door middel van primair onderzoek in vier landen die een selectie van verschillende bestuursmechanismen in Afrika vertegenwoordigen: Ethiopië, Ghana, Nigeria en Zambia.

Hoofdstuk 2: Drijvers van investeringen

Om de casestudies te positioneren en contextualiseren, verkent het tweede hoofdstuk in detail de belangrijkste geografische en sectorale patronen van grootschalige landbouwinvesteringen in sub-Sahara Afrika. Deze patronen dienen als uitgangspunt om de mogelijke gevolgen van regionale trends in conflicten tussen verschillende vormen van landgebruik, traditioneel grondbeheer en de bijdrage aan de binnenlandse marktbehoefte te verkennen. Waar studies tot dusver voornamelijk zijn gebaseerd op speculatieve en ongeverifieerde data, maakt deze analyse gebruik van een dataset ontwikkeld door de auteur, waarin gegevens zijn geclassificeerd op basis van betrouwbaarheid en alleen die gegevens worden gebruikt die voldoen aan minimale kwaliteitseisen. De dataset bevat 526 projecten groter dan 2,000 hectare (ha) met een cumulatieve oppervlakte van 21,806,312 ha, gelijk aan ongeveer 10 procent van het gebied dat jaarlijks geoogst wordt in sub-Sahara Afrika.

De bevindingen laten een grote geografische concentratie van investeringen zien, met meer dan de helft van de grootschalige landbouwprojecten geconcentreerd in slechts zes landen (Ethiopië, Ghana, Madagaskar, Mozambique, Zuid Soedan, en Zambia). Het toont aan dat een van de belangrijkste drijvers van deze investeringen de verwachting onder de Europese investeerders van een langetermijn vraag naar alternatieve energiebronnen in geïndustrialiseerde landen is. Deze vraag is grotendeels kunstmatig, gecreëerd door gunstige marktomstandigheden die hun oorzaak vinden in Europees en Amerikaanse energiebeleid (zoals biobrandstof mandaten). Een andere belangrijke drijver die naar voren komt is de vraag naar levensmiddelen in 'zuidelijke' landen, met name in Azië en het Midden-Oosten, die bijzonder gevoelig zijn voor prijsfluctuaties in mondiale grondstoffenmarkten vanwege beperkte binnenlandse beschikbaarheid van land en water en de daaruit voortkomende afhankelijkheid van externe markten.

In West-Afrikaanse landen als Ghana, Liberia, Nigeria en Sierra Leone is de omvang van deze landwervingen meer dan 80 procent van de totale geschikte en potentieel beschikbare grond. Aangezien het merendeel van de beschikbare grond reeds geclassificeerd is als bosland of landbouwgrond kan het gebrek aan geschikte mechanismen om traditionele landrechten en natuur te beschermen leiden tot nadelige sociale en ecologische gevolgen in deze landen. Bovendien is het de vraag of deze investeringen voldoende bijdragen aan binnenlandse marktbehoeften, gezien de overmatige oriëntatie op biobrandstoffen en andere gewassen die geen prioriteit hebben voor waarborging van voedselzekerheid. Aangezien weinig landen regels

hebben geïntroduceerd die ervoor zorgen dat gewassen worden geproduceerd voor lokale markten, bestaat er een reëel risico dat gewassen worden geëxporteerd ten koste van de binnenlandse behoefte aan essentiële voedingsmiddelen - dit als gevolg van prijsverschillen en beleid in de landen van herkomst van de investeerders. Deze bevindingen benadrukken dat de kosten van de groeiende wereldwijde grondstoffenschaarste dreigen te worden geïnternaliseerd door landen in sub-Sahara Afrika.

Hoofdstuk 3: Ethiopië

Agrarische industrialisatie gericht op kleinschalige boeren is sinds geruime tijd een belangrijke ontwikkelingsstrategie voor de Ethiopische regering. Sinds enkele jaren voert de overheid een stimuleringsbeleid voor plantagelandbouw, steunend op de toenemende belangstelling van investeerders voor vruchtbare landbouwgrond. Dit beleid gaat uit van de veronderstelling dat technologie-intensieve commerciële investeringen zullen bijdragen aan de modernisering van traditionele productiesystemen. Het eerste bewijsmateriaal gepresenteerd in dit hoofdstuk suggereert echter dat de relatie tussen beide productiesystemen meer wordt gekenmerkt door conflicten dan door complementariteiten. Aangezien alle grond in handen is van de Staat, en alleen de overheid land voor investeringen toe kan wijzen, zijn gemeenschappen met onzekere gebruiksrechten blootgesteld aan onteigening.

Het onderzoek omvatte tien projecten in drie regio's van Ethiopië: Gambella, Oromiya, en de Southern Nations, Nationalities, en Peoples' Region. Deze case studies tonen aan dat, ondanks het bestaan van procedures en protocollen om potentiële conflicten over landgebruik te signaleren, in de praktijk toewijzingsbeslissingen duidelijke bevooroordeeld zijn tegen bepaalde landgebruiksystemen. Ecologisch belangrijke landschappen en gebieden gedomineerd door extensieve vormen van landgebruik, zoals nomadisme, jagers-verzamelaars, en zwerflandbouw, worden in onevenredige mate beschikbaar gesteld voor commerciële landbouw door buitenstaanders. Hoewel financiële motieven gedeeltelijk aan dit fenomeen ten grondslag liggen, weerspiegelen deze vooroordelen nog meer de ontevredenheid van de overheid over wat regelmatig wordt aangeduid als 'achterlijke' en 'onbeschaafde' productiesystemen. Dit komt tot uiting niet alleen in allocatiebeslissingen, maar ook in een hoge mate van bewustzijn van conflicten over landgebruik, beperkte naleving van milieuvorschriften, het ontbreken van overleg, inspraak, of compensatiemechanismen, en de weigering om gemeenschappen te betrekken in een dialoog na implementatie.

Echter, de bevindingen tonen een wijdverspreide weerstand tegen tewerkstelling op plantages en tegenzin om traditionele bestaanswijzen op te geven onder de lokale bevolking. Dit kan deels worden toegeschreven aan de diepgewortelde sociale identiteiten verbonden met deze bestaanswijzen, maar ook aan de risico's die voortvloeien uit toenemende afhankelijkheid van onzekere inkomsten uit informele arbeid, toegang tot door de overheid gecontroleerde hulpbronnen en het opoffe-

ren van belangrijke sociale vangnetten. De fragmentatie van land en het verlies van toegang tot vitale hulpbronnen versterken daardoor inter- en intra-tribale conflicten alsook de kwetsbaarheid voor schokken. Veel huishoudens zullen op den duur worden gedwongen om deze activiteiten op te geven en zich neer te leggen bij de ontwikkelingsplannen van de Staat. Dit suggereert een groeiende discrepantie tussen een 'developmental state' die agrarische modernisering en normatieve mensen- en burgerrechten nastreeft. De recentralisatie van het investeringsproces maakt het de sub-nationale instellingen moeilijk om te beantwoorden om te beantwoorden aan de behoeften van de bevolking, waardoor afbreuk wordt gedaan aan de principes van het etnische federalisme vastgelegd in de Ethiopische grondwet, met name het recht op zelfbeschikking. Rurale gemeenschappen hebben geen reële opties om ervoor te zorgen dat hun ontwikkelingsbehoeften worden erkend of om de toewijzing van gemeenschappelijke goederen te betwisten.

Hoofdstuk 4 en 5: Ghana

In tegenstelling tot Ethiopië worden traditionele landrechten in Ghana beschermd onder het statutair recht, in wat wordt beschouwd als een van de meest vooruitstrevende systemen van landrechten in Afrika. Het merendeel van het platteland valt onder het gewoonterecht en daarom wordt het overgrote deel van land voor investeringen verworven door middel van onderhandelingen met de 'traditionele' autoriteiten die het ultieme recht hebben om land onder gewoonterecht te vervreemden. Hoewel de Ghanese overheid actieve steun biedt aan (buitenlandse) agrarische investeringen – bijvoorbeeld door een liberaal investeringsbeleid – is zij grotendeels afwezig in de onderhandelingen.

Binnen de bos-savanne overgangszone, de agro-ecologische zone in centraal Ghana die de meeste grote agrarische investeringen herbergt, zijn negen projecten onderzocht. De casestudies tonen aan dat bij het ontbreken van wettelijke mechanismen om individuele gebruikersrechten te beschermen en het handelen van notabelen aan regels to onderwerpen, traditionele autoriteiten vaak inadequaat omgaan met tegenstrijdige gebruikersbelangen. Onder deze omstandigheden laten politici vaak voorwaarden uit onderhandelingen komen die aan de behoeften van hun kiesdistrict voldoen. De bevindingen suggereren dat lokale grondstoffschaarste toeneemt door landoverdracht, met directe invloed op de voedselzekerheid en inkomstenbronnen van de gemeenschap. Kwetsbare groepen zoals vrouwen en migranten worden in onevenredige mate getroffen, mede omdat zij het minst in staat zijn om verloren hulpbronnen te compenseren.

Aangezien de overheid het traditioneel grondbeheer ziet als een systeem waarin burgers hun leiders verantwoordelijk houden om te handelen op basis van tradities, speelt zij geen rol als intermediair of toezichthouder in het vervreemdingsproces. Hoewel politieke motieven deels ten grondslag liggen aan dit fenomeen, kan het ook worden toegeschreven aan de verwachtingen van het ontwikkelingspotentieel van grootschalige investeringen in landbouwgrond. Zich ver-

schuilend achter een beperkt institutioneel mandaat falen veel overheidsactoren in het tegengaan van (juridische) trucjes van zowel beleggers als traditionele autoriteiten. Capaciteitsbeperkingen, versnippering van verantwoordelijkheden, de afwezigheid van overkoepelend gezag en perverse prikkels dragen verder bij aan deze resultaten. Met name de gedecentraliseerde bestuursstructuur verzwakt het vermogen van de Staat om te voorzien in lokale ontwikkelingsbehoeften, waarbij districtsoverheden weinig beleidsinstrumenten voorhanden hebben, beperkt verantwoording dienen te leggen bij sectorale instanties, en in toenemende mate in hun eigen inkomsten moeten voorzien.

Als gevolg van tekortkomingen in de regelgeving en een gebrekkige wil en vermogen om relevante wetten te handhaven, speelt de Ghanese staat slechts een marginale rol in de bescherming van traditionele grondgebruikers tegen (de gevolgen van) onteigening. De beperkte capaciteit van de betrokken gemeenschappen om hun rechten op te eisen, onrealistische ontwikkelingsverwachtingen en het respect voor traditionele hiërarchische verhoudingen ondermijnen de mogelijkheden voor collectieve actie. De uitdaging is waarborgen te vinden dat gemeenschappen voldoende bevoegdheden krijgen om hun volledige pakket van rechten op te eisen binnen de grenzen van een wettelijk systeem dat de uitoefening van deze rechten afhankelijk maakt van de welwillendheid van traditionele autoriteiten.

Hoofdstuk 6: Nigeria

Met oliegeden als de overgrote bron van overheidsinkomsten is Nigeria een rentenierstaat berucht om oliepolitiek en patrimoniale accumulatie. De ooit bloeiende agrarische sector had sinds de opkomst van de olie-economie te lijden onder tientallen jaren van verwaarlozing door de Staat, maar sinds de terugkeer naar een burgerregering in 1999 heeft Nigeria in toenemende mate particuliere commercialisering bevorderd als een middel om haar economie te diversifiëren. Echter, met alle land berustend bij wat in het algemeen gezien wordt als een slecht geïntegreerde en zelfzuchtige Staat, dreigen grootschalige landinvesteringen niet-duurzame lokale resultaten tot gevolg te hebben.

Binnen de hoogland-regenwoudszone in het zuidoosten, deel van de Congolese regenwoudgordel, zijn veertien projecten onderzocht. De meeste grote investeringen in Nigeria, een van de meest dichtbevolkte landen van Afrika, bevinden zich binnen dergelijke ecologische zones als gevolg van de relatieve 'beschikbaarheid' van geschikte grond. Het hoofdstuk laat zien dat de toenemende deelname van de particuliere sector in de landbouwproductie ten koste gaat van zowel inheemse rechten als natuurbehoud. Dit is echter niet alleen een gevolg van willekeurige landvervreemding. Zo is de Staat niet geneigd om land te vervreemden waarop gemeenschappen juridische claims kunnen laten gelden waaraan ze recht op schadevergoeding kunnen ontlenen. Daarom heeft de staat uitsluitend land toegewezen uit het eigen domein, ongeacht de conflicten over landgebruik. Vaak zijn dit verlaten boerderijen en land binnen bosreservaten en Nationale Parken. Aangezien de

meeste staatsboerderijen slechts gedeeltelijk ontwikkeld zijn en geruime tijd onderhevig zijn geweest aan verwaarlozing, brengt privatisering van staatsboerderijen wijdverbreide verplaatsing en onteigening met zich mee. Dit onvermogen om tegemoet te komen aan de belangen van kleine boeren weerspiegelt niet alleen de nalatigheid van de Staat ten aanzien van lokaal landgebruik maar ook, meer algemeen, is het een uiting van ontwikkelingsstrategieën gericht op het aantrekken van investeringen en van discriminerende ideologieën ten aanzien van 'inefficiënte' kleinschalige productiesystemen. Bovendien, ondanks de retoriek van natuurbehoud en strikte milieuwetgeving, worden beleid en wetten in de praktijk op grote schaal genegeerd en slechts selectief ten uitvoer gebracht. Dit roept een zeer reële bezorgdheid op over de achterliggende motieven en de capaciteit om te profiteren van mogelijkheden op het gebied van compensatie van CO₂-emissies.

De interacties tussen de Staat, agro-business, en de gebruikelijke elites spelen een belangrijke rol in de vorming van deze uitkomsten. Door middel van handhaving van traditioneel leiderschap en coöptatie van bestaande elites willen zowel de Staat als investeerders hun (gebrek aan) acties legitimeren en ontslagen worden van hun verantwoordelijkheden. Dit dient om de lokale weerstand te onderdrukken en de mogelijke politieke gevolgen van onteigening te dempen. Het schijnbare gemak waarmee traditionele leiders worden gecompromitteerd onthuld niet alleen de vermogensrechtelijke aard van traditioneel leiderschap, maar ook de beperkte capaciteit van de bevolking om verantwoording af te dwingen bij de autoriteiten. Dit, op zijn beurt, ondermijnt de capaciteit van maatschappelijke organisaties om gemeenschappen te mobiliseren en rechtsgerelateerde campagnes op te zetten. Net als eerder met olie-inkomsten is gebeurd zal zal de toenemende afhankelijkheid van de Staat van fiscale inkomsten uit agro-business de aandacht voor de belangen van andere maatschappelijke groepen blijven ondermijnen.

Hoofdstuk 7: Zambia

Als land zonder kust en netto olie-importeur is Zambia de afgelopen jaren begonnen met het actief bevorderen van investeringen in de productie van commerciële biobrandstoffen. Hoewel alle grond genationaliseerd is, net als in Ethiopië en Nigeria, kan land niet worden vervreemd zonder toestemming van de lokale stamhoofden. Bovendien, met landwetten die bepalen dat landvervreemding geen nadelige invloed mag hebben op bestaande belangen, zijn de rechten van individuele gebruikers theoretisch beschermd tegen onteigening.

Het onderzoek richtte zich op vijf projecten in de miombo bossen eco-zone van Centraal-Noord Zambia, door haar agro-ecologische geschiktheid en strategische ligging de voornaamste bestemming voor de meeste investeringen in nieuwe landbouwgrond. In het gebied is zwerflandbouw wijd verbreid en discriminerende percepties van deze praktijken als 'niet-duurzaam' worden gebruikt als rechtvaardiging van de toewijzing van land dat intensief gebruikt werd voor het levensonderhoud van de lokale bevolking aan meer 'productieve' beleggingsdoeleinden. Een

speciale inter-departementale werkgroep is opgericht om beleggers te helpen bij de identificatie van geschikte grond en om stamhoofden over te halen om land te vervreemden ten behoeve van investeerders of de grondbank. Andere hooggeplaatste politici bleken ook actief betrokken te zijn bij het faciliteren van het vervreemdingsproces. Gebrek aan ruimtelijke ordening op nationaal niveau om dergelijke initiatieven te begeleiden heeft ertoe geleid dat weinig aandacht werd besteed aan de vraag in hoeverre land werkelijk beschikbaar is.

Hoewel stamhoofden wettelijk verplicht zijn om hun kiesdistrict te raadplegen voordat land vervreemd wordt, is er weinig bewijs dat dit zorgvuldig is gedaan. Een cruciaal juridisch mechanisme om het gebruiksrecht te beschermen vereist dat zowel de stamhoofden als de districtsraad verklaren dat de 'belangen en rechten' van de bevolking 'niet worden aangetast door de goedkeuring'. Aan deze verzekering kan weinig waarde worden toegekend: in alle locaties in dit onderzoek werd het aan beleggers toegewezen land gecertificeerd als vrij van bezwaren, hoewel het actief gebruikt werd voor zwerflandbouw en diverse bosbouwgerelateerde activiteiten. In wezen degradeert dit de bescherming van traditionele rechten tot louter formaliteit. Hoewel gemeenschappen en stamhoofden geen wettelijke aanspraak hebben op schadevergoeding, werden in de meeste gevallen overeenkomsten gesloten tussen de stamhoofden en investeerders, gewoonlijk bestaande uit betalingen in de vorm van aanzienlijke geldsommen, nieuwe 'paleizen' en voertuigen voor de stamhoofden. De gemeenschappen bleken deze onteigening of wangedrag van stamhoofden niet te aan te vechten, door gebrek aan juridische kennis, het ontbreken van mechanismen om inbreuk op rechten aan te vechten, en vanwege hoge verwachtingen over de gevolgen voor ontwikkeling op de lange termijn.

De hardhandige rol van de overheid in het proces roept een aantal vragen op. Wanneer overheidsinstanties zich zij-aan-zij met beleggers positioneren in het streven om land te ontrukken aan traditionele autoriteiten voor landbanken van de overheid, dan versterkt dat de risico's van grootschalige landacquisities door buitenstaanders. Bovendien kunnen verdere belangenconflicten ontstaan wanneer een overheidsinstelling zo een grootgrondbezitter wordt, vooral als het verpachten van land gemakkelijke kansen biedt voor winstnastreving.

Hoofdstuk 8: Conclusie

De case studies hebben gewezen op de diversiteit van contexten waarin grootschalige landinvesteringen worden gestimuleerd, gefaciliteerd, en gerealiseerd. De resultaten laten zien dat investeringen doorgaans gepaard gaan met hoge lokale kosten van verplaatsing, onteigening, en aantasting van het milieu. In elk project werden lokaal belangrijke bestaansmiddelen onteigend, meestal een combinatie van akker-, bos- en weidegronden. Gezien het feit dat de meeste projecten nalaten om schadevergoeding te betalen of concrete bijdragen aan ontwikkeling van de gemeenschap te leveren, zijn de meeste getroffen huishoudens niet in staat hun bestaanswijze effectief te reconstrueren. Dit temeer omdat er onvoldoende of on-

geschikte werkgelegenheid is om verloren productie te compenseren, en een toenemende schaarste aan hulpbronnen om in hun levensonderhoud te voorzien.. Daarnaast besloeg een aantal projecten gebieden met een grote ecologische en culturele betekenis.

Deze uitkomsten geven niet alleen aanleiding om in het algemeen het potentieel voor duurzame en verantwoorde agrarische investeringen in twijfel te trekken, ook werpt het vragen op over de capaciteit van de gastlanden om deze investeringen effectief te reguleren. In dit opzicht is de uniformiteit van de uitkomsten een interessant raadsel: kan dit worden toegeschreven aan systematische tekortkomingen in de wettelijke context, of wordt de wet betekenisloos gemaakt door slechte uitvoering en handhaving, of zijn er andere structurele factoren buiten de formele bestuursstructuren? Terwijl de analyse van de juridische grondslagen talrijke tekortkomingen naar voren heeft gebracht, vooral met betrekking tot verschillende aspecten van de bescherming van traditionele rechten, wijst het schijnbare gemak waarmee de statutaire voorzorgsmaatregelen worden genegeerd op belangrijker onderliggende institutionele problemen. Dergelijke kwesties omhelzen belangenconflicten, coöptatie, 'elite capture', ontoereikende inter-institutionele coördinatie, onvoldoende capaciteit, en investeringsideologieën. Het daaruit voortvloeiende gebrek aan effectieve handhaving van regelgeving verergert de onderliggende structurele problemen van, bijvoorbeeld, overmatige eerbied voor lokale hiërarchieën, ongefundeerde verwachtingen, onverenigbaarheid van productiesystemen, en de afwezigheid van een maatschappelijk verantwoordelijkheidsgevoel onder veel beleggers. De conclusie is dan dat een duurzame en verantwoorde agrarische investering een paradoxaal begrip is, zolang er geen sprake is van een redelijk machtsevenwicht.

Gezien de centrale rol van gastlandinstellingen volgen er twee logische implicaties uit deze conclusie: hervorm die instellingen op gastlandniveau of versterk het extraterritoriale toezicht. Geen van beide routes biedt een eenvoudige oplossing. Diepgewortelde binnenlandse structuren ondermijnen pogingen om de gevestigde orde te bedreigen en soevereiniteitskwesties beletten consumerende landen van ongeoorloofde inmenging in het gastland. De meest significante innovaties vinden plaats in de markt, met een groeiend aantal niet-staatelijke marktinstrumenten die staatachtige functies overnemen. Hoewel dit geen aanpak biedt van structurele belemmeringen voor ontwikkeling en er een zeer lage acceptatiegraad is onder investeerders in Afrika, hebben dergelijke regelingen theoretisch de mogelijkheid om verschillende lacunes in regelgeving en implementatie op te vullen.

Onze bevindingen bieden nieuwe inzichten in een aantal politiek-economische complexiteiten in de ontwikkeling van meer effectieve en rechtvaardige bestuursystemen ten aanzien van investeringen in Afrika. De belangrijkste bijdrage ligt echter in het bevorderen van ons begrip van de verschillende processen op meerdere schaalniveaus die de resultaten van dergelijke investeringen mede bepalen, waarbij tot dusver vrij beperkte en onderling niet met elkaar in verband gebrachte gebieden van onderzoek aan elkaar worden gekoppeld. Zodoende heeft

dit onderzoek aangetoond dat discussies over bestuur niet zinvol zijn zonder een grondig begrip van de dynamiek van de onderliggende sociaal-politieke systemen en de arena's waarin deze systemen de macht en bestuursstructuren manipuleren, (re)produceren, en legitimeren. Inkomend (buitenlands) kapitaal hecht zich bij voorkeur aan krachtige strategische coalities, deze daarbij versterkend, ongeacht of deze coalities gebonden zijn aan gevestigde belangen of moderniseringsideologieën. Hierdoor is het streven naar duurzaamheid van de sector een kwestie van het ontrafelen en ontwarren van dit complex van staat-elite-agro-business. Dit hoofdstuk suggereert dat daarbij aan vier institutionele voorwaarden moet worden voldaan: duidelijke mandaten, capaciteit voor adequate uitvoering en handhaving, en goed omschreven stimulansen en verantwoordingsstructuren. Waargenomen hiaten in implementatie in aanmerking nemend, zullen juridische hervormingen alleen effectief zijn wanneer deze institutionele voorwaarden aanwezig zijn.

Het moet worden erkend dat gastlandinstellingen zijn ge(re)produceerd door een geopolitiek systeem dat (grond)markt liberalisering, deregulering en mondiale economische integratie beloont. Omdat dit systeem ook het kapitaal (re)produceert dat betekenis geeft aan een dergelijk beleid, zijn lokale regimes binnen betrekkelijk geïsoleerde perifere markten steeds meer geïntegreerd in mondiale markten, ten koste van de lokale politieke en economische ruimten. De toenemende geografische penetratie van neoliberale principes onthult daarmee de onverenigbaarheid van het mondiale systeem van accumulatie met traditionele eigendoms- en productiesystemen. Daardoor wordt de integratie van hedendaags Afrika in het mondiale economische systeem in toenemende mate gekenmerkt door privatisering, exploitatie en uitputting van hulpbronnen, waarvan selecte lokale groepen profiteren ten koste van de rechten en bestaansmiddelen van meer kwetsbare bevolkingsgroepen. Aangezien dit kapitaal geen maatschappelijk mandaat heeft en binnenlandse instituties falen om verantwoordelijkheden effectief voor te schrijven, gaat een groot deel van het ontwikkelingspotentieel voor wereldwijde productieve integratie verloren.

Biography

George Schoneveld has an interdisciplinary background, which includes business and economics, geography, and development studies. His research interests include the dynamics of customary rights and access regimes, political economy and ecology of investment-led rural modernization, alternative agricultural business models, land use change dynamics, and transnational governance architectures. He obtained a Master's Degree in International Business Economics from the Maastricht University in 2004 and a Master's Degree in International Development Studies from the Utrecht University in 2008.

Between 2008 and 2012, he was seconded by the Dutch Ministry of Foreign Affairs to the Center for International Forestry Research (CIFOR) in Bogor, Indonesia. There, his research focused on the implications of globalized trade and investment trends on forests and forest-dependent communities in sub-Saharan Africa. He has conducted research on a range of topics, related to the local impacts and governance of biofuel development, the implications of China-Africa bilateral relations, the political economy of large-scale agricultural investment, and development-induced displacement in the urban periphery. In 2012, he rejoined the Department of International Development Studies at Utrecht University to conduct his PhD research under the LANDac programme. Following the completion of his PhD in 2013, he returned to CIFOR as a Scientist at their Eastern and Southern Africa Regional Office in Nairobi, Kenya.

George Schoneveld has published numerous peer-reviewed journal articles, book chapters, policy briefs, and CIFOR working and occasional papers. He has professional experience in a number of Africa countries (Ethiopia, Ghana, Nigeria, Tanzania, Uganda, Zambia, and Zimbabwe) and in Asia (India, Indonesia, and Thailand).