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Author(s): George C. Schoneveld

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## Governing large-scale farmland investments in sub-Saharan Africa

### Challenges and ways forward

George C. Schoneveld

#### Key Points

- Large-scale farmland investments in sub-Saharan Africa have to date produced a striking uniformity of largely negative local socioeconomic and environmental outcomes, raising questions about their contribution to sustainable development.
- This study attributes these outcomes to eight interrelated factors, namely, (1) deficiencies in the law, (2) elite capture, (3) conflicts of interest, (4) capacity constraints, (5) high modernist ideologies, (6) limited contestation, (7) incompatibility of production systems, and (8) misalignment of corporate accountability.
- Considering the important role of poor implementation and enforcement in shaping outcomes, greater emphasis should be placed on institutional rather than legal reform in host countries. Institutional conditions relating to (1) mandate, (2) capacity, (3) incentives, and (4) accountability need to be fulfilled.
- Findings also highlight the importance of balanced cross-sectoral reform, risks associated with decentralization, and the need to exercise greater caution when adopting free, prior, and informed consent (FPIC) principles.
- This Info Brief concludes with a number of concrete recommendations for policy makers.

#### The importance of host country governance

Since the food and energy price crises of the mid 2000s, farmland has become an increasingly important asset class. Many private investors have as a result sought access to large areas of cheap and agro-ecologically suitable land. Often, they seek to capitalize on favorable long-term prospects within international food and biofuel markets or speculate on rapidly rising land values. For more established agribusinesses, the need to consolidate their market position and cut costs of production emboldens them to explore areas away from traditional production centers in Latin America and Asia to the agricultural frontiers. This ultimately leads most investors to Africa, where, owing to a largely informal agricultural economy, the absence of well-functioning land markets, and dilapidated infrastructure, land is comparatively cheap and ostensibly abundant.

Since the onset of the commodity price crises in 2005, an estimated 21.73 million ha has been acquired for such purposes across sub-Saharan Africa (see Figure 1 for data on geographic distribution) – equivalent to a sizable 9.6% of the total annual area harvested across the subcontinent (Schoneveld 2014). Although these investments could potentially make valuable structural contributions to comparatively uncompetitive agricultural economies and rural poverty alleviation objectives, early evidence instead suggests that most investments are synonymous with poor labor conditions, dispossession, and environmental degradation. Since most lands in Africa are governed by customary institutions and laws, as opposed to legal statutes, user rights over land are often insecure and thus subject to involuntary expropriation (Alden Wily 2012). These social and environmental threats are exacerbated by the relatively weak implementation and enforcement capacity of the state. Moreover, deregulation and market liberalization reforms of the 1990s have also encouraged many African governments to compete for foreign direct investment (FDI), thereby

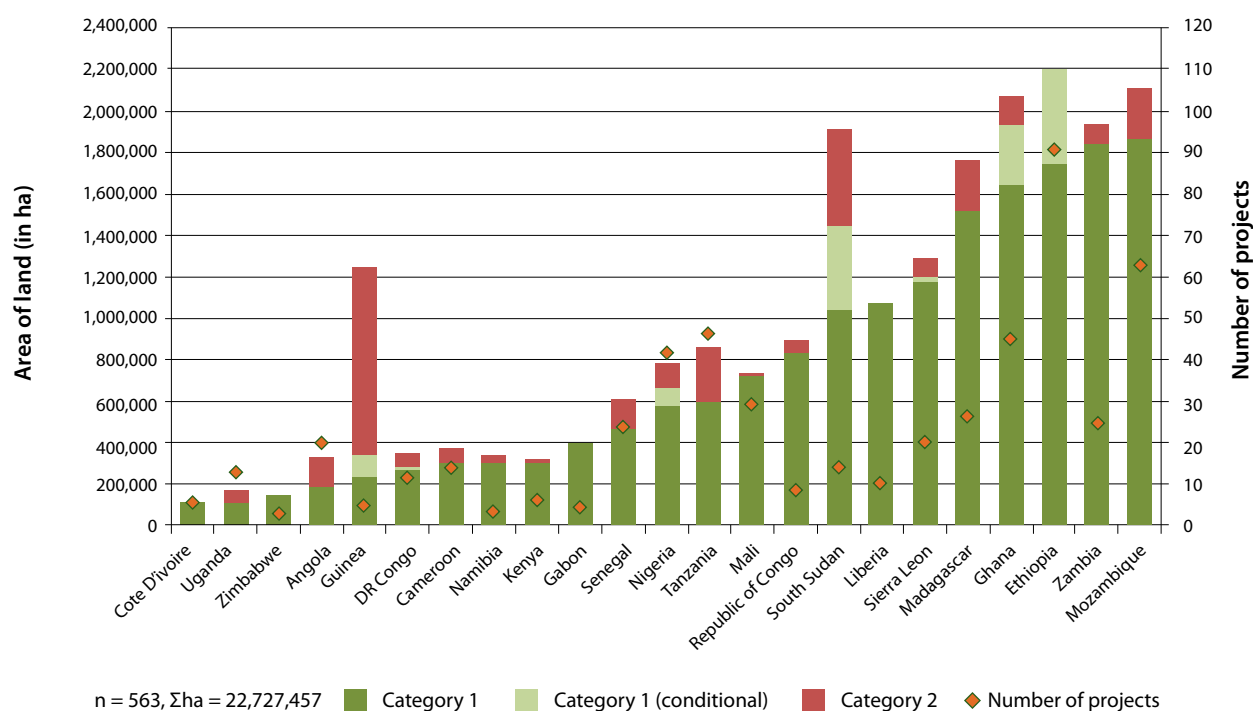
undermining efforts to more stringently regulate corporate conduct (Jenkins 2005).

Much of the academic and political debate on the governance of farmland investments has focused on private international regulatory instruments, such as codes of conduct, third-party certification systems, and banking due diligence. While certification in particular is gaining reputational value and in some parts of the world is proving effective at influencing industry practice, in Africa, adoption rates have been negligible – making up at most 0.2% of the total area acquired since the commodity price crises (Schoneveld 2014). Similarly, sustainability standards imposed by some financial institutions relate primarily to project financing, which constitutes a negligible 2.0% of total corporate financing (van Gelder and Kouwenhoven 2010).

Regardless, these voluntary approaches remain subordinate to ‘harder’ regulations. Various efforts to develop binding international regulations through the UN system on the conduct of transnational corporations have, however, been foiled by corporate lobbyists and Northern governments (Clapp 2005; Utting 2005). Citing World Trade Organization (WTO) rules on protectionism and violation of host country sovereignty, many investor country governments are also reluctant to impose excessively rigid regulations on extraterritorial production and trade. Consequently, the burden of governing farmland investments lies largely with host governments, which in the African context tend to be disinclined or ill-equipped to provide the necessary oversight.

#### The study

This Info Brief synthesizes key findings from a series of studies conducted on the governance of large-scale farmland investments in sub-Saharan Africa (see the About Section on page 8 for more details). The point of departure of these studies is that in order to promote a



**Figure 1. Major investment destinations > 2000 ha, by total land area acquired**

Note: Category 1 includes all data that have been verified through reliable sources (involving also investments that have been allocated conditional leasehold titles); Category 2 consists of data that have not been verified, although they have been triangulated (see Schoneveld 2014 for details).

Source: Schoneveld 2014

more meaningful discussion on governance options and development pathways, we first need to better understand how positive and negative local investment impacts come about. Therefore, the focus is to identify the different regulatory, institutional, social, and economic factors that shape outcomes.

These studies cover Ethiopia, Ghana, Nigeria, and Zambia. Not only are these important investment destinations, but they also constitute a diverse cross section of African governance systems. Ghana and Zambia are some of Africa's most democratic and open economies, with comparatively far-reaching protection of customary property regimes. Ethiopia, on the other hand, is one of the most authoritarian, centrally planned economies in Africa, with few customary claims to land protected by statutory law. Nigeria, on the other hand, falls somewhere in the middle on these dimensions and exhibits trademark features of Africa's failed rentier states.

A total of 38 projects were sampled across these four countries, selected on the basis of investment status (so as to best capture observable impacts) and location within investment hotspots (so as to maximize geographical representativeness). Projects ranged in size from 1000 ha to 303,749 ha, involving the acquisition of a total area of 1,048,437 ha. The projects involve a diversity of crops, including food crops such as maize, wheat, and rice, cash crops such as cotton, sugarcane, rubber, and oil palm, and biofuel feedstocks such as jatropha.

## Findings: Uniformity of local investment outcomes

Despite the diversity of governance contexts, the studies show that local socioeconomic and environmental investment impacts reveal a surprising uniformity of largely negative local outcomes. All sampled projects, for example, involved the conversion of one or more ecologically and socially significant land uses (Table 1). An estimated 68% of the area acquired by sampled projects involves forest-agriculture mosaics, which are

characterized by patches of secondary forests, herbaceous and woody fallow, and small cultivated plots used primarily for subsistence agriculture. Investments in these types of landscapes typically involve comparatively significant displacement of socioeconomically valuable land uses. In most, the landholdings of between 75 to 200 households are displaced for every 1000 ha converted. Most investments outside these mosaics were found to be located within high-conservation-value landscapes, which often are legally designated as nationally protected areas. This includes, for example, tropical high forests, wildlife abundant shrub- and grasslands, and wetlands. In practice, therefore, there appears to be a direct trade-off between socioeconomic and environmental impacts.

Investments that involved displacement of smallholder farmers, by and large resulted in declining agricultural outputs, which in turn undermined local food and income security. Loss of access to non-timber forest products and other common pool resources further exacerbated these insecurities, since this reduces household capacity to maintain diversified livelihood portfolios and fall back on traditional consumption smoothing strategies. With suitable land becoming increasingly scarce, recovery of lost landholdings often became a function of one's capacity to engage in financial exchange or exploit social networks. As a result, traditionally marginalized groups, such as women, ethnic minorities, and migrants, were often least able to recover from dispossession.

While the intensity and magnitude of socioeconomic impacts of projects located within environmentally significant landscapes were typically less severe, affected communities within such environs were more likely to belong to minority ethnic groups and be engaged in unique cultural and economic practices. These tended to involve more land-extensive and specialized livelihood activities such as (nomadic and seminomadic) pastoralism, flood-retreat agriculture, and hunting and gathering. Loss of access to riverbanks and pasture- and forestland tended to severely upset seasonal production patterns and incite territorial disputes; many affected communities were, for example, forced to encroach onto the

**Table 1. Projects encompassing ecologically and socially significant land uses**

Type of landscape	Ethiopia (n=10)	Ghana (n=9)	Nigeria (n=14)	Zambia (n=5)	Total (n=38)
Agricultural land	9	9	12	5	35
Pastureland	5	2	0	1	8
Secondary forest	0	8	5	3	16
Primary forest	3	0	7	1	11
Wetlands	3	1	0	1	5
UNESCO World Heritage site	4	0	0	0	4
Legally protected area	5	1	7	0	13
Total number of projects encompassing one or more types of land uses	10	9	12	5	38

land of neighboring communities to regain access to lost resources. Additionally, many of these projects entail environmentally destructive land use changes – fragmenting landscapes, threatening endangered flora and fauna, and diminishing the capacity of ecosystems to provide valuable environmental services.

Most companies failed to adopt the necessary remediation measures to mitigate or alleviate the negative impact of loss of access to livelihood resources. For example, none of the companies developed contract farming schemes to support smallholder integration into global commodity chains or provided inputs to enable intensification (Table 2). The most common contribution to local communities was the payment of royalties, although in all but two cases these were appropriated by customary elites and were not used for community development purposes. While compensation was occasionally paid, this typically covered only the unexhausted improvements to individual landholdings, not common pool resources. Only one project offered replacement land in lieu of cash compensation.

While employment generation was generally the earliest and most direct project benefit, project-affected persons rarely consider this to adequately offset lost production. Casual labor is the most abundant and locally accessible form of employment, offering between two and five months of employment per year (typically for planting, weeding, and harvesting). Despite the relative abundance of such employment opportunities, participation of project-affected persons was found to be limited. With many households expressing a disinterest in plantation employment, in practice it was often only 'idle' household members who were engaged in plantation employment. More secure and technical employment opportunities were largely allocated to 'outsiders' with specialized prior experience in plantation agriculture.

## Findings: Outcome determinants

The above findings suggest that, despite variations, large-scale farmland investments 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 significant landscapes are converted. Environmental conservation, social equity, and economic objectives are therefore not reconciled in a manner that respects basic human rights – notably the right to self-determination. This uniformity of outcomes can be attributed to eight interrelated factors.

## Deficiencies in the law

While analysis of the legal underpinnings for regulating farmland investments highlighted numerous structural deficiencies across sampled countries, three key issues were identified. The first, and arguably most important, issue relates to the rules that govern customary land (use) rights (Table 3). For example, all four countries lack sufficiently comprehensive provisions to consult and elicit the consent of land users about impending

**Table 2. Impact mitigation measures adopted**

Type of initiative	Total (%)
Contract farming schemes	0.0
Provision of inputs	0.0
Alternative livelihood initiatives	3.7
Preferential hiring policies	3.7
Community development funds	3.7
Physical infrastructure	7.4
Training and development	11.1
Compensation	13.2
Periodic royalties	40.7
Total percentage of investors engaged in one or more activities	48.1

land alienations. Although Ghana and Zambia in theory offer land users some degree of protection from involuntary expropriation by conferring on customary land management institutions (e.g. chiefs, elders, and earth priests) the right to decline and approve land alienation, 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. Although Ethiopia and Nigeria lack such representation structures, unlike Ghana and Zambia, legally recognized land users are granted the right to be compensated for unexhausted improvements to the land.

The limited legal rights to subsequent land revenues, such as ground rent, which in all countries except Ghana is appropriated in its entirety by government, deprive project-affected persons of 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 Ghana, Nigeria, and Zambia).

The second issue relates to weaknesses in the procedures for identifying land. In Ghana, Nigeria, and Zambia, no formal regulations and procedures are in place to identify and allocate genuinely available land. 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 available for capturing the potential developmental opportunities of investments. For example, except for the Agricultural Investment Land Administration Agency (EAIAA) in Ethiopia, there are no government institutions that are expressly mandated to promote spillovers. None of the countries has legislation in place that either stipulates investors' obligations to community development or that requires provisions to such effect to be incorporated into leasehold contracts or investment permits.

Despite these shortcomings, it must be noted that in all four countries these legal deficiencies are in part compensated for by progressive environmental legislation modeled after international best practices. Most significantly, these laws require most land-based investment entities to conduct an environmental and social impact assessment (ESIA), which is intended to inform project siting and ensure that communities are consulted and appropriate impact mitigation measures are adopted.

### Elite capture

In the absence of sufficiently rigorous checks and balances in Ghana, Nigeria, and Zambia, customary authorities were found to reap substantial benefit from the alienation process. Chiefs often pointed at prerogatives provided under customary law to justify what can otherwise be perceived as rent capture. They typically received large one-off cash contributions, periodic royalty payments, and new vehicles and 'palaces'. In all three countries, chiefs exhibited considerable personal entitlement to land and its proceeds – even in Nigeria where chiefs no longer have any legal rights to engage in land transactions. The finding that most chiefs failed to negotiate terms favorable to their constituency also highlights prioritization of individual over collective interests.

Despite numerous attempts in the post-Independence period to rein in the (political) power of chiefs, the absence of the state from rural areas continues to bestow on chiefs important political functions. Thus, government actively fostered chieftaincy relations as a means of mobilizing communities, influencing perception, and of exonerating themselves from responsibility. Since traditional institutions offer the only real space for political participation, as 'vote-brokers', chiefs wield significant political leverage. With government therefore reluctant to interfere in chieftaincy affairs, they are not well positioned to provide communities with the necessary representation.

**Table 3. Parameters on customary rights protection**

Type of provision	ET	GH	NG	ZM
Customary ownership recognized	x	✓	x	x
User rights are protected from expropriation for investment	x	x	x	✓
Consent of community representatives required	x	✓	x	✓
Consent of community required	x	x	x	x
Community consultations required	x	x	x	✓
Right to compensation for loss of farmland	✓	x	✓	x
Right to compensation for loss of settlements	✓	x	✓	x
Right to compensation for loss of common pool resources	x	x	x	x
Right for communities to share in land revenues	x	✓	x	x
Performance conditionalities in title	✓	x	x	x
Maximum allowable size of title	✓	x	x	x

ET=Ethiopia, GH=Ghana, NG=Nigeria, ZM=Zambia

Although in Ghana the government was largely absent from negotiations, in Nigeria and Zambia they frequently played a prominent role. Highly placed politicians often supported investors in acquiring land and liaising directly with chiefs to encourage land alienation, often without clarity about the capacity in which they acted. In Ethiopia, however, issues of elite capture were not apparent to the same extent. Although this can partially be credited to the absence of a local landed elite, it can also be ascribed to the recentralization of land allocation functions to the federal level. Prior to 2010, when regional and district governments were still the primary agents of alienation, corruption in the alienation process was reportedly rampant.

### Co-optation and conflicts of interest

In all of these countries except Zambia, lower levels of government are the primary recipients of most, and in some cases, all land revenues generated from investment. Within these decentralized governance structures – where district and regional governments are increasingly held accountable for revenue generation – district officials are incentivized to facilitate land-based investments since these are typically more lucrative revenue sources than those originating from the (typically informal and untaxed) rural subsistence economy. With most investors also making commitments toward the construction of physical infrastructure, the alleviation of the burden of service delivery further reinforces this tendency. While decentralization is intended to increasing the societal responsiveness of the state, these conflicts of interest instead result in a stronger alignment with investors.

Within central government, investment promotion agencies (IPAs) also often have conflicting mandates. In most countries, these agencies are charged with promoting investment, but also with providing regulatory oversight (e.g. issuing permits, ensuring financial viability, compliance monitoring). The EAIAA is also responsible for the ESIA process and the Zambia Development Authority (ZDA) currently obtains revenues from subleasing land to investors.

Conflicts of interest are compounded by co-optation. For example, many cases were observed of ex-politicians being allocated senior management roles in projects or of project managers entering public service, and of government officials being hired on the side as 'consultants' or of them fully or partly owning investment projects. Moreover, chiefs and their kin were frequently found to be allocated salaried positions in projects, sometimes in the somewhat dubious position as company–community liaison officer. In Ghana, chiefs also commonly receive a share of company profits. This blurring of public–private boundaries confounds existing accountability and incentive structures and serves to compromise those who have representation responsibilities or are expressly mandated to regulate investment.

### 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 interdepartmental collaboration also play an integral role. Such issues are particularly evident during the potentially valuable ESIA process. For example, in all four countries, environmental protection agencies (EPAs) tend to be critically understaffed and underfunded. As a result of these constraints, none of the EPAs was in a position to adequately monitor whether projects had met their ESIA requirements or adhered to other environmental legislation. For instance, 10 of the 38 sampled projects had completed an ESIA at the time of research and 13 projects comprise land located within nationally protected areas.

Despite knowledge of irregularities, other government agencies typically failed to liaise with or support environmental agencies in ensuring investor compliance, since these were often perceived as 'obstructing development'. Despite ratification of relatively progressive environmental

laws, in none of the countries are these sufficiently institutionalized. With all four countries being signatories of numerous conventions emanating from the 1992 Rio Summit, most environmental policies and ESIA procedures are not products of internal domestic pressures, but largely of bi- and 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 such as the EPAs are not budgetary priorities or are not adequately supported by other sectoral ministries.

### High modernist ideologies

The actions or lack of actions by the state are typically justified and legitimized by rationalizing narratives on the virtues of private sector investments. Without exception, agricultural investments are actively promoted for their potential to contribute to an array of official policy objectives. These range from macroeconomic objectives related to food security and foreign exchange earnings to poverty reduction through market and technological spillovers and employment generation.

Discriminatory ideologies about customary land-use practices often lend further credence to these views, with assumptions that land without houses or permanent crops is 'unused' and 'unproductive,' land uses involving fire or itinerancy are by definition environmentally destructive, and agro-pastoralism is 'backwards' and 'uncivilized.' Particularly in Ethiopia, investments were also seen as a tool to gain greater territorial control over peripheral (tribal) communities – for example, by promoting integration into the formal economy and encouraging sedentarization (e.g. since plantation employment is seen as an alternative to pastoral and other land-extensive activities).

While such discourses resonate strongly across the various layers of government, highly Westernized notions of modernity also abound within affected communities. Almost all researched communities, barring some agro-pastoralists, were found to be exceptionally sympathetic to investment. At least initially, communities had high expectations of well-remunerated employment; improved access to physical infrastructure, such as schools, hospitals, electricity and clean water; greater regional prominence; and availability of urban amenities. Such expectations often serve to legitimize elite capture, undermine contestation, and discourage affected persons from demanding just compensation.

### Limited contestation of rights infringements

In practice, dispossession was rarely contested. While high expectations of future development prospects was an important inhibiting factor, collective action was also actively discouraged and suppressed by (alliances of) local district government and chiefs. Contestation was, however, more prevalent in Ethiopia, where six projects became the object of violent protests (two of which resulted in fatalities). Arguably, without the mediating role of co-opted chiefs, community discontent could not be subdued in the same manner. However, with companies lacking any real accountability to communities, with local government admonishing discontented communities for being 'anti-development,' and with a strong state known to resort to military intervention to quell conflicts, contestation in Ethiopia failed to yield any tangible results.

The lack of proper community representation in all four countries also highlights a serious gap in customary rights protection; namely, that there are few viable independent pathways for affected land users to seek redress beyond those through which land was originally acquired (e.g. chiefs and government). Although many communities in theory had legal grounds for contesting rights infringements, in only one case in Zambia (which the court ruled in favor of the investor) were any actions taken before the judiciary. Lack of 'legal capacity to claim,' along with deference to chiefly authority and high future expectations, greatly contributed

to the failure to pursue legal action. Moreover, since chiefs are typically considered to be the 'custodians of tradition' and hold the power to define what constitutes customary law, it is also difficult to hold chiefs accountable through customary conflict resolution channels.

Although civil society organizations (CSOs) could play an important role in assisting communities in overcoming these barriers to contestation, in practice they often miss the most important window for contestation (e.g. prior to alienation). This can partially be attributed to the opacity of the land negotiations and the inability of outsiders to become aware of land deals in a timely manner. While CSO advocacy campaigns were comparatively strong in Nigeria, they were often compromised because community representatives typically withdrew their support following alleged political interference.

### Incompatibility of production systems

As noted already, few affected communities were able to effectively capture potential project benefits. In the case of employment, most households were unprepared to sacrifice traditional livelihood activities or considered employment to be socially undesirable. This can be attributed to social identities derived from traditional livelihood activities (notably hunting and pastoralism), negative social stigmas of plantation labor (in Ethiopia and Nigeria this was associated with poor, landless migrants), fear of loss of nutritional self-sufficiency, insecurity of casual employment, and low salaries. Since the more accessible forms of employment are most abundant during intensive local farming months, employment is largely a complementary livelihood activity taken up by those not actively engaged in other economic activities (e.g. women and youths).

Although many affected households expressed greater interest in contract farming schemes, at the time of research none of the investors had implemented initiatives to that effect. Crop- and market-specific factors in practice impede development of such schemes. In the Ethiopian cotton and the Nigerian rubber sectors, 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. In Nigeria, 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 as competitors rather 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 materialize because of inherent social and economic conflicts between small- and large-scale systems of production.

### Misalignment of corporate accountability

A key factor underlying limited investor regard for their social and environmental footprint is the lack of meaningful accountability mechanisms. For example, in Ethiopia and Zambia, and in most cases in Nigeria, the state is the only contractual counterpart of investors and in that capacity bears a number of responsibilities to investors. It is typically 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. In the absence of tripartite agreements, many investors are unwilling to accommodate or engage discontented communities. Since leasehold contracts rarely detail any far-reaching commitments toward host communities and with government more inclined to hold investors accountable on the basis of financial, rather than, socioeconomic and environmental performance, companies have few incentives to actively foster company–community relations.

That said, powerful chieftaincy institutions do prompt many investors to actively seek a 'social license to operate.' Governments too actively seek

chiefs' endorsement for alienation in order to absolve themselves from responsibility in case conflicts arise. As a result of an 'inequality of arms,' lack of (state) intermediation, and elite capture, many investors were, however, able to negotiate highly one-sided contracts that would see social demands relegated to mere verbal commitments. Most sampled investors were disinclined to adopt elaborate and inclusive corporate social responsibility strategies when these were not contractualized. In contrast to conventional wisdom, there was no discernible difference between 'Northern' and 'Southern' investors in this regard.

## Implications of findings

Discussions to date on farmland governance have tended to be overshadowed by antagonistic discussions 'for' FDI in land or 'against' so-called 'land grabbing'. Some opponents have called for alternative development models centered on rural social movements and the contestation of existing class dynamics and capitalist structures. While understandably speaking to the public imagination, especially taking into account findings, the practicality of these approaches is questionable. Considering the prevailing political-economic discourse, the emergence of new economic powers (and with them, lesser socially conscious markets), rising global food and energy scarcities, and domestic power and control structures vested in maintaining the status quo, failure to accept large-scale farmland investments as a new economic reality in Africa will only retard the development of more effective institutional and regulatory frameworks aimed at mitigating investment costs and leveraging investment benefits. Therefore, a number of implications of findings for governance will be highlighted here.

## Institutional reform

While analysis of the legal underpinnings has revealed numerous deficiencies in land and investment law, the apparent ease with which statutory safeguards are ignored indicates more important underlying institutional issues. Findings suggest that reforms should address the following, mutually reinforcing, institutional conditions:

1. **Mandate:** Institutions require clearly defined legal mandates. Clarity of mandate will also deter conflicts of interest – for example, IPAs with investment promotion and compliance monitoring mandates and district governments with regulatory and fundraising mandates will create situations where one of their two functions is compromised.
2. **Capacity:** Human and financial resources are key to effectively carrying out legislated 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. Capacity is also referred to here as the ability to act upon granted authority and mandate without repercussion. However, consideration should be given to whether the need to generate internal revenues to build or maintain capacity does not threaten to compromise important regulatory functions.
3. **Incentive:** Reforms to incentive structures are as much about the removal of unwanted incentives as the introduction of new incentives. In the case of the former, of particular importance is the removal of the myriad perverse and distortionary incentives that encourage the state to wrest away land from the customary domain. A number of key behaviors should be incentivized, such as interinstitutional collaboration, community representation in the negotiation encounter, postimplementation monitoring, and promotion of benefit capture.
4. **Accountability:** Improving accountability involves the implementation of new rules that ascribe sanctions in case of failure to follow legal mandates. It also involves the development of appropriate frameworks and procedures that facilitate aggrieved actors to demand accountability in case of

noncompliance (e.g. through greater transparency and more accessible conflict resolution channels).

## Decentralization versus recentralization

While decentralization is widely supported for enhancing state responsiveness to society and enhancing downwards accountability, in the context of the studies discussed here, few such benefits were apparent. Without meaningful popular participation, greater fiscal autonomy has instead given rise to perverse incentives and decentralized rent seeking and corruption. Despite its design and implementation flaws, the centralized investment governance system in Ethiopia does have some merits; for example, it harmonizes and simplifies land identification, allocation practices, and compliance monitoring. This eliminates the conflicting interests of district government – by depriving them of an investment facilitation role – and the opportunity for investors to engage in 'forum shopping' (e.g. when those local state and non-state actors are sought out that are most amenable to rent capture and co-optation). However, such a system requires a 'strong' state with a clear development vision such as that in Ethiopia; in a country such as Nigeria, centralized implementation may merely serve to concentrate power and rent capture.

## Cross-sectoral reform

In the land allocation process, Ethiopia and Nigeria, somewhat paradoxically, exhibit the greatest consideration for human 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 in Ghana and Zambia, but also the result of certain types of farmland in Ethiopia and Nigeria being considered a 'compensatable good.' Their governments appear to be disinclined to target those lands where land users have legal rights to compensation – largely to prevent incurring unnecessary costs (nonpayment tends to have undesirable political ramifications). Nevertheless, this inclines government to instead target common property resources, more vulnerable land users who have no legal claims (e.g. encroachers onto state land, migrants, and 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. Such reform involves the recognition of the entire system of rights, including secondary, overlapping, and periodic rights, and adequate enforcement of environmental protection laws. This will be an important challenge, considering the piecemeal approach of most (donor-driven) reform initiatives.

## Free, prior, informed consent

The principles of free, prior, and informed consent (FPIC) form the basis of many voluntary certification schemes, bank due diligence protocols, and international declarations. FPIC has gained universal acceptance as a tool for strengthening indigenous rights, improving local bargaining power, and promoting more equitable outcomes when communities negotiate with more powerful state or corporate actors. However, findings show that due to the widespread desperation for 'development' there is a very real risk that, even when well informed, many communities will be easily swayed into relinquishing their landholdings. In such cases, FPIC will only serve to legitimize land alienation. Moreover, in the context of common pool resources, what constitutes a 'community' and 'community consent' is a fuzzy concept; communities are not homogeneous 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 brings numerous additional complications to operationalizing and formalizing FPIC. Hence, FPIC should not be used as the sole determinant for evaluating the legitimacy and social viability of land alienation, as is currently often the case. Additional

safeguards are necessary to ensure that projects do not compromise food and income security or disproportionately disadvantage specific stakeholder groups.

### Articulated regulation

In view of some of the structural issues within host countries discussed here, it is unrealistic to assume appropriate institutional conditions for effective and enforceable supply-side regulation will be achievable in the medium term. With investor home country courts insufficiently accessible due to complicated jurisdictional requirements and softer regulatory instruments failing to achieve critical mass in Africa, greater complementarities and mutual reinforcements should be explored between the different hard and soft regulatory approaches operating at various scales; in other words, endeavor to achieve more 'articulated regulation' (see Utting 2005).

### Policy recommendations

1. Systematic identification of institutional and legal reform needs within host countries:
  - Reform initiatives would benefit from application of participatory diagnostic tools, especially the World Bank's Land Governance Assessment Framework (LGAF).
  - However, significant scope remains for improving the utility of LGAF. For example, the framework could be better suited to identifying and addressing concrete governance issues by including methods to evaluate: (a) the extent and nature of the implementation/enforcement gap (e.g. the difference between 'theory' and 'practice'); (b) factors shaping this gap; and (c) more explicitly capturing environmental management issues to prevent unintended trade-offs.
  - LGAF-type indicators could be better aligned with 'best practice' guidelines and codes of conduct such as the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) and the Principles for Responsible Agricultural Investment (PRAI).
  - LGAF-type evaluations should capture variations within countries regarding governance issues and reform needs, especially within federations.
2. Formation of inclusive and participatory national reform platforms:
  - Multistakeholder platforms involving civil society, the private sector, and government should be formed to identify reform priorities (as identified through an LGAF-type evaluation) and design reform initiatives.
  - These platforms should act as focal points for channeling and harmonizing related initiatives and associated funds (e.g. VGGT, PRAI, African Land Policy Initiative (LPI), Global Land Tool Network (GLTN), and projects falling under the Global Donor Working Group on Land).
3. Prioritization of technical and financial support to initiatives addressing structural institutional issues:
  - Emphasis should be placed on first realizing the four aforementioned institutional conditions, rather than rushing into transposing normative guidelines such as the VGGT into new policies and legislation.
  - Projects should be initiated and supported that take a more holistic approach to institutional reform. Rather than the excessively narrow focus on 'capacity development' to promote good legal reform (as is the case with many donor projects, VGGT, and LPI), projects should be prioritized that aim to alter established power and control structures that undermine regulatory reforms (e.g. by also enhancing clarity of institutional mandates and altering incentive and accountability structures).
4. Establishment of new National Contact Points (NCPs) and exploration of synergies between initiatives to ensure corporate compliance with 'best practices':
  - NCPs should be established in sub-Saharan Africa that support implementation of the OECD Guidelines on Multinational Enterprises (following successful prior experiences in 'adhering' countries in the North). The primary role of the NCPs is to undertake promotional activities, provide implementation support, and contribute to the resolution of issues that arise from corporate noncompliance with the guidelines. 'Instances' are published online, thereby promoting transparency and enabling public scrutiny.
  - Considering the narrow scope of the OECD guidelines, especially on land-related issues, new NCPs could extend their mandate to promote also corporate adherence to other related (and overlapping) initiatives such as VGGT, PRAI, the UN Guiding Principles on Business and Human Rights, and the LPI's Guiding Principles on Large-Scale Land Based Investment (LSLBI), which are currently under development.
  - Alternatively, if capitalizing on established platforms proves not to be (politically) viable, new institutional arrangements modeled after the NCPs could be explored that involve merging the various (overlapping) initiatives into a single coherent set of principles, directed specifically at corporations. This would facilitate the creation of critical mass and discourage corporate entities from merely opting for the 'lowest common denominator.'
  - To promote further transparency, such institutions could also act as repositories for complaints lodged under voluntary certification systems. In collaboration with certification schemes, these institutions could also avail technical support to investors to stimulate and facilitate certification. A more coordinated and articulated approach would be desirable to prevent further fragmentation of soft regulatory initiatives and capitalize on potential operational synergies.
5. Promotion of articulated regulation:
  - Adherence to voluntary guidelines, certification, and quality standard schemes should be promoted by introducing tax credits and subsidies (e.g. through consumer country investment and export financing).
  - Investor access to finance and/or markets should become conditional on conformance to voluntary guidelines, certification, and quality standard schemes (e.g. such as the EU Renewable Energy Directive). This could be incorporated into national or regional trade regulations or through initiatives targeting financial institutions.
  - A merged set of guiding principles should be transposed into international law through the UN system. Considering greater public attunement to the issues discussed here, there may now be a greater political support base, as opposed to previous failed efforts to develop binding regulations (e.g. the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights – see Miretski and Bachmann (2011) for a requiem).
  - Public scrutiny should be facilitated by introducing regulations or incentives in consumer countries to obligate environmental, social, and governance reporting, also of certain non-stock-exchange-listed corporations (e.g. based on the Global Reporting Initiative guidelines).



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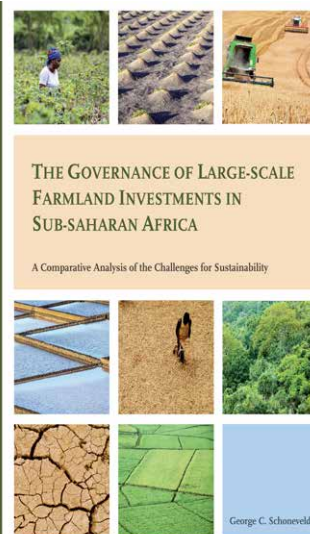
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## About

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Contact: [g.schoneveld@cgiar.org](mailto:g.schoneveld@cgiar.org)

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