Land grab or development opportunity?

Agricultural investment and international land deals in Africa

Lorenzo Cotula, Sonja Vermeulen,
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LIST OF ABBREVIATIONS

AOAD	Arab Organisation for Agricultural Development
BIT	Bilateral Investment Treaty
COFCO	China National Cereals, Oils and Foodstuffs Import and Export Company
DFID	UK Department for International Development
DUAT	Land Use and Benefit Right (Mozambique)
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FPIC	Free Prior Informed Consent
GDP	Gross Domestic Product
GEM	Green Energy Madagascar Ltd
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
IIED	International Institute for Environment and Development

IMF	International Monetary Fund
IWG	International Working Group
LAP	Libya Africa Investment Portfolio
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
QIA	Qatar Investment Authority
REDD	Reduced Emissions from Deforestation and Forest Degradation
SOE	State-Owned Enterprise
SWF	Sovereign Wealth Fund
TIC	Tanzania Investment Centre
UEMOA	Union Economique et Monétaire Ouest Africaine
UN	United Nations
US	United States of America

CONTENTS

EXECUTIVE SUMMARY

LAND GRAB OR DEVELOPMENT OPPORTUNITY?

Over the past 12 months, large-scale acquisitions of farmland in Africa, Latin America, Central Asia and Southeast Asia have made headlines in a flurry of media reports across the world. Lands that only a short time ago seemed of little outside interest are now being sought by international investors to the tune of hundreds of thousands of hectares. And while a failed attempt to lease 1.3 million ha in Madagascar has attracted much media attention, deals reported in the international press constitute the tip of the iceberg. This is rightly a hot issue because land is so central to identity, livelihoods and food security.

Despite the spate of media reports and some published research, international land deals and their impacts remain still little understood. This report is a step towards filling this gap. The outcome of a collaboration between IIED, FAO and IFAD, the report discusses key trends and drivers in land acquisitions, the contractual arrangements underpinning them and the way these are negotiated, as well as the early impacts on land access for rural people in recipient countries. The report looks at large-scale land acquisitions, broadly defined as acquisitions (whether purchases, leases or other) of land areas over 1,000 ha. While international land deals are emerging as a global phenomenon, this report focuses on sub-Saharan Africa.

The report draws on a literature review; on qualitative interviews with key informants internationally; on national inventories of approved and proposed land acquisitions since 2004 in five African countries (Ethiopia, Ghana, Madagascar, Mali and Sudan), as well as qualitative case studies in Mozambique and Tanzania; and on legal analysis of applicable law and of a small sample of land deals.

THE EMERGING PICTURE

Primary and secondary data on land acquisitions in Africa is scarce and often of limited reliability.[1] This means that evidence and the conclusions drawn from the study need to be treated with caution. Nevertheless a picture is emerging of large-scale land acquisitions in Africa. Key features include:

1. On the limitations affecting the figures presented in this report, read section 2.3.

- **Significant levels of activity** – the quantitative inventories have documented an overall total of 2,492,684 ha of approved land allocations since 2004 in the five study countries, excluding allocations below 1000 ha;

- **Rising land-based investment** over the past five years, with an upward trend in both project numbers and allocated land areas in all quantitative study countries and anticipated growth in investment levels in future;

- Large-scale land **claims remaining a small proportion of total suitable land** in any one country, but most remaining suitable land is **already under use or claim**, often by local people, and **pressure is growing on higher-value lands** (e.g., those with irrigation potential or closer to markets);

- Possible increases in the **size of single acquisitions**, though with considerable variation among countries – approved land allocations documented here include a 452,500 ha biofuel project in Madagascar, a 150,000 ha livestock project in Ethiopia, and a 100,000 ha irrigation project in Mali;

- **Dominance of the private sector** in land deals, though often with strong financial and other support from government, and significant levels of government-owned investments;

- **Dominance of foreign investment**, though **domestic investors are also playing a major role** in land acquisitions – a phenomenon that has received far less international attention so far.

WHY THE GROWING INTEREST IN LARGE-SCALE LAND ACQUISITION?

Several factors seem to underpin these land acquisitions. These include **food security concerns**, particularly in investor countries, which are a key driver of government-backed investment. Food supply problems and uncertainties are created by constraints in agricultural production due to limited availability of water and arable land; by bottlenecks in storage and distribution; and by the expansion of biofuel production, an important competing land and crop use. Increasing urbanisation rates and changing diets are also pushing up global food demand. The food price hikes of 2007 and 2008 shook the assumption that the world will continue to experience low food prices. While grain and

other food prices have dropped from the highs seen in the summer of 2008, some of the structural factors underpinning rising prices are likely to stay.

Government-backed deals can also be driven by investment opportunities rather than food security concerns. In addition, global demand for biofuels and other non-food agricultural commodities, expectations of rising rates of return in agriculture and land values, and policy measures in home and host countries are key factors driving new patterns of land investment.

With regard to **biofuels**, government consumption targets (in the European Union, for instance) and financial incentives have been a key driving force. It is possible that the recent decline in the oil price from the highs of 2008 may dampen enthusiasm for biofuel investments. But given the projections of diminishing supplies of non-renewables, biofuels are likely to remain and increase as an option in the longer-term, unless policies shift in response to concerns about the impacts of biofuel expansion on food security.

As for **rates of return in agriculture**, rising agricultural commodity prices make the acquisition of land for agricultural production look like an increasingly attractive option. Some agribusiness players traditionally involved in food processing and distribution are pursuing vertical integration strategies to move upstream and enter direct production.

Although political risk remains high in many African countries, **policy reforms** have improved the attractiveness of the investment climate in several countries – including through a growing number of investment treaties and codes, and through reform of sectoral legislation on land, banking, taxation, customs regimes or other aspects.

MITIGATING RISKS, SEIZING OPPORTUNITIES

For people in recipient countries, this new context creates **risks and opportunities**. Increased investment may bring macro-level benefits (such as GDP growth and improved government revenues), and may create opportunities for economic development and livelihood improvement in rural areas.

But as governments or markets make land available to prospecting investors, large-scale land acquisitions may result in local people losing access to the

resources on which they depend for their food security – particularly as some key recipient countries are themselves faced with food security challenges. While there is a **perception that land is abundant** in certain countries, these claims need to be **treated with caution**. In many cases land is already being used or claimed – yet existing land uses and claims go unrecognised because land users are marginalised from formal land rights and access to the law and institutions. And even in countries where some land is available, large-scale land allocations may still result in displacement as demand focuses on higher value lands (e.g. those with greater irrigation potential or proximity to markets).

Ultimately, the extent to which international land deals seize opportunities and mitigate risks **depends on their terms and conditions**: how are risks assessed and mitigated – for instance through considerations in project location? What business models are favoured in project implementation (from plantations to contract farming, purchase agreements, policy incentives, or joint ventures)? How are costs and benefits shared – for example, in terms of safeguards against arbitrary land takings, or revenue-sharing arrangements? And who decides on these issues and how?

UNPACKING LAND DEALS

Although the terms and conditions of investment display a huge diversity among countries and even individual projects, the main findings of this study, based on a small number of international land deals, include the following:

- Land deals must be **assessed in the light of the often complex overall package** they are part of, including commitments on investment, infrastructure development and employment – the "land grab" emphasised by some media is only part of the equation;

- **Land leases**, rather than purchases, are predominant in Africa, and host country governments tend to play a key role in allocating them;

- Land fees and other **monetary transfers are not the main host country benefit**, not least due to the difficulty of setting land prices in the absence of well-established formal land markets;

- Host country benefits are mainly seen in the form of investor **commitments on investment levels, employment creation and infrastructure development** – though these commitments tend to lack teeth in the overall structure of documented land deals.

Although on paper some countries have **progressive laws** and procedures that seek to increase local voice and benefit, **big gaps between theory and practice**, between statute books and reality on the ground result in major costs being internalised by local people – but also in difficulties for investor companies.

Many countries do **not have in place legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare.** Even in the minority of countries where legal requirements for community consultation are in place, processes to negotiate land access with communities remain unsatisfactory. **Lack of transparency and of checks and balances in contract negotiations** creates a breeding ground for **corruption** and deals that do not maximise the public interest. **Insecure** use **rights** on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, and compensation limited to loss of improvements like crops and trees (thus excluding loss of land) all undermine the position of local people.

Virtually all the **contracts** analysed by this study tend to be **short and simple** compared to the economic reality of the transaction. Key issues like **strengthening mechanisms to monitor or enforce compliance with investor commitments**, **maximising government revenues and clarifying their distribution**, promoting **business models** that maximise local benefit (such as employment creation and infrastructure development), as well as balancing **food security** concerns in both home and host countries are dealt with by vague provisions if at all.

RECOMMENDATIONS

Recommendations for policy and practice can only be tentative at this stage. In addition, land deals take many different forms and proceed in a wide diversity of contexts. Large-scale land deals may involve 1,000 hectares or 500,000 hectares. This diversity means that recommendations need to be

tailored to their contexts. Below are sets of general recommendations for different stakeholders:[2]

- Investors;
- Host governments;
- Civil society – organisations of the rural poor and their support groups; and
- International development agencies.

Investors – options for maximising security for investment and sustainable development gains

- While investment funds are playing a growing role in land acquisitions, they tend to be more familiar with financial deals than agricultural ones. Yet projects of the size documented in this report raise significant challenges even for experienced agribusiness, let alone for newcomers in agriculture. **Investors need to make realistic assessments of their capacity to manage large-scale farming projects.**

- **Issues of image and reputational risk should not be underestimated.** Investors can be seen as dealing with or propping up corrupt regimes and human rights violators. They may also be perceived as land grabbers in food-insecure countries.

- **Long-term land leases – for 50 or even 99 years – are unsustainable unless there is some level of local satisfaction.** In this context, innovative business models that promote local participation in economic activities may make even more commercial sense. These include outgrower schemes, joint equity with local communities and local content requirements.

- **At the local level, land rights may be hotly disputed.** The local tenure situation may be very complex, involving customary rights. **Careful assessment of local contexts** is critical, as well as **long-term engagement with local interests (not just elites).**

- **Clarity is needed about the costs and benefits of the business transaction from the start.** This includes realistic estimates and honest communication of what the project will bring – e.g. in terms of numbers and types of jobs and other positive and negative project impacts.

2. Please refer to section 4.2 of the report for a fuller explanation of these recommendations.

- **Clear principles for engagement at the local level are required.** Local consultation is likely to be a key success factor during project implementation, whether or not it is legally required. Principles and procedures for **free, prior and informed consent** particularly as developed in the forestry and extractive sectors will increasingly provide guidance relevant to the agricultural sector.

Recipient governments – placing sustainable development at the centre of investment decision-making

- **Governments need to clarify what kinds of investment they want to attract.** Given the long-term nature and large scale of much recent land acquisition, strategic thinking rather than ad hoc decision-making is needed.

- **Attention to increased agricultural productivity needs to be balanced with assessment of how gains are achieved** (for example, through mechanised or labour-intensive production) **and how benefits are shared.** This has implications for the **content of land deals**, for instance through mainstreaming minimum requirements for job creation, infrastructure, community benefits, national fiscal benefits and environmental protection. It also has implications for the way government agencies and officials work – for example, by **rewarding agencies and officials based on the quality not just quantity of investment** they attract.

- **State-of-the-art assessments of the social and environmental impacts of proposed investments are needed.** For example, on the environment side, key issues include: whether investments are likely to be associated with a short-term mining of soils and water (through cultivation of crops with high water or nutrient demands); the likelihood of pest or disease problems, particularly associated with monocultural production; possible impacts on biodiversity; and capacity to contribute to longer-term sustainable soil and water management.

- **Governments should ask hard questions about the capacity of investors to manage large-scale agricultural investments effectively.**

- **Land contracts must be structured so as to maximise the investment's contribution to sustainable development.** This includes devising incentive systems to promote inclusive business models, and giving legal teeth to

commitments on investment levels, job creation, infrastructure development, public revenues, environmental protection, safeguards in land takings, and other aspects. **Skillful negotiation is key, and governments may need to invest in their own capacity to negotiate.**

- **Mechanisms should be developed to discourage purely speculative land acquisitions.** High-level government commitment and capacity across administrative structures are essential to enforce compliance with investment plan requirements. Innovative thinking must be used to develop ways to discourage non-compliance beyond the early stages of the project.

- **Investment decision-making must be transparent.** Investors need to be given clear information on procedures, criteria for decision-making, and conditionalities. As long-term, large-scale land deals are likely to affect public and third-party interests, decision-making must be open to public scrutiny; this may increase the legitimacy and ensure the long-term sustainability of land deals.

- Perhaps most importantly, efforts must be stepped up in many countries to **secure local land rights.** This may help local people avoid being arbitrarily dispossessed of their land, and obtain better deals from incoming investors – for instance, through providing land as in-kind contribution to a joint venture in which both investor and community have a stake. **Collective land registration** may be a valuable policy option in this regard. Where mappings and inventories of "available" lands for possible allocation to investors are undertaken, care must be taken to respect existing land uses and claims. The principle of **free, prior and informed consent** and **robust compensation regimes** should provide a cornerstone of government policy, and must be integrated in national legislation.

Organisations of the rural poor and their support groups – options for maximising net benefits from land investments, and limiting exclusionary impacts

- Scope for influencing private deals is highly limited, but there should be more room for inputing into processes involving government. Evidence for this to date is limited, however, and **advocacy to promote transparency in land deals** is needed.

- **Advocacy and awareness-raising are also needed at each stage of the land investment process** – from project design and structuring of contracts through to implementation and calling investors to account on their promises.

- **Legal support** to people affected by investment projects can help them get a better deal from incoming investment – through better compensation regimes and investor-community partnerships, for example. This may include legal literacy training, paralegal programmes, legal clinics, legal advice and representation in negotiations with government and investors, training on negotiating skills, through to public interest litigation.

- The new land acquisition trend may require revisiting the longstanding debate about land titling in Africa. Local ("customary") land rights systems can work well at the local level, but they are irrelevant to investors. **Collective registration of community lands can be a powerful tool for protecting local land rights vis-à-vis incoming investors.** Experience from countries that have implemented community land registration programmes, in Africa and elsewhere, may provide useful lessons.

International development agencies – catalysing positive change

- **Engage with investor and recipient governments, private sector and civil society to ensure that land deals maximise the investment's contribution to sustainable development.** This may include supporting policy reform in recipient countries towards greater transparency of decision-making and greater consideration of social and environmental issues. The ongoing, FAO-led process to develop **Voluntary Guidelines for Responsible Governance** of Land and Other Natural Resources, and the **Framework and Guidelines for Land Policies in Africa** being developed under the leadership of the African Union, the UN Economic Commission for Africa and the African Development Bank are useful steps in that direction.

- **Help address the lack of clear and easily accessible information on land acquisitions and agricultural investments.** Effective systems to monitor land deals (inventories, maps, databases) can improve transparency and public scrutiny, as well as access to information for governments and prospecting investors. International agencies can play a role in making this happen.

- **Provide expert advice, capacity building and other support for governments, private sector and civil society,** for instance with regard to the negotiation of contracts, to tackling food security issues, to promoting innovative ways to provide legal support to local people, and to developing business plans that build on know-how of the wide range of business models for agricultural production beyond plantations.

I. INTRODUCTION

1.1. THE RESEARCH TOPIC AND WHY IT MATTERS

Over the past 12 months, large-scale acquisitions of farmland in Africa, Latin America, Central Asia and Southeast Asia have made headlines in a flurry of media reports across the world. Lands that only a short time ago seemed of little outside interest are now sought by international investors to the tune of hundreds of thousands of hectares. Governments concerned about stability of food supplies are promoting acquisition of farmland in foreign countries as an alternative to purchasing food from international markets. Recipient countries, welcoming the new wave of foreign investment, are implementing policy and legislative reforms to attract investors.

This fast-evolving context creates opportunities, challenges and risks. Increased investment may bring macro-level benefits (GDP growth and government revenues), and create opportunities for raising local living standards. For poorer countries with relatively abundant land, incoming investors may bring capital, technology, know-how and market access, and may play an important role in catalysing economic development in rural areas.

On the other hand, large-scale land acquisitions can result in local people losing access to the resources on which they depend for their food security and livelihoods. Local residents may be directly dispossessed of the land they live on, often their long-standing heritage. More indirect impacts may also be of major significance, though these are often more difficult to measure. They include loss of seasonal resource access for non-resident groups such as transhumant pastoralists, or shifts of power from women to men as land gains in commercial value. It is not only the land acquired that is affected. Knock-on effects are possible in other parts of the country or in the region, as local users pushed from higher-value lands encroach upon more marginal lands and as poorer people are priced out of the land market. Impacts may also be multiplied where land acquisitions are accompanied by accelerated policy reform to attract investment.[3]

Beyond these local impacts, concentration in land use has major implications for the future of world agriculture, with possible changes in:

3. For a more detailed conceptualisation of the land access impacts of large-scale agricultural investment, with particular regard to biofuels, see Cotula *et al.* (2008: 23-29).

– The balance between small-scale and large-scale farming and the future livelihoods of today's small-scale farmers;

– The relative importance of export-led agriculture;

– The role of agribusiness and the degree of vertical integration in agricultural production, processing and distribution.

Despite the spate of media reports and some isolated examples of forerunner research (particularly GRAIN, 2008), there is still very little empirical evidence about international land deals and their positive and negative impacts.

This study provides a contribution in that direction. Focusing on sub-Saharan Africa, it examines key trends and drivers in land acquisitions, the contractual arrangements underpinning them and the way these are negotiated, and the early impacts on land access for rural people in recipient countries. The study takes stock of what is known about these issues, reports empirical evidence internationally and from a sample of countries, and identifies next steps for research, policy and action. The aim is not to come up with definitive answers, but to facilitate balanced debate among government, private sector and civil society interest groups.

Beyond introduction and conclusion, the report is structured in two central sections that can be consulted on a "stand-alone" basis as well as forming part of the general narrative. Section 2 discusses the "what": trends in international land deals and their underlying drivers. Special attention is paid to the motives driving investors, and to policy contexts in investor and recipient countries. Section 3 analyses the "how": characteristics of land deals, with regard to both their content and negotiating processes. As far as possible, the report examines inclusion of local people in decision-making, and the effects of land acquisitions on access to land for the rural poor. A short conclusion summarises key findings, identifies knowledge gaps and suggests next steps.

1.2. SCOPE AND RESEARCH METHODS

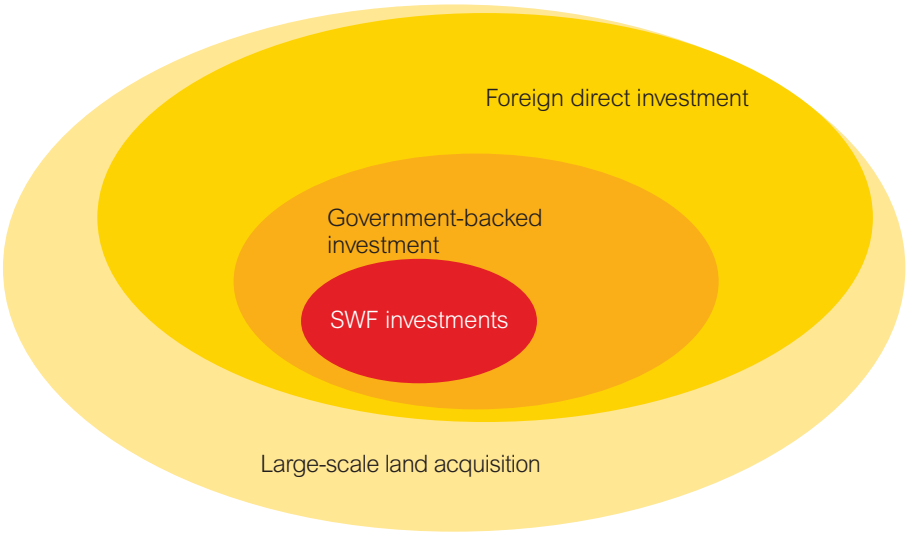
Given the breadth of the research, defining the scope and focus of the study is of particular importance. This involves setting geographic and thematic boundaries, and sharpening the focus within those.

While international land deals are emerging as a global phenomenon, this report focuses on sub-Saharan Africa. Media reports suggest that this region is a hotspot for international land acquisitions – particularly countries like Sudan, Ethiopia, Madagascar, Mozambique and Tanzania. Much of the rural population in the continent depends on land for their livelihoods and food security, which makes the issue of large-scale land acquisition all the more sensitive. The nature of property rights systems prevailing in Africa (e.g. the central role of the state in land relations) is likely to translate in differences between land deals in the continent and deals in Latin America or Eastern Europe (where private-to-private deals are likely to be more important). As the study is designed as a first step towards improving understanding of the phenomenon, extending research to other regions is expected to be a key next step. Unless otherwise stated, "Africa" refers to sub-Saharan Africa alone, given the important differences that separate northern from sub-Saharan Africa.

Thematically, the scope and focus of the report is articulated in four concentric areas, as visually represented in Figure 1.1 (see next page). The overarching scope is defined with regard to large-scale land acquisitions for agriculture. Land acquisitions for activities in other sectors (e.g. extractive industries, infrastructure, manufacturing) are outside the scope. Land acquisition is defined broadly to include not only purchase of ownership rights, but also the acquisition of use rights, for instance through leases or concessions, whether short or long-term. What qualifies as large scale varies among countries depending on local contexts (e.g. average farm size); the report considers deals involving land areas above 1000 ha.

Although most of the aggregate statistics presented in the report refer to all land deals above this threshold, the focus of the analysis is on foreign direct investment (FDI). It is recognised that land acquisition is by no means limited to FDI, and that domestic investors may also be involved. But, due to time and resource constraints, specific consideration of domestic investment is only cursory. Foreign direct investment is defined by the International Monetary Fund (IMF) as "the investments made by a resident entity in one economy (direct investor) with the objective of obtaining a lasting interest in an entity resident in an economy other than that of the investor (direct investment enterprise). The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence on the management of the enterprise" (IMF, 2001). FDI is

FIGURE 1.1. SCOPE AND FOCUS OF THE STUDY



distinguished from other forms of international movements of capital, namely "portfolio" investment, which refers to short-term capital flows linked to the sale or purchase of financial instruments.

Within FDI, the focus is on government-backed investment, particularly investment projects backed by the home country government. This focus reflects media reports of government promotion of land deals overseas, and the greater policy entries offered by government involvement. Exact typologies and definitions are difficult, because of the wide range of ways that governments in both investor countries and host countries engage in, support and regulate international investments. Particular attention in this report is given to direct investments by foreign governments, either as joint equity or wholly owned subsidiaries. Given the recent media and policy attention given to sovereign wealth funds (SWFs), the report specifically examines the role of SWFs in international land deals.

Because of its thematic focus and to the extent made possible by time constraints, the report pays specific attention to understanding trends in investors' nature (e.g. whether government-backed or not) and origin (e.g. FDI versus domestic investment). This is not meant to suggest that the characteristics of land deals and their positive and negative impacts are necessarily expected to differ depending on these factors.

The report draws on a four-pronged methodology combining both quantitative and qualitative research methods. First, a literature review generated a wealth of materials – though mainly based on media reports about newly signed deals or ongoing negotiations. Empirically based literature on the research topic (academic research, "grey literature") is currently much more limited, partly due to the recent nature of the phenomenon studied. Because of this, the study relied on reports from respected media to a greater extent than in many research efforts, mainly as a source of intelligence about ongoing and proposed investment projects. In choosing media sources, the study prioritised those with a reputation of credibility, and sought to ensure diversity of geographical regions and of perspectives.

Second, semi-structured interviews and email exchanges with key informants provided insights on the drivers underpinning large-scale land acquisitions for agricultural investment, on the content and negotiation of international land deals, and on how local land rights issues are usually approached. Key informants included staff from investor institutions, service providers (e.g. lawyers, consultants facilitating land deals), host government officials, and "observers" such as researchers, journalists and FAO country officers in home and recipient countries.

Third, in-country research in Ethiopia, Ghana, Mali, Madagascar, Mozambique, Sudan and Tanzania provided empirical evidence about what is happening on the ground. Country selection was based on relevance (reports of significant large-scale land acquisitions), geographical diversity (East, West and Southern Africa, the Horn) and research feasibility (particularly with regard to data access). It is recognised that other countries not covered by the study would also be highly relevant.

In Ethiopia, Ghana, Mali and Madagascar, teams of national researchers prepared national inventories of ongoing and proposed agricultural investments involving land acquisitions above 1000 ha from 1st January 2004 to 31st March 2009. Each country inventory drew on data from official government sources (e.g. investment promotion agencies, ministries responsible for land or agriculture), cross-checked with a small number of semi-structured interviews. In Sudan, an attempt to undertake the same exercise had to be suspended due to force majeure; therefore, the inventory here only drew on information made available online by the investment

agency.[4] The country studies also entailed a more detailed examination of a small number of investment projects (up to 10, depending on the country), mainly chosen based on data accessibility.

The inventories used a common methodology developed jointly by IIED and the World Bank as part of a parallel study led by the Bank and involving both IIED and FAO. The World Bank-led study is significantly more ambitious than this one in terms of both geographical scope (it aims to undertake inventories in 30 countries worldwide) and thematic focus (it is not specifically focused on FDI and government-backed investment, and it includes forestry).

In Mozambique and Tanzania, in-country partners (Centro Terra Viva and Tanzania Natural Resource Forum, respectively) undertook qualitative research on the land access impacts of different business models for biofuel production (Nhantumbo and Salomao, 2009; Sulle, 2009). This forms part of other IIED-led research on biofuels. Quantitative inventories in these countries are being undertaken by the World Bank and were not commissioned for this report.

Based on findings from the quantitative inventories, the report develops descriptive statistics to provide a picture of trends and key features of land deals. On the other hand, statistical analysis to explore statistical significance or correlations is beyond the scope of this study, and will be undertaken by the World Bank-led research. Qualitative findings provided more in-depth insights both on trends and drivers and on the key features of land deals.

The fourth strand of research involved the legal analysis of applicable law and of a small sample of land deals from the covered countries (see Table 1.1). These contracts are quite diverse, ranging from framework agreements through to legal instruments to execute the land transfer or allocation. These different layers of legal instruments may co-exist in a given land "deal", as will be discussed.

In most sample contracts land is provided by the host government or a parastatal – with the exception of the Varun deal, which concerns lease and contract farming arrangements with local landowners organised in associations. The acquirer ranges from a foreign government to an intergovernmental organisation through to a domestic private investor. The

4. www.sudaninvest.org

MAP 1.1. FOCUS COUNTRIES, QUANTITATIVE AND QUALITATIVE RESEARCH

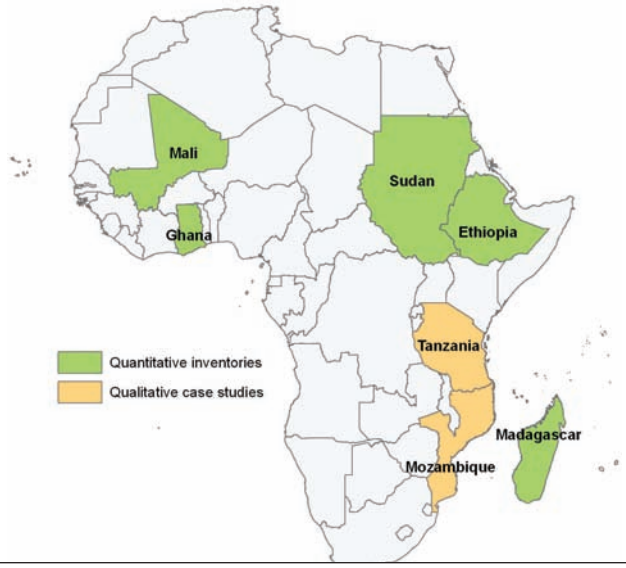


TABLE 1.1. SAMPLE OF LAND DEALS

Country	Contract
Ethiopia	Land Contract between the Benishangul Gumuz Regional State Administration and Alemitu Negash, signed on 20 October 2008 (original in Amharic, contract examined through an English translation undertaken by the study; the date on the contract is 10 October 2001 following the Ethiopian calendar).
Madagascar	Contract Farming Agreement between Varun Agriculture SARL and Each Association of 13 (Thirteen) Different Plains (Bemanevika, Bekapila, Mahatsinjo, Ambohitoaka, Mahadrodroka, Manandriana, Ankaizina i, Ankazina ii, Bealanana, Maevarano, Amparay, Ankobalava, Ampatsifatsy) in Sofia Region, signed on 26th January 2009 (accessed in English translation only).[5]
Mali	Draft Convention between the government of the Republic of Mali and the West African Economic and Monetary Union (UEMOA) concerning the terms of the allocation of two plots in the Office du Niger area as well as the roles and responsibilities of actors involved in their development (original in French); Draft Lease Contract between the Office fu Niger and Petrotech/AgroMali SA (original in French).[6]
Mozambique	Model provisional allocation of a "land use and benefit right" (DUAT; original in Portuguese).
Sudan	Special Agricultural Investment Agreement between the government of the Arab Republic of Syria and the government of the Republic of Sudan, signed on 22 May 2002 (original in Arabic, contract examined through an English translation undertaken by the study).

5. Available at http://farmlandgrab.blogspot.com/search/label/Varun
6. It was not possible to obtain a copy of these agreements as eventually signed by the parties; the Office du Niger is a large irrigated scheme run by a parastatal.

land area involved varies from a few hundred hectares in the Ethiopian contract to 10,000 ha or above in Sudan and in one of the two Malian contracts. The Varun deal is considerably bigger, as it concerns a land area of 170,914 ha. Mozambique's model land allocation instrument applies irrespective of land area.

Finally, the legal form of land deals varies across countries. In Mozambique, for example, strictly speaking there tends to be no "contract" as such; the deal is embodied in a cluster of legal instruments, including the provisional and then permanent land allocation instrument ("DUAT"), plus the investment plan, the community consultation report ("*acta*"), a sketch map and other documents annexed to that instrument.[7]

While it is accepted that the contracts sample is very small and that it is not possible to generalise from it, this analysis was useful to better understand the terms and conditions embodied in some of these land deals. A final caveat is the recognition that, while contracts are important legal documents, they are not always applied to the letter, and what happens on the ground often deviates from the content of the contract.

Despite this articulated research design, it is important to emphasise the limitations of the study. Research activities were carried out over a five-month period – an ambitious timeframe for a study of this kind. In-country access to data was constrained by varying government capacity to collect and store information about agricultural investments (with cross-country variation in recorded investment projects possibly reflecting differences in this capacity as well as in real-world investment flows), by varying degrees of cooperation from government authorities, and by limited access to investor-state contracts due to confidentiality concerns. Internationally, the scarcity of literature beyond media reports, and the difficulties in reaching key people for interviews (with confidentiality being a major concern) also constrained our access to data.

Given these limitations, the picture presented in this report is likely to entail biases and gaps, particularly with regard to quantifying investment flows and land acquisitions. As such, the contribution of the report is to provide an initial mapping of issues, promote debate and pave the way for further research.

7. International land tenure consultant based in Mozambique, 2 April 2009. A separate contract may exist where investors wish to avail themselves of the tax breaks offered by the Investment Law 1993.

II. TRENDS AND DRIVERS

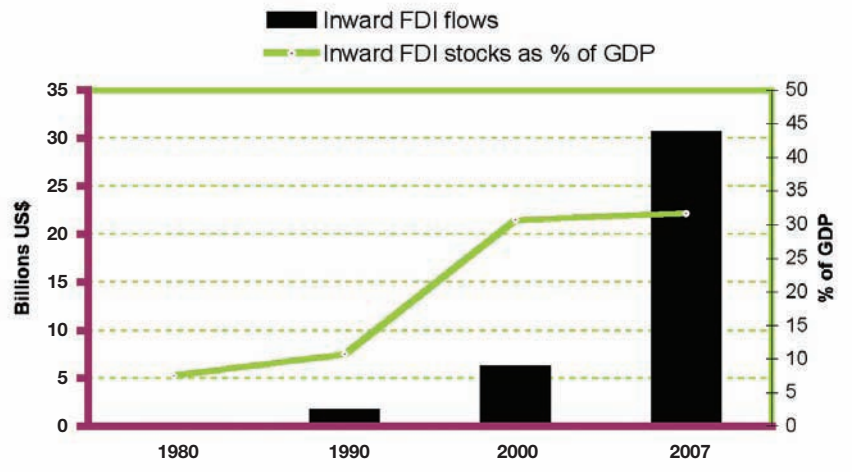
2.1. THE BACKDROP: GOVERNMENT SUPPORT AND FDI IN AFRICA

A fast-evolving context: Increasing FDI flows to Africa

Trends in large-scale land acquisitions for agricultural investments must be placed within the broader context of expanding economic relations between Africa and the rest of the world. Over the past decade, economic liberalisation, the globalisation of transport and communications, and global demand for food, energy and commodities have fostered foreign investment in many parts of Africa – particularly in extractive industries and in agriculture for food and fuel.

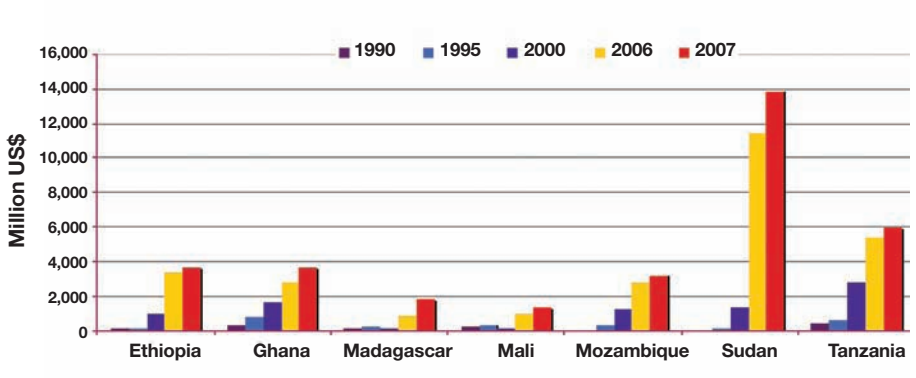
In 2007, FDI to sub-Saharan Africa amounted to over US$ 30 billion, a new record level – up from the records of about US$ 22 billion in 2006 and US$ 17 billion in 2005 (UNCTAD, 2008a; see Figure 2.1). The distribution of FDI flows and stocks is highly uneven, shaped by cross-country differences in resource endowments. Big shares of investment are concentrated in countries with important petroleum and mineral resources, such as Nigeria. But while investment flows to some countries have stagnated (e.g. Cameroon), countries like Ethiopia, Ghana, Mozambique, Sudan, Tanzania and Zambia, that received little foreign investment until the early 1990s, now host sizeable stocks of foreign investment (UNCTAD, 2008a; see Figure 2.2).

FIGURE 2.1. FOREIGN INVESTMENT FLOWS AND STOCK IN SUB-SAHARAN AFRICA



Data source: UNCTAD (2008a)

FIGURE 2.2. FOREIGN INVESTMENT STOCK IN SELECTED COUNTRIES



Data source: UNCTAD (2008a)

It is quite possible that these trends may be reversed by the ongoing slowdown in the global economy. The current financial crisis and economic downturn may affect capital availability, attitude to risk and world commodity demand. But, in the longer term, the structural factors underpinning increased investment (some of which are discussed in the next section) are likely to stay.

Given Africa's resource endowments, natural resources are at the heart of FDI flows to the continent. Increases in investment flows are directly linked to global demand for energy and commodities such as oil, gold, copper, aluminium and nickel (UNCTAD, 2008b). Growing interest in Africa's petroleum and minerals, exemplified by recent large-scale projects like the Chad-Cameroon oil development and pipeline project, is linked to fluctuations in global commodity prices and Western efforts to diversify supplies. The perceived availability of land in Africa has attracted the attention of governments eager to ensure security of food and fuel supplies, and of investors eager to tap into global demand for food and fuel – as discussed later in this report.

The range of government-backed FDI

Governments play a range of roles in promoting investment overseas – including with regard to land acquisitions. Much reporting of international land deals is vague on the institutional and financial details of deals. Arrangements are complex, and need to be analysed in detail to develop an

informed understanding of the role of home governments. While an accurate typology is not possible, the forms of government involvement in land deals includes the following types:

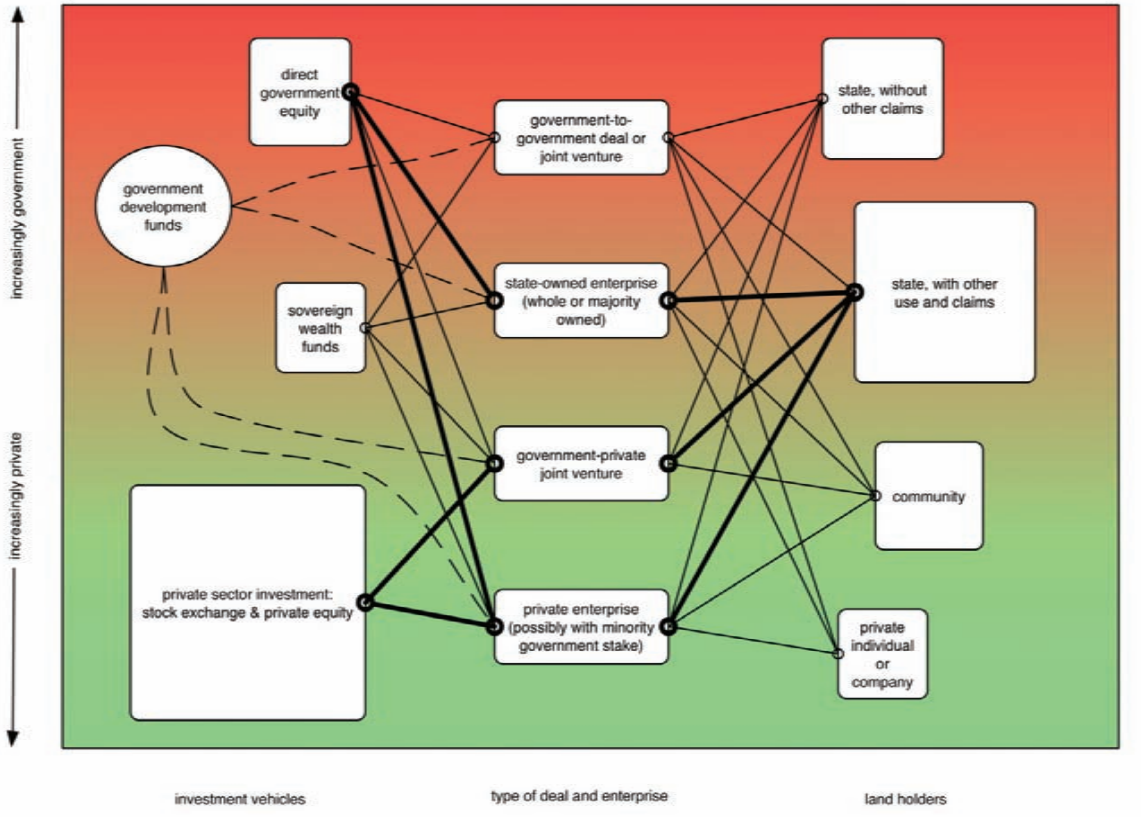
1. **Direct land acquisition by central government agencies:** Although this model appears rare, there are documented cases of the central government, represented for instance by the Minister of Agriculture, acquiring land in a foreign country through a high-level deal with the relevant host country minister.

2. **SWF investments:** Many SWFs have shifted in the past couple of years away from purely portfolio investments towards direct investments in foreign assets. Most commonly, this involves acquisitions of minority shares in foreign public-listed companies. Direct investments in foreign land assets are less common, although some cases are discussed below. SWFs may operate though a subsidiary operational company, or through entering into shared-governance joint ventures with private sector companies or with other governments' state-owned enterprises (SOEs) or investment funds.

3. **State-owned enterprises and other non-SWF equity shares:** Many states own or partner in enterprises through investment sources other than SWFs. Broadly speaking, a majority stake or whole ownership by the state classifies a business as an SOE. But the definition of an SOE is complicated by differing policy circumstances among countries and discontinuities between business ownership and business governance, and will be further discussed below.

4. **Support to private sector in investor and host countries:** Governments have a number of vehicles beyond equity stakes for providing financial and non-financial assistance to private sector and state-owned companies in their countries. Some governments have established development funds that provide financial services such as subsidies, soft loans, guarantees and insurance to both SOEs and other companies (e.g. the Abu Dhabi Fund for Development). Government agencies also provide a range of informational, technical and bureaucratic support to the private sector in investor and host countries. Examples of these agencies include export credit agencies in investor countries and investment promotion agencies in host countries.

FIGURE 2.3. TYPOLOGY OF RELATIONSHIPS AMONG INVESTMENT VEHICLES, ENTERPRISE MODELS AND LAND HOLDERS IN LAND INVESTMENTS IN AFRICA



NB: The size of the boxes for investment vehicles and land holders gives a visual impression (not quantitatively accurate) of their relative importance in land investments in Africa. The many connections among boxes show the wide variety of arrangements that are possible and are seen in practice. The weighted lines indicate the more prevalent arrangements (again, not quantitatively accurate). The dashed lines represent the important role of government development funds in providing loans and other non-equity financial support to both private and government land deals. The variation from government through to private arrangements is shown as a gradation, to illustrate the considerable overlap in government and private sector roles in these investments.

5. **Framework agreements and national policy:** Even in purely private investment projects, governments play a role through establishing the regulatory framework that governs the investment – including through national legislation in home and host states and through framework government-to-government agreements such as bilateral investment treaties (BITs) and cooperation agreements in agriculture. These inter-governmental agreements may be part of broader bundles of development aid, non-financial assistance and business involvement.

The categories above are not distinct but rather overlap and reinforce each other. A typical process of government-backed FDI may begin with government-to-government dialogue and fact-finding missions, leading to a broad, non-binding statement of partnership intent. This may pave the way to individual investment projects led by SOEs, joint ventures and other companies, each based on more specific legal agreements. All of these will have access to various forms of financial and non-financial support in the investor and host countries. SWFs may have equity shares in the SOEs or joint ventures. The implementation of deals signed between governments may be driven by private operators, either from inception or as part of subsequent efforts to regain momentum. The upshot is a very wide range of combinations of public and private finance and governance. Figure 2.3 opposite provides a simplified summary to show the diversity of arrangements.

The next few sections provide additional clarification on three of the forms of government involvement discussed above: SWFs, SOEs and framework agreements.

Sovereign wealth funds and FDI

SWFs are unusual as a government institution, in that their management is largely market-oriented, but also unusual in the financial sector because of their government ownership. The International Working Group on Sovereign Wealth Funds (IWG) of the IMF defines SWFs as follows:

"[S]pecial purpose investment funds or arrangements, owned by the general government. Created by the general government for macroeconomic purposes, SWFs hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies that include investing in foreign financial assets. The SWFs are commonly established out of balance of payments

surpluses, official foreign currency operations, the proceeds of privatisations, fiscal surpluses, and/or receipts resulting from commodity exports".[8]

The key features of SWFs are government ownership, financial objectives (rather than e.g. traditional balance of payments purposes), and separate management from other government funds.

Estimates of the aggregate value of SWFs range from US$ 1.9 trillion to US$ 3.5 trillion. UNCTAD's World Investment Report (2008a) estimated that, in 2007, SWFs' foreign direct investment was only US$ 10 billion, which approximately accounts for 0.2% of their aggregate assets and 0.6% of total FDI flows in that year. In contrast, private equity funds' FDI was US$ 460 billion in that year. However, of the US$ 39 billion investments abroad by SWFs over the past two decades, as much as US$ 31 billion was committed in the past three years (UNCTAD, 2008a).

The size, institutional mandate, governance structure and investment policies of SWFs (from the Gulf to East Asia through to Norway) are extremely diverse, which requires caution in generalising. Various stakeholders, from central banks through to non-governmental organisations (NGOs), have recently voiced concerns about the governance of SWFs and their roles in international investment (e.g. Gieve, 2008; Truman, 2007; Singh, 2008). With regards to FDI, concerns include use of investment as vehicle for foreign policy, unacceptable influence over host country economies, particularly in strategic industries, and lack of transparency, with the perception that SWFs have access to routes of influence and other advantages not open to the private sector.

On the other hand, there are also reasons why SWF investment may be especially attractive to host countries. Compared to private equity, SWFs invest with longer time horizons, higher risk tolerance, more stability (fewer calls on capital) and greater readiness to make counter-cyclical investments. For example, SWFs had an important role in purchasing and stabilising shares in financial institutions in 2008. During recent months, however, SWFs have themselves become more risk-averse in response to the trenchant downturn in capital markets.

Both the Organisation for Economic Co-operation and Development (OECD) and the IMF have stepped in to provide guidance on SWFs. The main outcome

8. See www.iwg-swf.org

of the OECD's Freedom of Investment project in 2008 was four principles to guide host countries in regulating SWF investments so that they address national security concerns without removing opportunities for investment by SWFs. In October 2008, the IWG of the IMF presented 24 voluntary principles for SWFs, dubbed the "Santiago Principles", covering various aspects of SWF governance (see www.iwg-swf.org). The next step of the IWG will be to convene a Standing Group of Sovereign Wealth Funds.

State-owned enterprises and FDI

The exact definition of an SOE varies from country to country, but in broad terms SOEs are profit-making entities registered under company law that are majority or wholly owned by the state. Their profit motive differentiates them from other semi-autonomous parastatal bodies such as energy supply boards or universities, but the profit motive often sits alongside other roles in the national economy such as price stabilisation or provision of employment.

The world's largest SOEs are predominantly oil and gas companies such as Saudi Aramco (Saudi Arabia), Petroleas Mexicanos (Mexico) and the Kuwait Petroleum Corporation. A number of these, such as Petronas (Malaysia), are important outward investors. SOEs are also significant beyond the lucrative oil and gas sector. EDF (France), Deutsche Post (Germany) and Volkswagen (Germany) are examples of major foreign direct investor SOEs. Virtually all of the top 30 Chinese multi-national enterprises are state-owned. Between 2003 and 2005, 80-85% of Chinese international FDI flows and stock were accounted for by SOEs (Cheng and Ma, 2007).

The boundaries between "state" and "non-state" enterprises may be fuzzy, as illustrated by the Chinese case. There are two aspects to this discussion: state ownership and state influence. In China, corporations emerging from the centrally planned economy such as COFCO (China National Cereals, Oils and Foodstuffs Import and Export Company) are clear SOEs: senior staff are appointed by the state, and chief executive officers have ministerial level rank. In other cases, however, it is less easy to distinguish whether a Chinese firm is "public" or "private". Many companies do not disclose clear information on equity structure, which makes it difficult for outsiders to be precise about ownership. An apparently private company may by controlled by a state-owned, unlisted parent company.

In addition, there is likely to be significant state influence over strategic private firms, or put another way strategic companies flourish because of their formal and informal links to key state agencies. Such companies benefit from access to special credit lines, tax breaks, and possibly favourable interpretation of regulations and priority in allocation of key contracts. Key private companies in China will also have internal Communist Party committees, which are likely to encourage close accountability to the state. While such firms are operationally independent, on red flag issues they are likely to adhere closely to government policy, or informally specified objectives.

Framework agreements and FDI

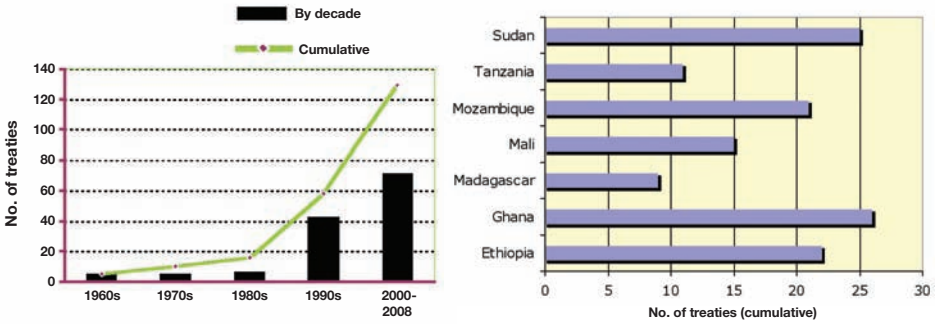
Land deals may be facilitated by the enabling environment provided by BITs, framework cooperation agreements for agriculture, and other government-to-government deals.

Though the content of BITs varies, they usually provide legal protection to investment by nationals of one state party in the other state. They typically define investment very broadly, which would cover investment in agriculture including land acquisitions. Their provisions usually include safeguards against discrimination, expropriation and arbitrary treatment, provisions on profit repatriation and currency convertibility, and access to international arbitration as the mechanism to settle investment disputes. Recent years have witnessed a boom in BITs in Africa. By December 2006, African countries had signed 687 BITs, up from 193 in 1995.[9] The seven countries covered in this study signed a total of 71 treaties since the year 2000, compared to 5 in the 1960s and 42 in the 1990s (see Figure 2.4).

Agricultural cooperation agreements tend to encourage technical cooperation, joint research and exchange of information and experience. They may also be specifically worded to encourage private sector investment in agriculture. Examples are article 5 of the Memorandum of Understanding for the Cooperation in Agriculture between Lebanon and Sudan;[10] and article 4 of the Framework Cooperation Agreement between Mali and Portugal.[11]

9. UNCTAD (2008b: 24 and 26). These data include North Africa.
10. Signed on 29 November 2003, on file with the authors.
11. Signed on 14 September 1999, on file with the authors.

FIGURE 2.4 NUMBER OF BILATERAL INVESTMENT TREATIES CONCLUDED BY THE SEVEN COVERED COUNTRIES, BY DECADE AND CUMULATIVE



Data source: UNCTAD World Investment Report online database

Beyond legal instruments, the role of government-to-government diplomacy in promoting economic relations is also exemplified by the recent "Africa summits" hosted by China (November 2006), the EU (December 2007), India (April 2008), Japan (May 2008) and South Korea (October 2008). Significant government involvement in recent or planned international events also reflects growing interest from Gulf countries – such as the Gulf-Africa Strategy Forum, convened by the private independent think tank Gulf Research Centre and held in Cape Town in February 2009, and the forthcoming Joint Afro-Arab Ministerial Meeting on Agricultural Development and Food Security, which will be hosted by the African Union and the Arab League in October 2009.

Inter-governmental arrangements may evolve into committed partnerships underpinned by mutual financial stakes. For instance, under the 2002 Special Agricultural Investment Agreement between Syria and Sudan (see Table 1.1), the government of Sudan grants to the government of Syria a 50-year lease over a land area of 30,000 faddan (about 12,600 ha) in Al-Gezeera state (articles 2 and 3); the preamble of this deal explicitly refers to its being a "practical step" to execute the Agreement for Cooperation in Agriculture, signed between the two governments in 2000, while article 1 refers to the investment treaty between the two states. In these cases, international treaties complement project-specific contractual arrangements, so that the content of the latter can only be properly understood in light of the former – as will be discussed below.

2.2. TRENDS IN LARGE-SCALE LAND DEALS IN AFRICA: THE MEDIA VIEW

The past 12 months have witnessed a major increase in *reported* international land deals, particularly in domestic and international media. In late 2008, the NGO GRAIN compiled a valuable forerunner research report, collating materials from the media and other third-party sources (GRAIN, 2008). GRAIN is continuing this process with a web-based depository of emerging stories on land acquisitions (http://farmlandgrab.blogspot.com/). The International Land Coalition maintains a similar web-based resource, "Commercial Pressures on Land", for its members.

Media reports are of varying quality and reliability. A careful analysis of the more credible reports provides some insights on trends and players. Certain East Asian (China, South Korea) and Gulf (Saudi Arabia, Qatar, United Arab Emirates) states emerge as key sources of investment. Dependence on food imports and availability of major official reserves (SWFs from oil revenues or trade surpluses) are common characteristics – with the exception of some East Asian countries where import dependency does not seem to be a main driver (see Box 2.1). Private investors from the European Union (EU) and the United States (US) are also active in land investment, though have featured in fewer headlines in the international press.

According to media reports, Sudan, Ethiopia, Madagascar and Mozambique are among the key recipients of FDI in land in Africa. Outside Africa, Pakistan, Kazakhstan, Southeast Asia (Cambodia, Laos, Philippines, Indonesia) and parts of Eastern Europe (e.g. Ukraine) appear to be significant recipient countries. Relative geographical and cultural proximity to some of the key investor countries appears to play a role, notably with regard to a band of countries around the Gulf (Sudan, Pakistan, Central Asia).

These recipient countries vary greatly in GDP, relative importance of agriculture in the national economy, legal frameworks regulating land and investment, and government capacity to negotiate deals with incoming investors. Some key recipient countries are food importers themselves (e.g. Sudan). As a result of these differences, the characteristics and reverberations of international land deals are likely to diverge.

Media reports highlight the spectrum of government backing behind land transactions: SWFs and other direct investments, support through loans and guarantees, and overarching support through policy and bilateral agreements. There is no single dominant model for financial and ownership arrangements, but rather a wide variety of locally specific arrangements among government and the private sector as illustrated in Figure 2.3. Examples of the many reported cases are given below to illustrate the breadth of arrangements.

SWFs and government-to-government deals

Sovereign funds, despite some international concerns about their increasing role in asset acquisition, do not emerge as the main mechanism through which governments promote land acquisitions abroad. Examples of direct investment in foreign land by SWFs seem isolated, and usually far from the top end in terms of land area size – though indirect SWF involvement in land deals through equity participation in more directly engaged companies is difficult to measure.

An example of significant SWF involvement in the sector is provided by the Qatar Investment Authority (QIA), which pursues joint ventures with foreign host governments using an interesting co-ownership, risk-sharing model not yet seen in other SWFs and government investment vehicles. Outside the African context, the QIA has reportedly established one-billion dollar joint venture funds with the governments of Indonesia and Vietnam (contributing 85 and 90% of the finance, respectively), in order to support investment in a range of sectors including agriculture (National Portal Republic of Indonesia, 2008; and Reuters, 2008c). Similar deals are reported to be under discussion between the QIA and the governments of Malaysia (The Star, 2009) and of the Philippines (Pañares, 2008). QIA is also reported to have been involved in the negotiation of land deals in Sudan (GRAIN, 2008). Other direct land investments by SWFs are noted in Table 2.1 (see page 36).

In some cases, land deals have been signed directly between two governments, rather than through subsidiary bodies like SWFs. One verifiable example is the 2002 Special Agricultural Investment Agreement between Syria and Sudan, mentioned above – which involves a 50-year lease by the government of Sudan to the government of Syria.

TABLE 2.1. EXAMPLES OF AGRICULTURE-RELATED DEALS BY SWFs REPORTED IN THE MEDIA

SWF	Key project information	Status	Source
Qatar Investment Authority (QIA), Qatar	Joint venture fund, Indonesia	Established	National Portal Republic of Indonesia (2008)
Qatar Investment Authority (QIA), Qatar	Joint venture fund, Vietnam	Established	Reuters (2008c)
Qatar Investment Authority (QIA), Qatar	Joint venture fund, Malaysia	Negotiation	The Star (2009)
Qatar Investment Authority (QIA), Qatar	Joint venture fund, Philippines	Negotiation	Pañares (2008)
Kuwait Investment Authority, Kuwait	Approached several countries in South East Asia to discuss potential for long-term investment in agriculture and other sectors	Negotiation	Reuters (2008d)
Libya Africa Investment Portfolio (LAP), Libya	Partnership with a local organisation Foundation for Africa Development Aid, Liberia for the production of rice in Liberia	Concession agreement signed, subject to revision and ratification by parliament	http://adalap.com/ and The Analyst (2007)
Libya Africa Investment Portfolio (LAP), Libya	Through a subsidiary, to develop 100,000 ha in the Office du Niger, the land area with highest agricultural potential in Mali	Deal signed	Clavreul (2009)

State-owned enterprises

State-controlled entities other than sovereign funds may be more significant players than SWFs in international land deals. SOEs with sectoral expertise in agribusiness are in some cases investing in primary agricultural production in foreign countries. For example, the Zad Holding Company, a state-owned firm from Qatar, is reported to be involved in the formation of a joint holding company to produce food in Sudan for export to Arab markets (Sudan Tribune, 2008b). In September 2008, Dubai World, a government-controlled conglomerate, created a new subsidiary targeting global investments in natural resources ("Dubai Natural Resources World"); this has in turn set up subsidiaries to handle investments in three sectors, including a company to handle "agrarian investments" (Dubai World Media Centre, 2008).

Chinese SOEs have been involved in discussions about land acquisition in Africa. Wuhan Kaidi, a power company, is currently involved in negotiations over a land concession in Zambia for jatropha cultivation.[12] COFCO, the state-owned grain and oilseed trading company, was involved in discussions for a major land concession to grow rice and soybeans in Mozambique, though at present this deal has not progressed.[13]

However, as yet there are no known examples of Chinese land acquisitions in Africa in excess of 50,000 hectares where deals have been concluded and project implemented. China's "Friendship Farms" in various African countries are formally owned by a Chinese parastatal organisation, but are mostly medium scale, usually below 1000 hectares.

Beyond Africa, Chinese SOEs have been involved in acquisition of land for key agricultural commodities. Examples include Yunnan Rubber, a former state farm, which has reportedly acquired 160,000 hectares in Laos for rubber cultivation (Weiyi Shi, 2008). Sinopec, one of China's nationally owned oil companies, is reported to be discussing with an Indonesian enterprise setting up biofuel plants and growing energy crops in Indonesia, with an investment of US$ 5 billion (Biopact, 2008).

Private sector and government-private joint ventures

While acknowledging the variety of government-to-government deals above, most reported international land deals involve the private sector. There has been extensive media coverage, for example, of a 1.3 million ha deal between the South Korean company Daewoo Logistics and the government of Madagascar. The deal was reported to involve the acquisition of land in the west and east of the country to grow maize and oil palm mainly for export to South Korea, though the deal subsequently ran into trouble and was then officially cancelled by the new government of Madagascar (e.g. Africa-Asia Confidential, 2008; Blas, 2008; Jung-a *et al*., 2008; Olivier, 2008; Reuters, 2008a; BBC, 2009).

12. Interview with Biofuels Association of Zambia, 14 April 2009; Lusaka Times (2009).
13. Interview with a technical consultant for COFCO, 25 March 2009.

Major private land deals that have actually reached conclusion have involved both agrifood companies and biofuels developers. Examples of the former include:

- A consortium of Saudi agricultural firms called Jenat recently announced plans to invest US$ 400 million into food production in Sudan and Ethiopia, following investments in 10,000 ha of barley, wheat and livestock in Egypt according to company sources (Reuters, 2008f and 2009c);

- Another private Saudi consortium recently announced a lease of unspecified size in Ethiopia (Reuters, 2009d);

- The pan-African conglomerate Lonrho acquired 25,000 ha of land in Angola, and is negotiating major land deals in Mali and Malawi (Burgis, 2009).

As for biofuels, GEM Biofuels plc gained exclusive rights for 50 years over 452,500 ha in Southern Madagascar to plant jatropha for biodiesel production (Reuters, 2008a). In addition, UK energy company CAMS Group announced in September 2008 that they had acquired a lease over 45,000 hectares of land in Tanzania for investments in sweet sorghum production for biofuels, through equity financing and lending from a commercial bank in London (Reuters, 2008e).

Interestingly, private operators include not only agribusiness firms, but also investment funds, for example in a reported land acquisition in Southern Sudan by US-based Jarch Capital (Blas and Wallis, 2009). Recent announcements of new specialised investment vehicles suggest that the number of investment fund land deals may increase in future, including both Western funds (e.g. BlackRock and Emergent Asset Management Ltd; Henriques, 2008) and Gulf funds (e.g. Abu Dhabi-based Al-Qudra Holding; Blas, 2008).

Media reports also provide examples of government backing for privately led deals. Saudi Arabia's "King Abdullah Initiative for Saudi Agricultural Investment Abroad" supports agricultural investments by Saudi companies in countries with high agricultural potential, with a view to promoting national and international food security. Strategic crops include rice, wheat, barley, corn, sugar and green fodders, in addition to animal and fish resources.[14]

14. http://www.mofa.gov.sa/Detail.asp?InSectionID=3981&InNewsItemID=88796.

The Saudi Arabian company Hadco reportedly acquired 25,000 ha of cropland in Sudan (Blas and Wallis, 2009), with 60% of the project's cost coming from the governmental Saudi Industrial Development Fund (Reuters, 2009a). Similarly, the Abu Dhabi Fund for Development is financing the development of 28,000 ha of farmland in Sudan to grow alfalfa for use as animal feed, and probably maize, beans and potatoes for export to the United Arab Emirates (Rice, 2008).

Is there a scramble for land in Africa?

While media reports provide numerous examples of a wide range of international land deals, they in themselves say little about scale and trends. Without a large-enough pool of systematic and reliable data, it is hard to quantify the scale of recent land acquisitions, and assess the extent to which these are on the rise. Whether information about international land deals filters through the media seems largely due to contingent circumstances. The Daewoo deal in Madagascar received wide media coverage due to the investor's decision to go public at a press conference. But other major land acquisitions in Madagascar, such as the GEM acquisition of almost half a million hectares, received surprisingly little attention among international media in spite of press releases (e.g. Reuters, 2007; Reuters, 2008f; Biopact, 2007) and public sharing of information on the part of the investor.[15]

In addition, there is a big difference between announcing plans and actually acquiring land – let alone starting to cultivate it. In the short term, high-level negotiations and announcements do not necessarily translate into sizeable changes in land access and use on the ground. The reasons for this are varied: first and foremost, the time lag separating the negotiation of a framework deal, the transfer of land rights, and agricultural production (which is often phased, so that even a very large project may initially involve cultivation of a relatively small land area); but also possible changes of plans linked to political risk (as in the Daewoo deal) or to evolving contexts.

Finally, although some recently reported deals are of unprecedented scale, it must be borne in mind that large-scale land acquisitions are not a new phenomenon. In the past, land was commonly acquired by foreign investors, for instance to produce rice (Lonrho) and rubber (Firestone). At a

15. Such as a presentation at the Biofuels Markets East Africa Conference in Dar es Salaam, 17-18 September 2008 (Benetti, 2008).

smaller scale, South African farmers have been acquiring land in Zambia, Mozambique and Tanzania for decades. Large domestic players have also acquired land in the past, for example to produce pulp (e.g. Mondi in South Africa). This makes it even more difficult to establish whether the past few years have witnessed an acceleration in land acquisitions (by project numbers or overall land area) based on media reports alone. Quantitative research on the scale of the phenomenon is therefore particularly useful.

2.3. EVIDENCE FROM QUANTITATIVE STUDIES IN FIVE AFRICAN COUNTRIES

The national inventories undertaken for this study shed some light on the scale of land acquisitions. Before analysing these, however, it is important to re-emphasise the limitations of this research. Government agencies were the primary source of information. The extent to which this information could be cross-checked with qualitative interviews varies across countries. It may very well be that a share of international land deals are not reflected in government statistics. In Ethiopia, for example, enquiries at the state-level Oromia investment promotion agency found evidence of some 22 proposed or actual land deals, of which 9 were over 1,000 ha, *in addition* to the 148 recorded at the national investment promotion agency. It is possible to speculate that state-level agencies in other Ethiopian states may also have records of additional projects,[16] and that some land acquisitions may not have been recorded at all.

Also, while the Ethiopian investment promotion agency has developed a relatively effective system to record and store data about land deals, its counterparts in Madagascar, Mali and Ghana seem to have far less complete and reliable systems. As a result, country teams had to rely to a greater extent on other sources of information, which tend to be less systematic and complete. In Madagascar, constraints in access to data on domestic investment, mainly due to political reasons, are likely to have skewed the dataset towards FDI. In Ghana, research relied heavily on data from the Free Zones Board, which may not capture all land acquisitions – and indeed a

16. Though Oromia is seen as the hotspot for agricultural investment and land acquisition.

recently reported acquisition was not registered with the Board.[17] It is therefore possible that cross-country variation in numbers of deals reflects differences in availability of data, in government determination to collect and store it (possibly linked to the extent of the government involvement in economic relations), in government capacity to do so effectively, and in its willingness to share data with researchers – as well as differences in real-world land deals.

Finally, datasets tend to be incomplete, which translates into gaps in the analysis. For example, in Ethiopia information about the land size of many deals proposed or concluded in 2008 was missing. In Sudan, where the study relied on information posted online by the investment agency, the dataset is even more incomplete than in the other countries.

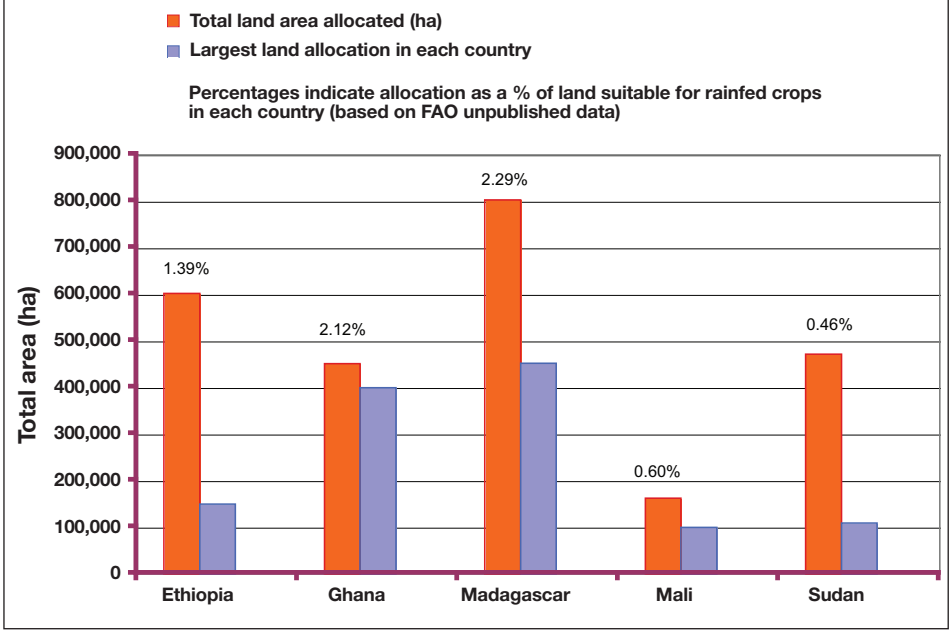
More generally, official government statistics are likely to lag behind real-world negotiations for proposed deals – and even more so with regard to the recent announcements of new funds for *future* land acquisitions, discussed above. Much of the ferment highlighted by the above press review is likely not to be fully captured in publicly available government data. This may explain some of the discrepancies we found between media reports and official government data. For example, an investment by German company Flora EcoPower in Ethiopa was reported to involve 13,000 ha (Reuters, 2009e), while it is recorded at the Ethiopian investment promotion agency for 3,800 ha only. A recent 400,000 ha deal in Sudan, reported in the media (Blas and Wallis, 2009), is absent from Sudan's public available government statistics.

Size and trends in land investments

All these caveats notwithstanding, data from the national inventories suggest that total *approved* land allocations for investment in agriculture (whether FDI or domestic investment, privately or state-led) over the period 2004-2009 are significant. The national inventories have documented an overall total of 2,492,684 ha of allocated land in the five quantitative study countries, excluding allocations below 1000 ha and pending land applications. Country-specific figures reach a total of over 803,414 ha in Madagascar, with Ethiopia and Sudan following suit (see Figure 2.5 and Table 2.2). Given the incompleteness of the study's datasets and the likelihood that many deals may

17. Namely, 100,000 acres acquired by Sequoia Energy for a biofuel project (Barlow, 2008).

FIGURE 2.5. LAND AREA ALLOCATED TO INVESTORS, 2004-EARLY 2009



Data source: country studies

TABLE 2.2. LAND UNDER INVESTOR CLAIM 2004-EARLY 2009 (APPROVED PROJECTS ONLY)

	Ethiopia	Ghana	Madagascar	Mali	Sudan	Total
Total land area allocated (ha)	602,760*	452,000*	803,414*	162,850*	471,660*	2,492,684*
No. of projects approved (over 1000 ha)	157	3*	6*	7*	11*	184*
Largest land allocation (ha)	150,000	400,000	452,500	100,000	109,200	
Total investment commitments (US$)	78,563,023*	30,000,000*	79,829,524*	291,988,688*	439,600,000*	919,981,235*

Data source: country studies; * denotes incomplete data

not be reflected in them, these data should be seen as conservative figures. Levels of activity appear significantly higher once pending land applications are included. Approved land allocations constitute varying shares of each country's total suitable land – which is a country's total land area suitable for rain-fed agriculture (Bot *et al.,* 2000; FAO, 2003; FAO, 2009 – see Figure 2.5).[18]

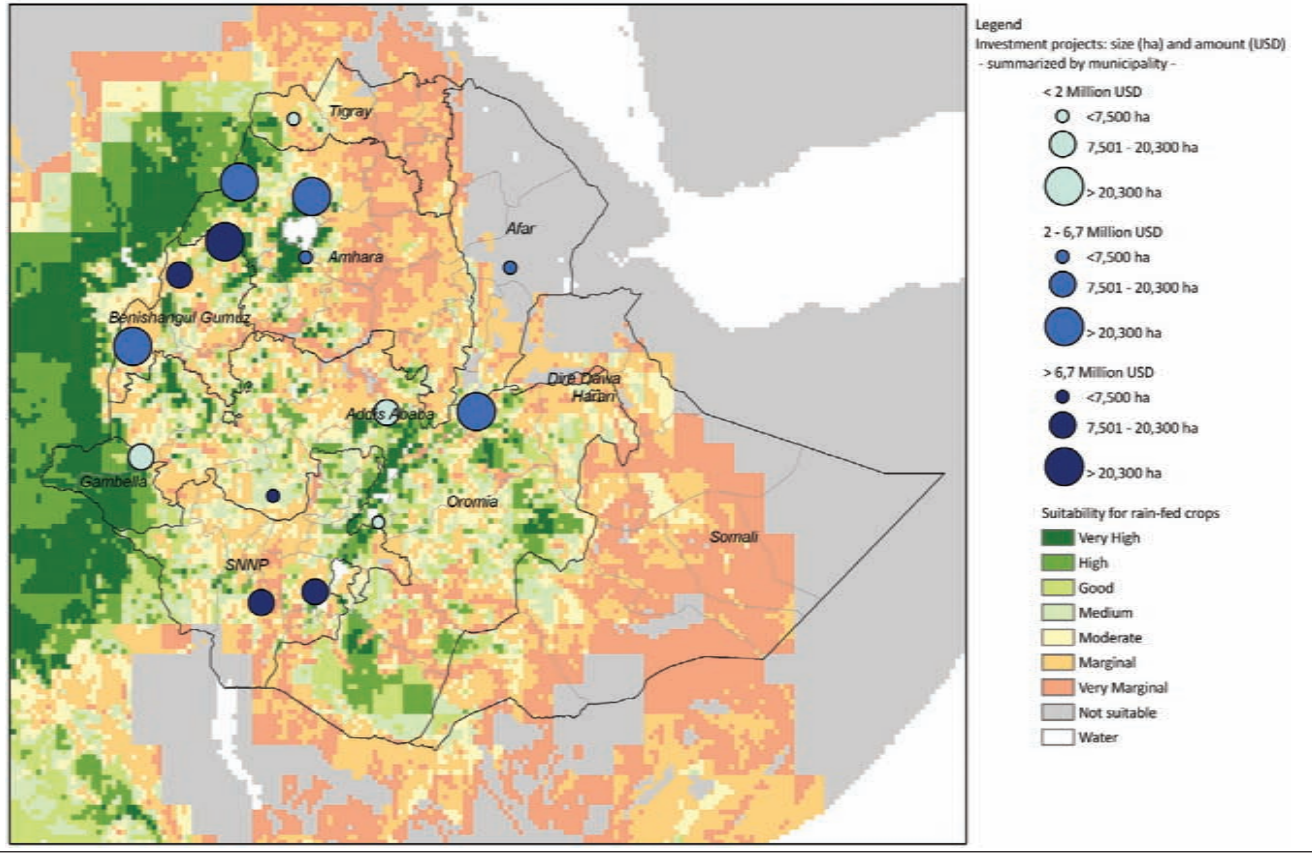
Significant levels of investment have been committed in all study countries (Table 2.2). Overall investment commitments documented in the five quantitative study countries amount to US$ 919,981,235. This amount is likely to underestimate investment levels for projects included in the national inventories, as data on investment commitments presented significant gaps. Data access constraints also prevented an analysis of actual investment flows for documented projects so far. Cross-country mis-matches between aggregate figures on investment commitments and on allocated land (for example, with Mali receiving higher levels of investment for lesser land than the other countries) must be read with great caution: for each project, investment levels depend on project-specific variables linked for instance to the crop system, the business model, and existing ecological and infrastructural conditions.

The significance of this level of land allocations can only be properly understood once investor claims are placed in their broader context. Land availability varies across the study countries (as will be discussed in section 2.5 below), and land allocations that look small in relation to the overall national territory can still be very significant where they concentrate on the possibly much more limited areas of higher-value land (more fertile land, land with greater irrigation potential or easier access to markets). In addition to outside investment, pressure on the land may also be growing as a result of other forces, including population growth (see section 2.5) and demand for land from smallholders increasingly engaged in commercial agriculture. Equal land areas allocated to outside investment are likely to have different implications in local contexts with varying levels of land competition. Water scarcity may be a constraint even where land is available, and priority in water use may prove a source of conflict.

Obtaining geo-referencing for approved and proposed land deals proved difficult in most country studies, though in Ethiopia data obtained by the country team enables plotting investment amounts and land area sizes by region against FAO data on land suitability (see Map 2.1). The map suggests

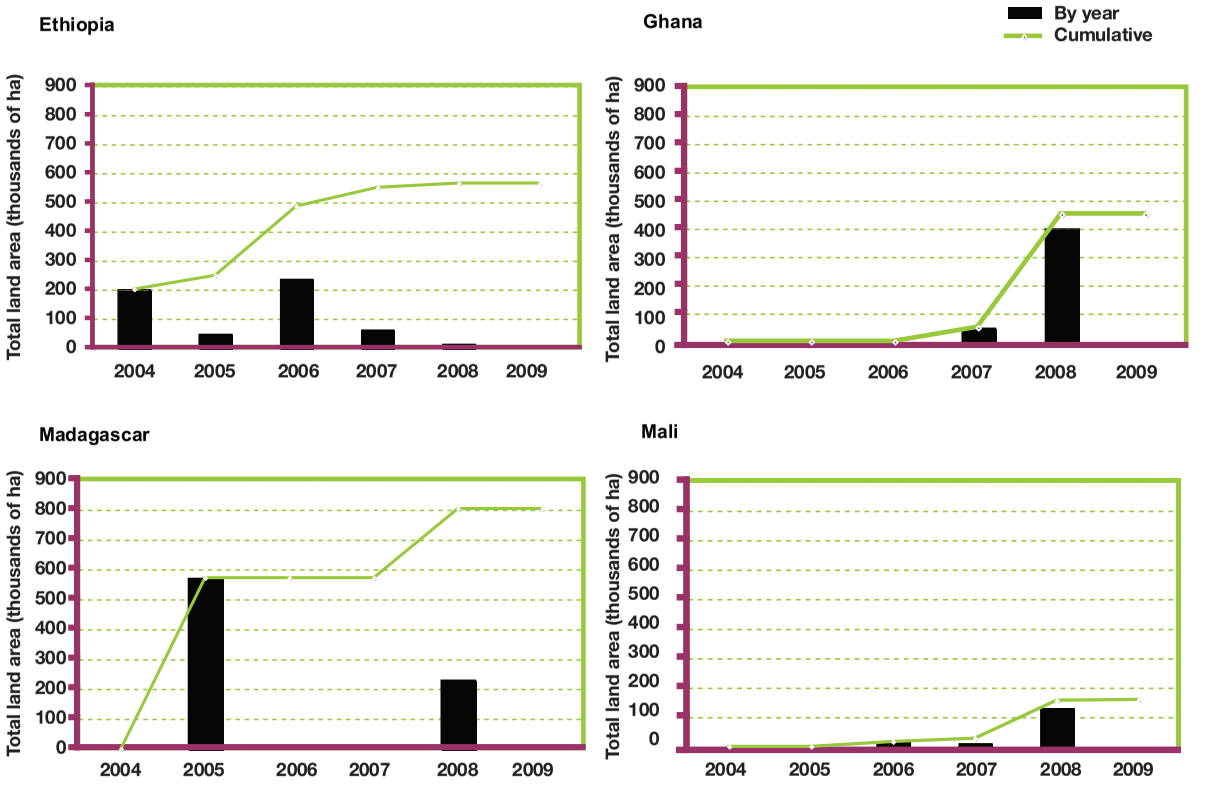
18. Irrigated agriculture may be found – and often is – in land which is unsuitable under rain-fed conditions.

MAP 2.1. DOCUMENTED LAND ACQUISITIONS IN ETHIOPIA, 2004-2009



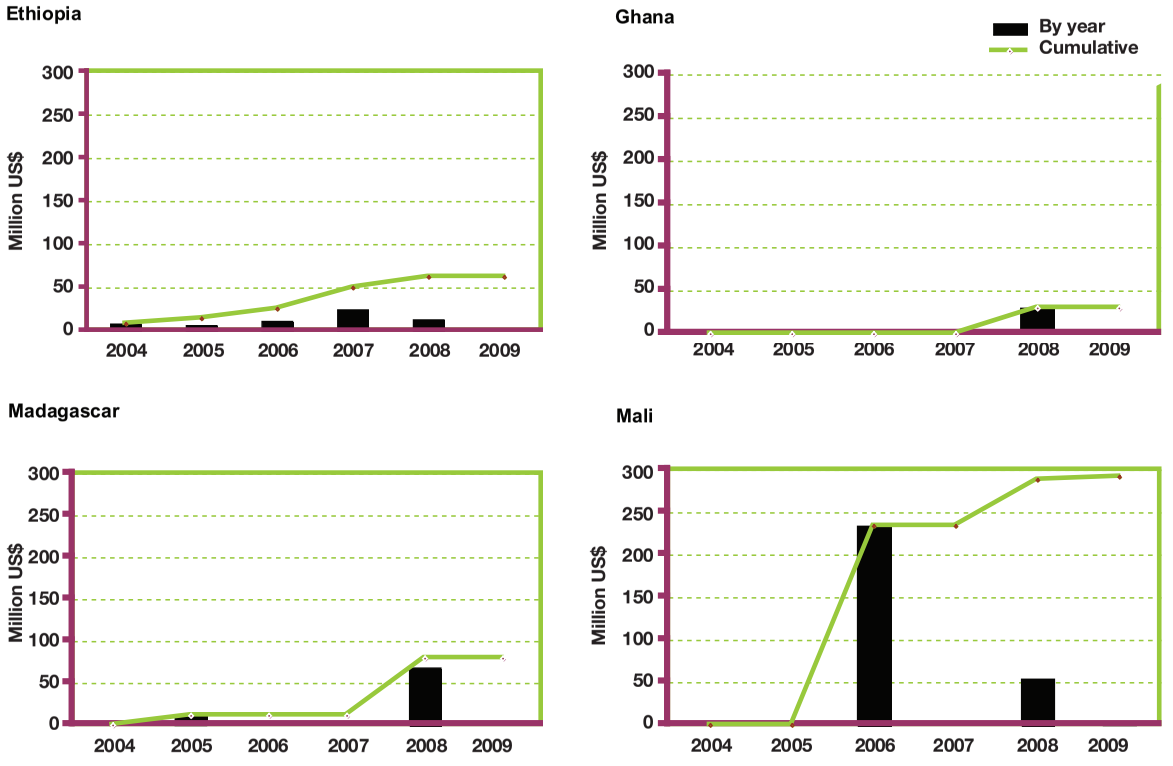
Sources: country studies; FAO (2009); FAO unpublished data

FIGURE 2.6. LAND ALLOCATIONS IN ETHIOPIA, GHANA, MADAGASCAR AND MALI 2004-2009



Data source: country studies. Approved projects only. NB: Sudan projects are not represented as data is not disaggregated by year of approval.

FIGURE 2.7. INVESTMENT COMMITMENTS IN ETHIOPIA, GHANA MADAGASCAR AND MALI 2004-2009



Data source: country studies. Approved projects only. NB: Sudan projects are not represented as data is not disaggregated by year of approval.

that documented land deals tend to concentrate in regions with more fertile lands and/or closer links to markets. This mapping exercise only gives a broadbrush picture of the spatial distribution of land deals, however. Far more detailed, project-specific geo-referencing would be needed in order to accurately plot land deals against data on land suitability.

Data from the national inventories suggest an upward trend for project numbers and allocated land, for instance in Ethiopia, Madagascar and Mali. But while cumulative figures display such upward trend, some annual data show a less clear-cut picture involving year-to-year fluctuations (in Ethiopia and Madagascar). Increases in land deals feature over the entire duration of the study period (2004-2009), though Ghana and Mali seem to have experienced an acceleration over the past couple of years (see Figures 2.6 and 2.7).

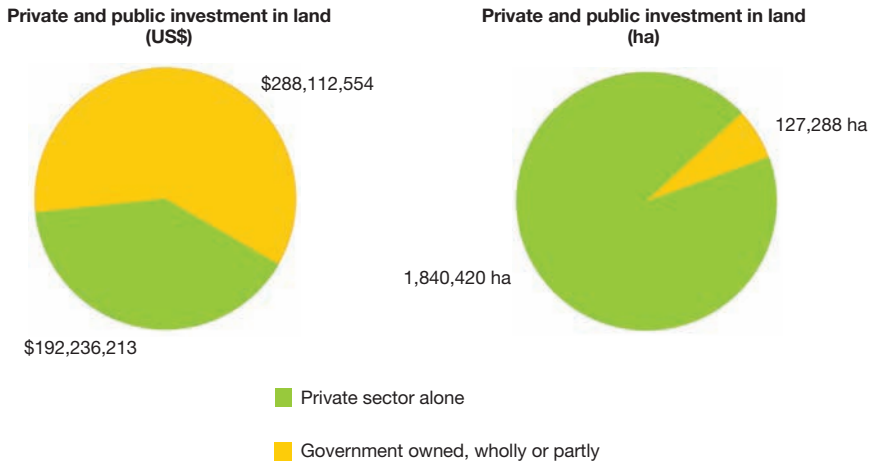
Lack of data disaggregated by year prevents a trends analysis for Sudan. But large-scale land acquisitions in this country are not new, particularly with regard to investment from Gulf countries. The Arab Organisation for Agricultural Development (AOAD), based in Khartoum, was created in 1970 for the purpose of identifying and developing links among Arab countries, and coordinating agriculture-related activities among members. Its Director-General recently said he believed that Arab nations had the potential to feed themselves through international land acquisitions, saying "I am convinced that if there is a real interest and seriousness by investors in the farming sector, then the whole Arab World needs of cereal, sugar, fodder and other essential foodstuffs could be met by Sudan alone" (Kawach, 2009).

Ownership of investments

The national inventories gathered data about equity ownership for documented investment projects. Data access constraints made it difficult to establish what percentage of private sector-led deals involves government backing through mechanisms other than equity participation, such as soft loans or insurance schemes. Even with regard to ownership, it is possible that indirect government participation, for instance through equity in the chain of parent and subsidiary companies, may not have been detected.

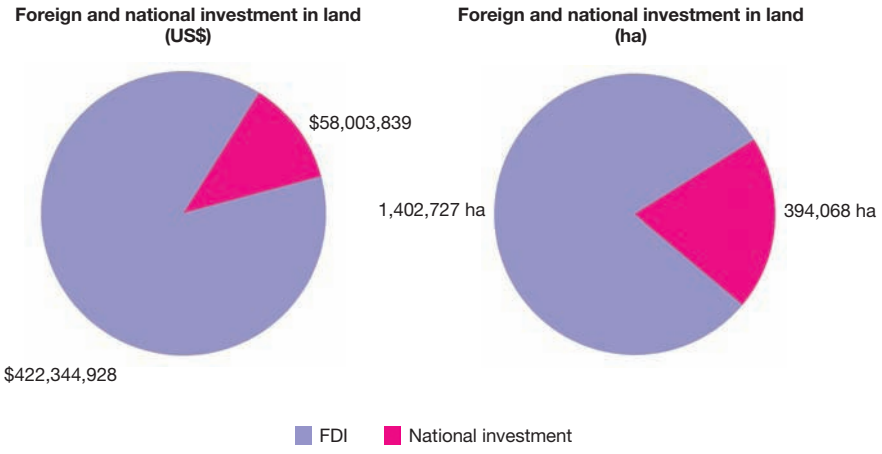
Results from Ethiopia, Ghana, Mali and Madagascar indicate that, in terms of allocated land area, the major share of approved investments are made by private companies rather than state-owned entities, though state agencies do account for a sizeable proportion of total allocated land (see Figure 2.8).

FIGURE 2.8. DISTRIBUTION OF PRIVATE AND PUBLIC INVESTMENTS IN ETHIOPIA, GHANA, MADAGASCAR AND MALI 2004-2009



Data source: country studies; absolute figures reflect known cases. NB: Data does not include Sudan due to lack of information relating to investor profile.

FIGURE 2.9. DISTRIBUTION OF FOREIGN AND NATIONAL INVESTMENT IN ETHIOPIA, GHANA, MADAGASCAR AND MALI 2004-2009



Data source: country studies; absolute figures reflect known cases. NB: Data does not include Sudan due to lack of information relating to investor profile.

The extent of this varies across countries. While in Ethiopia and Madagascar all documented investments are privately owned, Mali hosts major government-backed investments, including a 100,000 ha land allocation to a subsidiary of an SWF based in Libya, and an 11,000 ha allocation to a regional organisation of which Mali is a member (UEMOA).

Figure 2.8 suggests that the share of government-owned investment is higher for investment commitments than for allocated land. This raises the interesting question of whether investments involving government participation in equity might tend to be associated with higher levels of investment per hectare. This question is complicated by two factors. First, as with cross-country variation in investment/land area ratios (see above), caution and more research are needed, as land area sizes and investment commitments crucially depend on the economics specific to each individual project, and the pattern suggested by Figure 2.8 may not be statistically significant. Second, projects involving government or inter-governmental agencies might be more frequently tied to development aid goals, blurring the border line between pure investments and aid interventions. In Figure 2.8, the public-private split in investment commitments is affected by some large, capital-intensive projects in Mali that are mainly driven by local development or food security considerations (such as the UEMOA deal and a project funded by a US donor). The same issues would apply to Gulf-based government development funds that provide loans or insurance to private investments, or to the tying of investment and aid-funded infrastructure undertaken by some Middle Eastern or East Asian operators.

A comparison between the shares of FDI and domestic investment in Ethiopia, Ghana, Madagascar and Mali suggests that the majority of the investment involves FDI (see Figure 2.9). In Madagascar, all documented projects involve foreign ownership of domestic subsidiaries – although as discussed this may be partly caused by the lack of publicly available information on the significant agribusiness projects owned by domestic investors with political prominence.

But a less expected finding is the extent to which national individuals and companies are also acquiring land in certain countries – an aspect virtually absent in much media reporting. In Ethiopia, domestic investors account for the large majority of agricultural projects, adding up to 362,000 ha and US$ 54 million compared with 240,000 ha and US$ 24 million for FDI.

The picture does not change much if only land deals over 5,000 ha are considered: Ethiopian projects still cover 286,000 ha and US$ 12.6 million, compared with FDI of US$ 10.8 million and 210,000 ha.

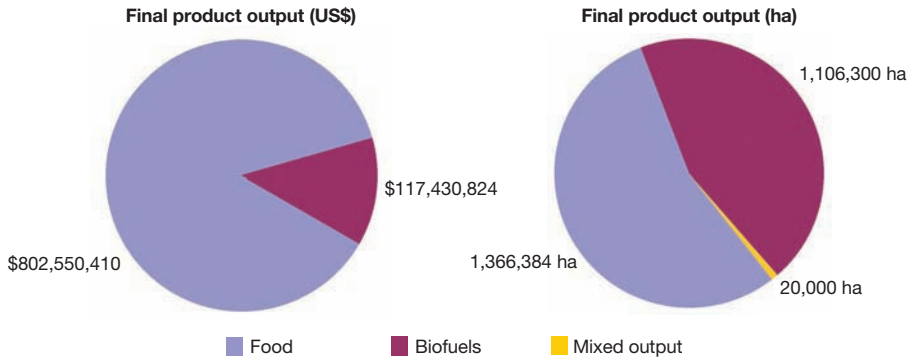
These findings match evidence about widespread land acquisitions by national elites and urban middle classes in several African countries. It would be interesting to document the extent to which acquisitions by nationals are driven by the hope to subsequently partner up with a foreign investor, using the land as a negotiating chip. The Jarch Capital deal in South Sudan seems interesting in this respect: the US investment company is reported to have acquired, through its related company Jarch Management, a lease over 400,000 ha of land by taking a 70% stake in the South Sudanese company LEAC for Agriculture and Investment Co Ltd. The Sudanese company is controlled by the son of a high official in the Sudan People's Liberation Army, and had in turn obtained most (though not all) the land area from the government (Blas and Wallis, 2009; Reuters, 2009b).

Crops and markets

The national inventories suggest that food projects in the quantitative study countries account for the majority of allocated land areas and, even more so, investment commitments, but that biofuels also constitute a significant share of both (see Figure 2.10). Attractiveness of biofuels as an investment option varies widely among African countries. In Ethiopia, 98% of the projects recorded at the investment promotion agency involve food production, compared to only 2% for biofuels (though in terms of land area the split is slightly different: 94% versus 6%). On the other hand, the qualitative case studies undertaken for this research suggest that countries like Mozambique and Tanzania have more enthusiastically embraced the biofuels boom.

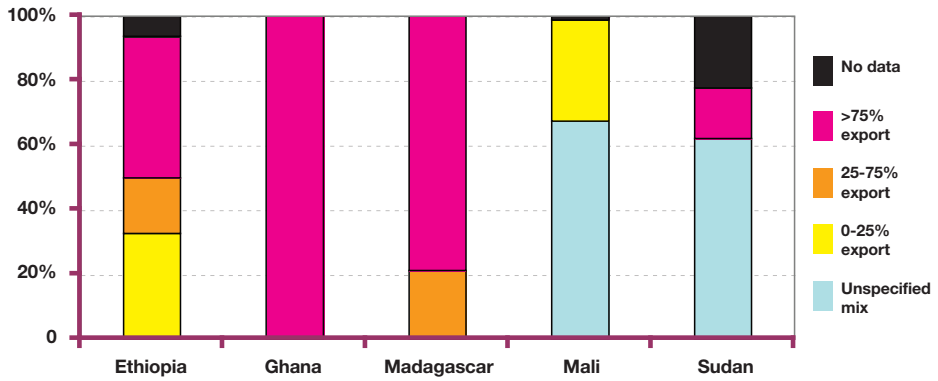
A final point worth mentioning is market outlets. Country study findings in this regard are mixed – most allocated land is for export-oriented cultivation in Madagascar and for domestic consumption (and regional export) in Mali, while Ethiopia displays a combination of these. Incomplete data sets prevent us from getting a full picture for Sudan, though the limited data available does suggest that export-driven agriculture plays a key role (Figure 2.11). In aggregate terms, exports dominate biofuel production, while for agri-food the picture is more nuanced (Table 2.3).

FIGURE 2.10. DISTRIBUTION OF PROJECTS BY PRODUCT SECTOR IN THE FIVE INVENTORY COUNTRIES, 2004-2009



Data source: country studies. NB: Biofuels here means feedstocks for bioethanol and biodiesel. The borderline between food and fuel is blurred, as the same crop may be used for both or the same land cultivated with multiple crops, and as investment plans may evolve over project duration to respond to changing international prices and other incentives.

FIGURE 2.11. DISTRIBUTION OF LAND AREA DEVOTED TO DOMESTIC AND EXPORT MARKETS (AS % OF ALLOCATED HA)



Data source: country studies

TABLE 2.3. FOOD AND FUEL, EXPORT AND DOMESTIC MARKET

	Investment commitments (US$)		Land area (ha)	
	Food	Fuel	Food	Fuel
Domestic market	249,212,800	0	229,162	0
Export >25%	44,043,257	117,430,824	517,126	1,106,300

Data source: country studies. NB: Sudan data not included. Data for mixed output and unspecified market mix projects not included.

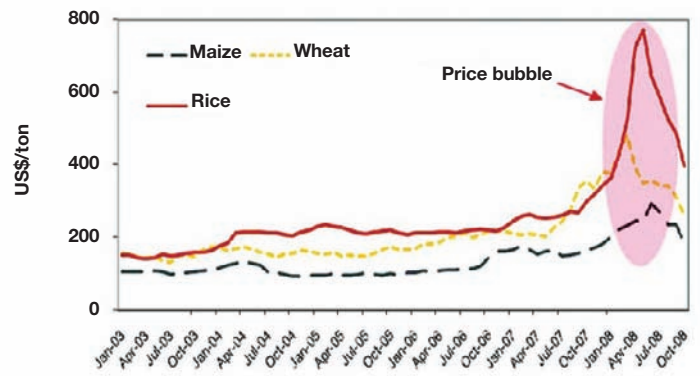
2.4. DRIVERS BEHIND THE LAND DEALS

Several factors underpin the land acquisitions discussed in the previous section. Some countries that are highly dependent on food imports see land acquisitions overseas as part of their national food security strategy. Agricultural investment has also been associated with rising land values and increasing prices for agricultural commodities. Both of these dynamics are important, but they do not explain all cases. Precisely what combination of factors is at work in a particular land deal varies from case to case. And while the role of investors is critical, it is important not to neglect the agency of host states in attracting and encouraging investment. Some of the key drivers of the recent wave of large-scale land acquisitions are discussed below.

Food security

Over the past century or so, food prices have been in long-term decline, reflecting the expansion of agricultural frontiers and agricultural trade, increasing concentration in the retail sector, as well as innovations in production. The food price hikes of 2007 and 2008 shook the assumption that the world will continue to experience low food prices. Maize and wheat prices doubled between 2003 and 2008 (von Braun, 2008; see Figure 2.12 below). Grain and other food prices have dropped from the highs seen in the summer of 2008; but prices are still 30 to 50% above their averages over the past decade (The Economist, 2009b).[19] Price decreases could be a temporary

FIGURE 2.12. THE GLOBAL FOOD PRICE CRISIS IN 2007-08



Data source: von Braun (2008)

19. The new FAO database confirms that 2009 prices are still high compared to the period since 2000, see http://www.fao.org/worldfoodsituation/FoodPricesIndex/en/

correction, and falls in international prices have not always translated into equivalent falls in in-country prices. It is still unclear whether the world is now entering a new period of food price inflation. Some ongoing processes are fostering expectations that in the longer term food prices will continue to rise and create new incentives for investment in agriculture.

These processes relate to both global food supply and demand (Selby, 2009). On the one hand, constraints and uncertainties in food supply may be due to the diminishing agricultural production in some areas, linked to negative environmental externalities affecting soil quality and water supply. Water-intensive agriculture has (with industrial and domestic use) lowered water tables in many production systems, thereby reducing the productivity of agriculture. For example, while until recently extensive subsidies and water-intensive production made Saudia Arabia self-sufficient in wheat, imports resumed in 2007, and wheat production will be phased out completely by 2016. Progressive depletion of non-renewable fossil water in the country was a key factor in this shift (Woertz *et al*., 2008; Woertz, 2009).

Bottlenecks in storage and distribution infrastructure may also constrain supply in the near future (Selby, 2009). Climate change is expected to exacerbate land degradation and water scarcity in many places, and to increase the frequency of extreme weather events affecting harvests. Changes in oil prices may also affect supply: oil is central to modern agriculture for its role in transport costs and in the production of nitrogen fertilisers. The oil question also links to biofuel production, an important competing land use. Production of some bioethanol or biodiesel feedstocks diverts staples into non-food use thereby affecting food supply, and results in important land use change. According to the International Food Policy Research Institute (IFPRI), "increased biofuel demand in 2000-7 is estimated to have contributed to 30 percent of weighted average increase of cereal prices" (von Braun *et al.*, 2008).

On the demand side, population growth, increasing urbanisation rates (which expand the share of the world's population that depends on food purchases) and changing diets (particularly growth in meat consumption by middle classes in large industrialising countries) appear among the factors pushing up global food demand. For example, while cereal agriculture in the Gulf countries is in irreversible decline, the population of the region will double from 30 million in 2000 to nearly 60 million by 2030. Dependence on food imports, now at 60% of

total demand, will grow as a result (Woertz, 2009). Food inflation has been a serious issue in several Gulf countries, with higher food prices driving inflation in the wider economy. Price rises are particularly problematic in relation to the large migrant blue-collar workforce in smaller Gulf states, and there are concerns about social unrest. Social unrest associated with food has affected at least 33 countries around the world during the recent food price spikes (World Bank, 2008b).

For some of the countries involved in international land deals, these food security concerns (whether shorter or longer term) are extremely significant. The acquisition of land internationally is one possible strategic choice to address the challenge. Africa is seen as a major production base, along with parts of South America and Asia. However, food security is not the only driver of land deals, and care must be taken in interpreting the motives of governments in promoting agricultural FDI. China provides an interesting case study in this respect (Box 2.1).

Biofuels

Production of liquid biofuels is a key driver of much recent land acquisition. Internationally, government consumption targets have been the key driver of the biofuels boom, as they create guaranteed markets for decades to come. Government policies have also provided financial incentives to the private sector (for example, subsidies and tax breaks). While climate change mitigation is often presented as a key policy goal, in practice more compelling reasons for governments to pursue a switch from oil to biofuels include (Dufey *et al*., 2007):

- Energy security: with fluctuating global oil prices, countries are seeking alternative energy sources to increase long-term energy security and reduce energy import bills.

- Rural development: a new and profitable land use will provide better opportunities and long-term security for farmers and employees, as well as – if processing facilities are near to farms – for value-addition to profit rural areas.

- Export development: for countries with favourable endowments of land, labour and trade conditions, biofuels are an opportunity to develop new export markets and improve the trade balance.

BOX 2.1. COMPLEX DRIVERS FOR INTERNATIONAL AGRICULTURAL INVESTMENTS: THE CASE OF CHINA

A common external perception is that China is supporting Chinese enterprises to acquire land abroad as part of a national food security strategy. Yet the evidence for this is highly questionable.

In 2008, in the context of the global food price crisis and serious food price inflation in China, a confidential document was drawn up by China's Ministry of Agriculture. The document argued that the country would in the future no longer be able to maintain its own food security, and that active efforts should be made to secure land concessions overseas (Anderlini, 2008). This proposal was intensely debated in China, with many analysts arguing that land acquisitions overseas was not a feasible food security strategy due to logistics and political risk.

In December 2008, the National Development and Reform Commission, China's planning agency responsible for five-year plans and long-term national strategy, announced a new 20-year food security strategy. It also explicitly stated that land acquisitions abroad would not be part of the strategy (Xinhua News Agency, 2008). The only exception to this is possibly land for soyabean cultivation in Brazil.

However, some argue that even if China is not currently acquiring land to feed itself, it is still engaging in an unofficial long-term hedging strategy, and that this has driven reported negotiations for land deals in Mozambique and Sudan (see for example, Horta, 2008). The accuracy of these reports is hard to verify, however.

In addition, China has had an explicit "Going Out" policy since 2004 – as part of a business development (rather than food security) strategy. The Chinese government has encouraged Chinese firms to invest abroad, partly to secure access to resources where Chinese demand outstrips domestic supply, and also to build robust international companies capable of competing in key sectors with leading established multinationals. This policy has been supported by a range of incentives such as tax breaks, credit, low-interest loans and customs preferences, allied to high level diplomatic support. The focus of this activity has been strategic SOEs that Chinese policy-makers see as capable of rivalling established multinationals. However, in theory smaller companies investing in land may also be able to access government support. The China Africa Development Fund set up by China Development Bank to finance China's development programme in Africa is actively looking for opportunities to support Chinese agribusiness development on the continent.

It is possible that the recent decline in the oil price from the highs of 2008 may dampen enthusiasm for biofuels investments in the short-term. But given the projections of diminishing supplies of non-renewables, biofuels are likely to remain and increase as an option in the longer-term, unless policies move against encouraging further biofuel investment in response to concerns about its impact on food security.

Non-food agricultural commodities

Some countries depend on imports of agricultural commodities as part of their industrialisation model and their role in global production and consumption systems. Global economic growth would require secure access to these commodities where they cannot be replaced by alternatives – though the ongoing economic downturn may slow these processes. When production systems meet natural limits, new sources of supply become necessary. Commodities that are subject to this kind of pressure include rubber, cotton, sugar, coffee, cocoa, tea, soybeans and many others.

To take one example, Chinese rubber imports shot up to consume 23% of world supply in 2003 (Weiyi Shi, 2008), overtaking the US as the biggest consumer of natural rubber in the world. This has resulted in acquisition of land for rubber production in countries neighbouring China, for example Laos and Myanmar (Weiyi Shi, 2008; Gray, 2009). Not all agricultural commodities necessarily require direct investment in land, however. For example, China's cotton imports have mostly expanded through purchase on the world market, or through the involvement of Chinese companies in local markets as buyers or under contract farming arrangements – as in Zambia, where Chinese buyers have expanded operations rapidly in recent years. Cotton is however also farmed through investment in large-scale plantations in some areas (for example, Xinjiang, in Northwest China and parts of Central Asia).

Expectations of returns: The role of the private sector

While food and energy security emerge as key drivers of government-backed agricultural investment, private sector involvement seems mainly driven by expectations of competitive returns from agriculture or land. With agricultural commodity prices rising, the acquisition of land for agricultural production (whether biofuels, agrifood or other agricultural commodities) looks like an increasingly attractive option. In some parts of the world, FDI into agriculture has been growing for some time, particularly in Russia, Ukraine, Central and Eastern

Europe, Latin America and parts of sub-Saharan Africa. These investments are driven not by short-term considerations linked to the food price hikes of 2008, but to the expectation of returns in agriculture over the longer term.[20]

Traditionally agricultural value chains have tended to concentrate returns in processing and distribution, while the risks fall mainly on primary production, acting as a disincentive for investment in agriculture. Now the upward trend in commodity prices is tipping the balance by increasing the downstream risks to processors and distributors, concerned about sourcing raw materials, and boosting returns from production (Selby, 2009). This increases the attractiveness of agricultural production as an investment option, including the acquisition of land as such, but also of shares in companies holding land, producing fertilisers or otherwise involved in upstream agricultural activities (The Economist, 2009b).

Some agribusiness players traditionally involved in processing and distribution are therefore pursuing vertical integration strategies to move upstream and enter direct production – a rationale explicitly mentioned by Lonrho as justifying its recent land acquisitions in Angola, Mali and Malawi (Lonrho Plc, 2009). Entering direct production enables agribusiness firms to avoid needing to buy from the market (where market prices include a share for traders), and to secure their supply (when market price rises and export restrictions reduce supply to world markets). This may offset the high risks typically involved in holding large areas of land in foreign (and often politically unstable) countries.

Finally, in many parts of Africa land is still very cheap. As will be discussed in chapter 3, most of the land deals documented by this study involved no or minimal land fees. Yet, with productive land increasingly being perceived as scarce in many contexts (see section 2.5 below), the relative value of land is likely to increase. This may create expectations of returns not only from the profitability of agriculture, but also from increases in land values per se, for both domestic and foreign investors. This circumstance is particularly significant given that the global financial crisis has resulted in a collapse in equity and bond markets, thereby reducing the appeal of these investment options.

As for government-backed investment, there is no evidence to suggest that either China or Gulf states are primarily engaged in land investments with a view to profiting from rising land values per se. China's interest is more to do

20. Interview with an international agribusiness consultant, 23 January 2009.

with securing supplies of agricultural commodities, or with opportunities for Chinese companies to profit in regional markets (Box 2.1). In the case of the Gulf states, as we have seen, the interest is more in securing food supplies.

Emerging carbon markets

Some argue that emerging carbon markets may be fostering land acquisitions in the expectation of long-term increases in land values. Carbon markets may be relevant for afforestation projects, possibly including biofuels, and longer-term for the nascent Reduced Emissions from Deforestation and Forest Degradation (REDD) scheme that is being negotiated as part of the post-Kyoto climate change regime. Indeed, potential returns from carbon markets may increase land values. Evidence on the extent to which this is currently happening is mixed, however. REDD is still at a very early stage. This is likely to limit its potential impact on land values in the short term – though it may not deter those investors that look at longer-term returns, such as investment funds and SWFs.

Generally speaking, afforestation projects have had limited success under the Clean Development Mechanism – the arrangement under the Kyoto Protocol for developed countries to offset their excess emissions through projects in developing countries. This is due to high transaction costs and other restrictions (for example, all forestry is excluded from the EU Emissions Trading Scheme). On the other hand, a substantial proportion of the voluntary market has supported tree planting and management (Cotula and Mayers, 2009).

The quantitative country inventories have not revealed much evidence of land acquisitions *declaredly* motivated by carbon market considerations. But evidence does suggest that these concerns can play a role as complementary sources of project revenues, for example in the Mali Biocarburant biodiesel project in the *cercle* of Koulikoro, Mali (GERES, 2009).

Host country incentives

Among many African countries there is a renewed interest in agriculture as a source of employment, growth and revenue as well as more long-standing concerns about food security.[21] In this context, foreign investment is seen as capable of bringing new technologies, developing productive potential, facilitating infrastructure development, and creating employment and supply

21. In the donor community this interest is best illustrated by the publication of the World Development Report 2008 on agriculture (World Bank, 2008a), and a renewed interest by donors such as DFID in the agricultural sector.

of food to local markets. In some countries there is an explicit strategy of diversification from dependence on single commodities, for example oil in Sudan or copper in Zambia. Agriculture is seen as an obvious alternative.[22]

Beyond the growing number of investment treaties, discussed in section 2.1, the more favourable attitude to FDI is reflected in national-level policy reforms to improve conditions for foreign investors. Examples include the adoption of investment codes (e.g. Mali in 1991 and 2005, Mozambique in 1993, and Tanzania in 1997) and reform of sectoral legislation on land, banking, taxation, customs regimes or other aspects. Although political risk remains high in many African countries, and although recent hikes in commodity prices have prompted some adverse tax or regulatory interventions by governments seeking to capture a share of the greater profits, the predominant trend is towards policy reforms to improve the attractiveness of the investment climate (UNCTAD, 2008b). One of the main discernible policy trends is towards the easing or removal of restrictions on foreigners' acquisition of "strategic" assets, including land, for example easing of restrictions on foreign ownership and simplifications to the administrative processes involved, discussed further in section 3.2.

2.5. AVAILABILITY OF UNDER-UTILISED SUITABLE LAND IN AFRICA

One of the key reasons for Africa's attractiveness to outside investors is the perceived abundance of land. In explaining their interest in Africa, the manager of a major private investment fund involved with land acquisitions was quoted as saying that "Africa has most of the underutilised fertile land in the world" (Jung-a *et al.,* 2008); the chief executive of another fund emphasised that "land values are very, very inexpensive" (Henriques, 2008). Yet systematic empirical data on land availability in Africa remains limited.

The Global Agro-ecological Assessment (Fischer *et al*., 2002), based on satellite imagery, provides the most comprehensive survey of global agricultural potential. It suggests that 80% of the world's reserve agricultural land is in Africa and South America. Estimates based on satellite imagery from 1995-1996 give a total cultivable land in Africa of 807 million ha, of which 197 million ha are under cultivation. The underestimation of the actual use,

22. Interview with a Sudanese government official, 22 February 2009; and with a private sector official, 20 February 2009.

according to the authors, ranges from 10 to 20%, which would increase the cultivated land up to about 227 million ha. However, it is not clear how land under shifting cultivation and fallow systems is included in these measurements. In Africa, a ratio of five plots under fallow to every plot under cultivation would give a range of the total "cultivated" land from a minimum of 227 million ha up to a maximum of 1182 million ha[23] – well above the available reserves. In addition, since 1996, there is likely to have been an increase in land under agriculture in Africa, plus a decline in available agricultural land due to competing land uses.

Worldwide, about half of the cultivable land reserves are in just seven countries: Angola, Democratic Republic of Congo, Sudan, Argentina, Bolivia and Colombia (Fischer *et al*., 2002). "Marginal" and "abandoned" lands may be more widespread, but there are likely to be major obstacles to commercial agricultural production on these lands: most importantly lack of adequate water for viable harvests, but also fragmented rather than continuous land holdings and inaccessibility from markets.

Population data may also provide insights on the extent of land availability. Over the past few decades, many parts of Africa have experienced strong demographic growth. Average population growth rates for sub-Saharan Africa were 2.14% in the period 1950-55 and 2.49% in 2000-05, although average data mask important cross-country differences and projections suggest that this rate is to decrease over the next decades (down to 1.68% in 2030-35; United Nations, 2008). It is important to note, however, that population changes may not be concentrated in rural areas.

As a result of demographic growth, population density has increased substantially (see Table 2.4). In Ethiopia, Mali and Sudan, population density

TABLE 2.4. POPULATION DENSITY OVER TIME (POPULATION/SQ. KM)

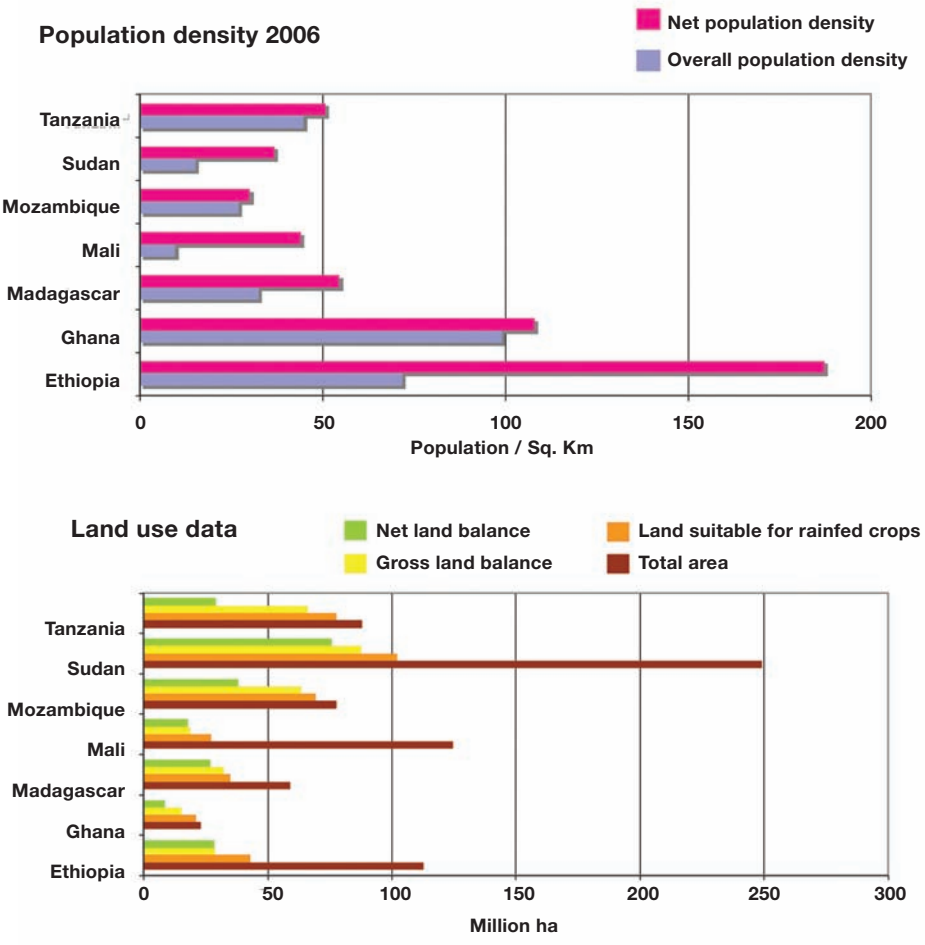
	Ethiopia	Ghana	Madagascar	Mali	Mozambique	Sudan	Tanzania
1950	17	21	7	3	8	4	8
2000	59	82	26	8	23	14	36
2050	157	190	73	23	55	30	116

Source: United Nations (2008), actual data and projections

23. I.e. 197 million times 6.

figures increase significantly if related (not to the entire land area of a country but) to land suitable for cultivation. This effect is due to the fact that a substantial part of the country may be occupied by desert or barren lands. It is also reflected in the major differences between total land area and "net land balance", which excludes land already used for cultivation, settlement, forests and protected areas (see Figure 2.13).

FIGURE 2.13. POPULATION DENSITY PER TOTAL LAND AREA AND NET DENSITY PER CROPLAND AREA



Key concepts and sources: "Suitable land": land suitable for rain-fed agriculture; irrigated agriculture may be found – and often is – in land which is unsuitable under rain-fed conditions. "Gross land balance": the extent of suitable land remaining after making deductions for areas of actual cropland, without considering current land uses other than cropland. "Net land balance": suitable land minus the sum of cultivated land, forestland, protected areas and settlements. "Net population density": population per suitable land. Based on Bot *et al.* (2000); Fisher *et al.* (2002); and FAO (2009).

In other words, although all seven countries display positive net land balances, particularly Sudan, the availability of land should not be taken for granted, even in Africa. Even where land is currently underused and seems abundant, it is still likely to be claimed by somebody. In addition, aggregate figures about land availability tell only part of the story. Investors are likely to seek higher-value lands for their agricultural investment. From an economic point of view, compensating local people for loss of land may still be more convenient to the investor than cultivating unoccupied but less fertile land. This may explain why even in seemingly land abundant countries like Sudan large-scale land allocations have been reported to entail takings of local land rights.

Concepts such as "available", "idle" or "waste" land, used to justify land allocations to investors, therefore need critical analysis. These concepts feature quite prominently in some of the country reports. In Ethiopia, for example, all land allocations recorded at the national investment promotion agency are classified as involving "wastelands" with no pre-existing users. But this formal classification is open to question, in a country with a population of about 75 million, the vast majority of whom live in rural areas. Evidence collected by in-country research suggests that at least some of the lands allocated to investors in the Benishangul Gumuz and Afar regions were previously being used for shifting cultivation and dry-season grazing, respectively. Evidence of pre-existing land use and claims in areas allocated to investors was also provided by the qualitative studies in Tanzania and Mozambique (Sulle, 2009; and Nhantumbo and Salomao, 2009).

In other words, concepts such as "idle" land often reflect an assessment of the *productivity* rather than *existence* of resource uses: these terms are often applied not to unoccupied lands, but to lands used in ways that are not perceived as "productive" by government. Perceptions about productivity may not necessarily be backed up by economic evidence (for instance, on pastoralism, see Hesse and Thébaud, 2006). Low-productivity uses may still play a crucial role in local livelihood and food security strategies.

Even the systematic national assessments of available land for allocation to investors, recently undertaken in some African countries, may be subject to challenges about what land was considered as "available" and hence included in the inventory, how thorough the assessment was, and who was involved in it and how.

III. CHARACTERISTICS OF THE LAND DEALS

This chapter discusses key features of documented land deals, including parties and negotiating processes as well as key provisions. The scope is limited to the aspects most directly relevant to the transfer of land – to the exclusion, for example, of other fundamental issues like environmental standards. It is recognised that each deal typically involves complex trade-offs (in very crude terms, loss of land versus investment promotion and jobs creation, for example), and must be analysed on a case-by-case basis. The study does not involve an economic analysis of the deals, not least due to data limitations and to the very early stages of many documented projects (the World Bank-led study features a major economic analysis component[24]). Access to only a small sample of land deals (see Table 1.1) also limits the ambitions of this section.

3.1. PARTICIPANTS AND PROCESS IN INDIVIDUAL LAND DEALS

Parties involved in the deal

In their basic form, land deals involve at least two parties. On the one hand, there is an acquirer. In the African context, this is generally a private or joint equity company, but it can also be a foreign government acquiring land directly – for example, under the 2002 Special Agricultural Investment Agreement between Syria and Sudan, mentioned above. On the other side of the deal is a land provider, either a government or, much more rarely, a private land-owner.

This apparent simplicity hides a significant degree of complexity. Each "deal" may involve multiple contracts and legal instruments – from a framework agreement outlining the key features of the overall deal, whereby among other things the host government commits itself to making the land available to the investor (e.g. the Syria-Sudan deal in the sample); through to more specific instruments (contractual or otherwise) that actually transfer the land or subsections of it (e.g. the Office du Niger-Petrotech/AgroMali lease contract in Mali and the "DUAT" allocation instrument in Mozambique, both in the sample). The Varun contract farming agreement with local landowners, also in the sample, follows an earlier deal signed between the company and the administration of Sofia Region in Madagascar. The extent to which land deals are negotiated or standardised texts varies across countries and across the

24. See section 1.2.

different stages of negotiation – with instruments to allocate land tending to be more standardised (e.g. the lease contracts in Mali's Office du Niger).

Also, each deal typically involves a wide range of parties through the multiple stages of preparing, negotiating, contracting and operationalising the project. First, multiple agencies within the host government are engaged. Even in countries where there is a central point of contact ("one-stop shop") for prospective investors, usually an investment promotion agency, this agency alone will not deal with all aspects of the land deal. At a minimum, the investor is likely to need to engage separately with government agencies at the local level. In Tanzania, for instance, where the Tanzania Investment Centre (TIC) plays a hands-on role in facilitating land access (see below), formal approval for the investment is needed from the TIC (financial viability), the Ministry of Agriculture (agricultural viability), the Ministry of Lands and Housing Development (land registration) and the Ministry of Environment (environmental impact assessment). Coordination and communication among government agencies tasked with different aspects of the investment process can be poor, hampered in part by government departments' preference to report positive outcomes only, without sharing problems and setbacks (Sulle, 2009).

On the investor side, private investors have the advantage of being able to act as a single legal entity with a cohesive set of values. But, as discussed, the borderline between public and private investors is fluid. Among the various possible scenarios, the implementation of deals signed between governments may be driven by private operators, either from inception or as part of subsequent efforts to regain momentum. For example, the Syria-Sudan deal enables Syria to delegate implementation to the private sector, subject to this being cleared with the government of Sudan (article 14). In addition, implementation of a 1998 deal between the governments of Jordan and Sudan, whereby the former will rear livestock and grow crops in Sudan, is being resumed after having stalled for several years; the government of Jordan is reportedly planning to rely on private companies to run the investment (Hazaimeh, 2008).

One of the fundamental challenges for foreign investors is local knowledge and capacity, and associated issues of coordination between head offices in home countries and staff tasked with negotiating complex deals in host countries. The complexity and risk entailed in international land deals usually requires the involvement of a number of external service providers

and intermediaries, such as agricultural advisors, consulting firms specialised in site location, and international contract lawyers. Some intermediaries based in recipient countries advertise their services on the Internet.[25]

Administrative processes

Examples from Ethiopia indicate that the land acquisition process first involves obtaining an investment licence from central government level (Ethiopian Investment Commission), then proceeding to find appropriate land in the target area. This can involve negotiations with clan leaders or local elders – but even here issues may exist as to the representativeness and downward accountability of these leaders towards their constituents. Contact is made at this stage usually with the sub-national (i.e. regional) investment office, where verification of capital is required and a project feasibility study is then carried out. After a lease agreement is signed with the sub-national investment office, the land is transferred to the investor. In some cases, local elders are party to the agreement. This broad-brush picture of land acquisition processes tallies closely with experience from other countries – such as Tanzania.

Some countries have streamlined the administrative processes that investors must go through in order to acquire land – which constitute a major barrier to land access in many jurisdictions. One-stop-shops and investment promotion agencies play a key role in this context. In Mali, Mozambique and Ghana, investment promotion agencies facilitate the acquisition of all necessary licences, permits and authorisations. Their direct role in facilitating land access focuses on helping investors in their dealings with other agencies. A more "hands-on" role is played by Tanzania's investment promotion agency, the TIC. This is mandated, among other things, with identifying available land and providing it to investors, as well as with helping investors obtain all necessary permits (article 6 of the Tanzanian Investment Act 1997). The TIC has set up a "land bank" – it has identified some 2.5 million hectares of land as suitable for investment projects.[26] Land is vested with the TIC and then allocated by this to the investor on the basis of a derivative title. After the end of the investment project, the land reverts back to the TIC.[27]

25. E.g. www.info-ghana.com/buy_land,_ghana.htm

26. www.tic.co.tz, particularly at http://www.tic.co.tz/TICWebSite.nsf/2e9cafac3e472ee5882572850027f544/729d4c075f2b03fc432572d10024bea6?OpenDocument.

27. Articles 19(2) and 20(5) of the Land Act 1999. Tanzania's Land (Amendment) Act 2004 introduced another land access arrangement: the establishment of joint ventures between foreign investors and local groups (under article 19(2)(c) of the Land Act, as amended). For more on the role of investment promotion agencies in facilitating investors' land access, see Cotula and Toulmin (2007).

Despite the steps taken in some countries to streamline procedures, the process to acquire land is usually complicated and often unclear to those involved. Investors visit the land in question, undertake official procedures and, being accustomed to clear deals based on private ownership, sound documentation and established business protocols, believe that the deal is clinched. However, land tenure contexts in many developing countries are not always so clear-cut. The deal may not account for the broader value of the land, perhaps in terms of environmental services, or to a particular social or ethnic group not represented in negotiations. There may be significant problems in identifying the multiple land claims at stake, even where the land is classified as privately held and land certificate documents are produced.[28]

For a variety of reasons, including ethical concerns and the need for risk-management in long-term ventures, most investors will be motivated to ensure that deals are concluded to the broad satisfaction of all stakeholders, with appropriate levels of consultation and compensation. One of the main complaints among investors is the long and uncertain period of time required for project negotiation, a factor that has material impacts on the attractiveness of the investment for their financial backers.[29]

Transparency and civil society engagement

Land deals in Africa are framed by high levels of public concern over land rights and food security, both within countries and internationally. Commentators and insiders recognise the need to weigh the ambitions and potential of large-scale land-based developments against the concerns of host country citizens about sovereignty over local resources, as well as the vigorous criticism of some civil society organisations. Land issues are emotive: large-scale transfers to foreign interests raise the spectre of the "bad old days" of colonialism and exploitative plantations.

Lack of transparency is a major challenge in the negotiations of a land deal as well as of the broader government-to-government arrangement in which individual deals may fit. There is a general sense among observers that negotiations and agreements occur behind closed doors. Actual contracts between host governments and incoming or domestic investors are not public. Some data sources may be publicly accessible (e.g., in some

28. Interview with an FAO country officer, 11 February 2009.
29. Anonymous personal communications.

jurisdictions, the national land registry), but usually only for limited data on completed deals – and even access to the land registry for this research proved problematic in some countries.

In the course of this study, research revealed that in most of the focus countries (with the partial exceptions of Ethiopia and Sudan), basic data on the size, nature and location of land investments were not accessible through the national land registry or other notionally public sources. Researchers needed to make multiple contacts and meetings with government officials to access even superficial and incomplete information on land acquisitions over the past five years. Even in countries where there are official "land banks" available for investment, records may be incomplete, contradictory or not communicated to the relevant district administrations themselves.

While details about individual land deals may need to be sheltered to protect commercial confidentiality, lack of transparency seems particularly problematic for government-to-government diplomacy. Private sector interests are actively involved in such diplomacy from the start, but civil society has been largely absent. There is little evidence in most countries of civil society being invited to contribute constructively to emerging inter-governmental arrangements. The consensus among the sources interviewed for this report (government and private sector representatives as well as observers) is that it is difficult for the public to gain access to information on inter-governmental discussions and negotiations. Even within government, flows of information are incomplete, with a perception of a lack of coordination among ministries and agencies.[30]

Lack of checks and balances and of transparency in negotiations creates the breeding ground for corruption and for deals not in the best public interest. Some recently reported land deals were associated with allegations that investors had paid cash or in-kind contributions to business or other activities run by high government officials or even the president in a personal capacity (e.g. Hervieu, 2009).

It must also be noted, however, that although excluded from negotiation processes, civil society is increasingly making its voice heard with regard to the strategic policy choices underpinning those processes. The past few

30. Anonymous personal communications.

months have witnessed growing advocacy on international "land grabs", both nationally and internationally. NGOs, producer associations and community-based organisations have been active commentators on or critics of some high-profile land deals, such as agrifood in Kenya or biofuels and forestry in Uganda. Nyari (2008) discusses an experience from Northern Ghana, where village-level, NGO-supported resistance to a land allocation for biofuel production had significant national resonance. The Paris-based "Collective for the Defence of Malgasy Lands" has undertaken high-profile advocacy on land acquisitions in Madagascar, particularly the Daewoo deal.[31] But alliances with equivalent civil society groups from investor countries remain limited. This growing level of scrutiny of land deals, even though poorly informed by accurate and timely information, creates pressure for a more measured and multi-faceted approach on the part of investors and host governments.

Consultation and consent: participation of local rights holders and land users

Perhaps the most important area of concern is the extent and depth of engagement with directly affected people in the planning, approval and establishment of large-scale agricultural projects. There are major concerns in some countries about the weakness of provisions within national law for local people to steer development options and defend their own land rights. In other countries such rights are in theory substantially more secure, but concerns remain around implementation of the law and voluntary good practice on the part of investor companies.

At the international level, the strongest guidance on consultation and consent is the principle of free, prior informed consent (FPIC) and the methodologies and policies that are emerging around this principle. FPIC is formalised through article 32 of the 2007 UN Declaration on the Rights of Indigenous Peoples. The basic principle of FPIC is that indigenous people have the right to say "yes" or "no" to proposed developments on their lands. The consent needs to respect people's cultures, customary systems and practices and be secured through iterative negotiation with people's own representative institutions. Also, governments are responsible for making sure that effective systems for grievance, redress and mitigation are in place (Colchester and Ferrari, 2007).

31. http://terresmalgaches.info

Several countries are incorporating the principle of FPIC into national or sub-national legislation – early adopters include the Philippines and Australia. Companies are also beginning to adopt FPIC to guide engagement with local communities over issues of land and resource access. The pulp and paper company, APRIL, for example, is piloting a methodology based on FPIC in Indonesia (Wilson, 2009). Several methodological issues still need to be sorted out within the FPIC framework (e.g. what breadth of consultation is required among affected communities and over time) and there remain some legal questions (e.g. extension to "non-indigenous" local residents and whether rights are substantive or merely procedural).

Nonetheless, commentators suggest that FPIC is likely to become increasingly important as a principle and methodology for engagement between large-scale land investors and those whose land access is affected by such investments. For example, the Roundtable on Sustainable Palm Oil is considering whether and how to incorporate FPIC into its system of certification (Wilson, 2009).

While FPIC emerged in its original sense in relation to indigenous peoples as defined through the UN process, its key tenets can in principle be applied to any local rights holders and resource users. And although FPIC is not yet a framework for policies and procedures on consultation and consent in African countries, several countries have nonetheless enacted legislation or policy requiring consultation with local and affected communities as part of the land transfer process. Ghana, Mozambique and Tanzania, for example, require that all land transfers must be approved by the communities that have rights over the land in question, with further requirements for protection of access rights, fair compensation and opportunities for review of the agreements.

However, even where policy frameworks are well developed, practice may be unsatisfactory. Boxes 3.1 and 3.2 summarise experience on the ground in two countries where policies and law on community rights to consultation and consent are on paper exemplary: Mozambique and Tanzania. In both countries, however, enabling national laws are implemented partially rather than fully. What is defined as community consultation may be confined to village elders, officials and elites.

BOX 3.1. STRONG POLICY BUT WEAKER IMPLEMENTATION: EXPERIENCE WITH COMMUNITY CONSULTATION IN LAND ACQUISITION IN MOZAMBIQUE

Mozambique's laws and policies on management of land and natural resources include provisions for participation of local stakeholders. There is special recognition of the rights and interests of local communities, including mandatory requirements for community consultations and hearings when land is transferred to new uses and users. However, implementation of these positive legal and institutional frameworks is often incomplete or unsatisfactory. National economic priorities may mean that district authorities have more incentive to promote the interests of investors over local communities. Local interests are also undermined by the fact that policy does not include terms for benefit-sharing. In addition, the actual legal weight of community consultation processes is unclear. As a result of this combination of factors, community consultations during land acquisition by investors are in practice fairly limited. The following findings from three case studies on commercial biofuel projects illustrate the shortcomings of practice on the ground.

1. Communities do not receive relevant information in advance of consultation meetings.
2. Most consultations are performed in one meeting only. When there is more than one meeting, the first is normally limited to organisational aspects, such as the indication of date and time of meeting, without passing any relevant information on the project at stake to the communities.
3. Consultation meetings are generally attended by community leaders (traditional chiefs, local party leaders), whose opinions are usually dominant. Preliminary meetings are held with the traditional leaders to ensure that the consultations meeting will produce an outcome favourable to the investor.
4. Despite being the majority of the workforce in rural lands, women are rarely involved in the consultation processes and they almost never sign the respective reports.
5. Most consultation records present incomplete or even conflicting data. While, on one hand, they may describe cultivated agricultural fields and other forms of evidence of human occupation, on the other hand they include a declaration stating that the land is not occupied for the purpose of the request at stake.
6. Consultation records often do not accurately reflect community opinions and viewpoints.
7. The provisions of consultation records concerning benefit-sharing are generally vague. There are seldom time-bound targets or measurable indicators of progress.

Source: Nhantumbo and Salomao (2009)

BOX 3.2. ROBUST LAWS AND INSTITUTIONS BUT INADEQUATE EXPERIENCE AND GUIDANCE: COMMUNITY CONSULTATION AND COMPENSATION IN LAND ACQUISITION IN TANZANIA

In Tanzania, investors can only lease and use 'general land', not 'village land'. Land can be transferred from 'village' to 'general' status with the permission of the local community. Prospective investors start at the national-level Tanzania Investment Centre, the one-stop-shop that facilitates investment in Tanzania, where they are required to demonstrate the financial viability of the proposed project in order to get a Certificate of Incentives. From here they go to the district level, as advised and facilitated by the TIC. In the simple case they take up previously identified and surveyed land, registered with the TIC "land bank". But if all or part of the proposed land area is still 'village land', negotiations with local communities are necessary. The investor must have the request for land transfer approved in turn by the Village Council (senior village representatives), the District Council Land Committee and finally the Village Assembly (comprising all adult residents of a village).

To date, about 640,000 ha, out of a total of 4 million ha requested by companies, has been allocated for biofuel production in Tanzania. Many companies have shown interest in acquiring lands that are underdeveloped 'general' lands. For instance, a Swedish company is in the process of securing 400,000 ha for sugarcane production in the Wami River basin in Bagamoyo District. Evidence suggests that about 1000 small-scale rice farmers on these lands will need to move, and are not eligible for compensation as the land is 'general' not 'village' land.

The process of negotiation over village land tends to be slow, in large part because of the lack of precedent and guidance. In one case, for instance, the investor FELISA completed the process, securing approval for 350 ha from two Village Assemblies, but was later sent a message from one of the villages withdrawing the offer as the land had apparently already been allocated to another individual. Intervention by local authorities resolved the issue in FELISA's favour, and arrangements have been made for community infrastructure investment and an oil palm outgrowing scheme, which have convinced villagers of the value of the investment. However, there are no formal documents to bind either party to these agreements.

There is a legal requirement that villagers be compensated fairly by the government when village land is transferred to general land. In practice however, investors themselves tend to pay compensation directly to the villagers. There are substantial differences in opinion and confusion over the amount of compensation and the entitled beneficiaries. Given the lack of an active land market in Tanzania, market-based per hectare rates have little meaning. Some companies compensate for the value of the resources on the land, such as trees and grazing, rather than the land per se. Access to water resources is of particular

concern to both villagers and investors, as well as other competing interests (downstream users, conservation etc), and is a source of conflict in some instances – conflict that is difficult to resolve in the absence of clear regulations or guidelines from government on sustainable levels of water abstraction.

Source: Sulle (2009)

While it should not be contingent on an investor to resolve issues of local governance, there is little sign that efforts are made specifically to include significant social groups such as women, or user groups such as pastoralists. Indirectly affected communities, for example those affected by migration out of project areas, have not been included to date. Consultation tends to be a one-off event rather than an ongoing interaction through the project cycle. An underlying problem is not so much reluctance on the part of local government and companies to "do the right thing" but rather a lack of experience and guidance to shape better practice.

3.2. NATURE OF LAND TRANSFERS

A key aspect in international land deals concerns the nature of the land rights being transferred, and between whom. From the investor's perspective, several factors are likely to matter when assessing options. These include the economic rationale of the investment project (e.g. whether driven by short or long-term concerns), and options provided by national law in the host state (which may restrict ownership rights).[32] Investors and their government backers are likely to favour longer-term land rights where these are required by the economic nature of the investment. This may include ownership or long leases, and legal availability of these options may influence the choice of recipient countries – as explicitly stated in the guidelines for Saudi Arabia's "King Abdullah Initiative for Saudi Agricultural Investment Abroad".[33]

In several African countries, land is nationalised or otherwise mainly controlled by the state. For instance, land is nationalised in Ethiopia (under Proclamation No. 31 of 1975 and the 1995 Constitution), Mozambique (at independence in 1975, and more recently under the 1990 Constitution and

32. Interview with an international consultant, 23 January 2009.
33. Available online at http://www.mofa.gov.sa/Detail.asp?InSectionID=3981&InNewsItemID=88796.

the Land Act 1997) and Tanzania (after independence and more recently under the Land Act 1999 and the Village Land Act 1999). In these cases, outright purchases are outlawed – although some African countries have introduced private ownership where this was previously ruled out (e.g. Burkina Faso in the 1990s), or enabled transfers of "underdeveloped" state lands even if radical title ultimately remains vested with the state (e.g. in Tanzania, under article 6 of the Land (Amendment) Act 2004).

Other countries do allow private land ownership, which may be acquired through land registration procedures (in Kenya, Madagascar and Mali, for example). In Ghana, part of the land is owned by the state but most of it belongs to private entities such as customary chiefdoms, extended families and individuals.[34] But with some exceptions (e.g. Kenya), private land ownership tends not to be widespread even where it is formally recognised – particularly in rural areas.

The World Bank estimates that, across Africa, only between 2 and 10% of the land is held under formal land tenure; this mainly concerns urban land (Deininger, 2003). Thus, in Cameroon, only about 3% of the land has been formally registered and is held under private ownership (Egbe, 2001), mainly by urban elites such as politicians, civil servants and businessmen (Firmin-Sellers and Sellers, 1999). And in Sudan, although private land ownership is formally recognised, about 95% of all the land is state owned.[35]

The limited spread of private ownership is partly due to the long and cumbersome procedures required to acquire it, particularly land registration (e.g., on Mali, see Djiré, 2007; on Cameroon, see Egbe, 2001). In addition, where "customary" tenure systems are functioning and perceived as legitimate, local resource users may feel they have sufficient tenure security under these systems. The implication is that, even where private ownership is formally recognised, most of the land is controlled by the state.

Specific restrictions on the acquisition of certain land rights by non-nationals may also exist. In some countries, non-nationals face restrictions on land ownership (e.g. in Ghana, under article 266 of the 1992 constitution) and on resource use (for example, in Tanzania foreigners may acquire land rights only

34. Kasanga and Kotey (2001) estimate that 80 to 90% of all undeveloped land in Ghana is held under customary tenure.
35. Interview with a Sudanese government official, 22 February 2009.

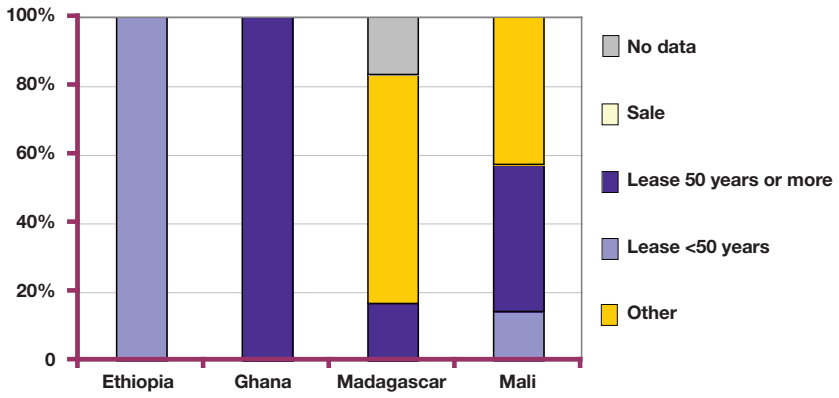
for the purpose of an investment project under the Tanzania Investment Act[36]). But under certain circumstances incorporation of local subsidiaries may enable foreign investors to overcome these barriers. And in countries like Mali there is no formal legal differentiation of treatment between nationals and non-nationals – though differences in practice may still exist. In Mozambique, foreign and domestic investors alike may acquire a renewable 50-year land use right, which for the first two years (five for nationals) is conditional upon the implementation of an agreed investment plan (articles 17 and 18 of the Land Act 1997).

Given this context, while outright purchases are used in Latin America and Eastern Europe, government-allocated leases seem to be much more common in Africa – irrespective of the degree of home government involvement in the land acquisition. This is the picture emerging from the interviews undertaken for this study,[37] as well as from media reports concerning much-publicised land deals in Sudan (for example, the leases over 25,000 and 400,000 ha of cropland reported to have been acquired by the Saudi company Hadco and by the US company Jarch Capital, respectively; Blas and Wallis, 2009), Madagascar (the now officially cancelled Daewoo deal was reported to involve a 99-year, government-allocated lease; Olivier, 2008) and Angola (Lonrho's announced acquisition of 25,000 ha of land is reported to involve a 50-year government lease; Burgis, 2009). This broad picture is confirmed by the legal analysis and in-country research undertaken for this study.

For example, in terms of legal analysis, the Sudan-Syria inter-governmental land deal, discussed above, involves a renewable 50-year lease; the government of Sudan commits itself to delimiting the land and delivering it to the government of Syria "free from any right" other than ownership, which remains vested with the government of Sudan (article 3 of the agreement). The contract between Varun and 13 associations of local landowners involves a 50-year deal combining lease and contract farming arrangements, renewable for up to 99 years. Similarly, in Ethiopia, the contract from Benishangul Gumuz Regional State examined by this study involves a 50-year lease (article 3). In Mali, land allocations to investors in the Office du Niger area also typically involve leases. This is the case of the draft Convention

36. Sections 19 and 20 of the Land Act 1999.
37. Interview with an international consultant, 23 January 2009; with a Sudanese government official, 22 February 2009; and with a government official from Uganda, 18 February 2009.

FIGURE 3.1. TYPE OF LAND RIGHTS TRANSFERRED (BY NUMBER OF PROJECTS)



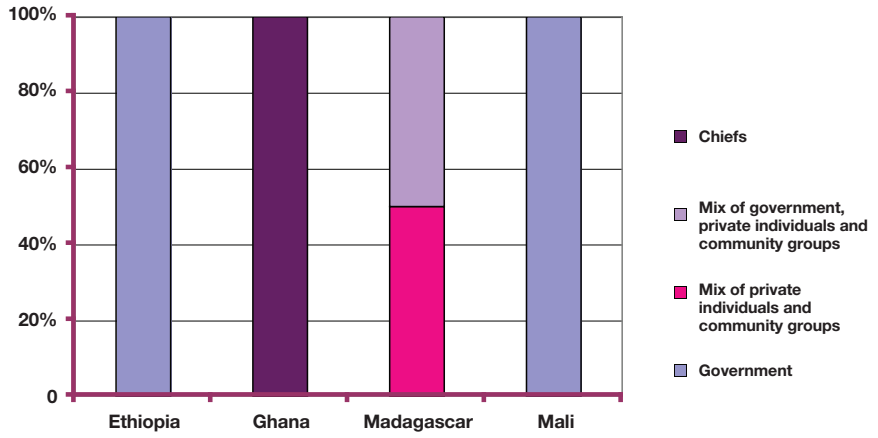
Data source: country studies. "Other" in Mali and Madagascar refers to projects involving contract farming or land distribution arrangements.

between the government of Mali and UEMOA, concerning 11,288 ha and involving a renewable 50-year lease ("*bail emphytéotique*"; article 3); and of the draft Lease Contract between the Office du Niger and Petrotech/AgroMali SA, concerning 10,000 ha and involving a renewable 30-year lease ("*bail ordinaire*"; article 2).

In quantitative terms, in Ethiopia, all projects documented by the national inventory involve allocations of (or applications for) government leases for diverse durations of up to 50 years (e.g. 10, 30 or 50 years). In Mali, the majority of documented projects (7 out of 13) involve 50-year renewable leases ("*baux emphytéotiques*"); one project involves a lease below 50 years ("*bail ordinaire*", for 30 years renewable); data is not available for the remaining five projects. In Ghana, long leases also seem to be the rule (see Figure 3.1).

The qualitative studies in Mozambique and Tanzania also support the finding that leases, not purchases, are predominant. In Mozambique, where land is nationalised, investors (whether foreign or domestic) can only obtain 50-year, renewable leases (article 17 of the Land Act 1997). All the 16 biofuel projects documented by Nhantumbo and Salomao (2009) involve such leases. In Tanzania, leases are available up to 99 years, though in practice many are agreed for shorter periods subject to renewal (Sulle, 2009).

FIGURE 3.2. LAND HOLDER BEFORE DEAL



Data source: country studies

Most documented land leases are granted by the government. This includes 100% of documented cases in Ethiopia, Mali and Mozambique, and the vast majority of cases in Sudan. In other countries there is room for private transactions, however. In Ghana, for example, leases may be granted by the Land Commission, by customary chiefs or by families or individuals, depending on who holds the land. All the land leases documented by the Ghana inventory were granted by private right holders, particularly customary chiefs purporting to act on behalf of their communities (see Figure 3.2).

3.3. DIRECT ECONOMIC BENEFITS OF LAND DEALS

Land fees and other financial transfers

While the financial terms of the land deals reviewed vary, a recurring theme is the relatively low importance and value of financial transfers compared to the expected broader economic benefits such as employment generation and infrastructure development.

In many government land allocations, official land fees tend to play a relatively unimportant role – they are often not charged, or charged at only nominal rates. This may be linked to low land rents and to the fact that, in the eyes of the government, expected benefits exceed opportunity costs. The absence or small value of fees emerges prominently in press reports. In the

Daewoo-Madagascar deal, no rent was reported to be required – job creation and infrastructure development were seen as the main benefits (Olivier, 2008). Findings from the research conducted for this report confirm this trend.

A Sudanese government official interviewed for this study stated that land rents in Sudan are extremely low, particularly in rural areas: a feddan (0.42 ha) may cost US$ 2 or US$ 3 in the Northern State, compared to US$ 15-20 in Khartoum. It is therefore government policy to only charge negligible rent to international investors: the main benefit of incoming investment is seen in its economic repercussions, and the emphasis in government decision-making is on the "seriousness" of the investment project.[38]

Similarly, a corporate officer interviewed for this study suggested that "the [Angolan] government are not interested in making money out of the land. The government is interested in stimulating the local economy, diversifying the primary economic base from past focus on mining and industry".[39] Limited development of formal land markets, ensuing uncertainty about land values, and weak negotiating position of the host government may also push land fees down, however.

In-country research confirms the general impression that land fees are low in monetary terms and an unimportant component of negotiations. In Ethiopia, rent was required in four deals out of the six projects examined in greater detail, with prices ranging from US$ 3 to 10 per hectare per year. These fees are low in the international context, though land rentals are going up (in the Ethiopian state of Oromia, for instance). Several deals – including the contract from the Benishangul Gumuz Regional State, examined by this study – involve five-year exemptions from land fees (article 4(a) of the Benishangul Gumuz contract).

In Mali (where the study looked more in depth at three projects), no upfront payment was required, but a fee of US$ 6 to 12 per hectare per year was required in two projects (the third being the one led by UEMOA, for which the draft Convention makes no reference to fees). The GEM deal in Madagascar does not involve rental fees for the exclusive farming rights over 450,000 ha, but instead promises to bring local development benefits and local employment, with around 4,500 part-time workers in the field at various

38. Interview with a Sudanese government official, 22 February 2009.
39. Interview with a private sector official, 20 February 2009.

times (Benetti, 2008). The Syria-Sudan deal contains an interesting provision, whereby the government of Sudan bears the rent for land under exploitation – which would create an incentive for Syria to develop the land (article 3).

It is plausible that land prices may be higher in private-to-private deals, though in these cases amounts paid tend not to be disclosed (in the acquisition by Jarch Capital in south Sudan, for instance). In Ghana, two of the private leases documented by in-country research involved significant cash payments.

Separate provisions may be included to deal with other fees. In irrigated contexts, water fees are an obvious example. For instance, in Mali the Office du Niger – Petrotech/AgroMali draft lease contract requires the investor to pay an annual water fee (article 6); non-payment for three years leads to the Office du Niger rescinding the lease (article 9).

A related question is the extent to which fees may be periodically revised. A government official from Uganda reported that, while rent is not likely to be increased in 49-year leases, it is re-negotiated (i.e. increased) every 10 years in 99-year leases.[40] In Mali's Office du Niger, water fees are not fixed in the contract but are determined by the relevant Minister (article 6 of the draft Petrotech/AgroMali lease).

Taxation may increase public revenues. But much depends on tax incentives granted by the government as part of efforts to attract investment. In Sudan, with agriculture now seen as a strategic sector, the government exempts agricultural concessions from custom duties, tax on all capital items, and income and profit tax.[41] The Syria-Sudan deal provides various tax and customs duty exemptions (article 10).

Similarly, in Madagascar, Mali and Ethiopia, the national inventories documented significant levels of tax incentives. In Ethiopia, for example, profit tax (estimated at US$ 20 per hectare per year) is usually exempted for a period of 5 years; for a total of 602,760 ha allocated to documented projects, it is estimated that the exemption of this tax for each project over 5 years amounts to US$ 60,276,000.[42]

40. Interview, 18 February 2009.
41. Interview with a Sudanese government official, 22 February 2009.
42. Based on figures from the Ethiopia country study (602,760 ha x 20ha/year x 5 years).

Financial transfers seem usually paid into general government funds. Specific provisions on how these revenues are distributed and used seem less common. But in Sierra Leone a policy document adopted in January 2009 by the Ministry of Agriculture requires land rentals to be split between local landowners (50%), local government (20%), national government (10%) and administration (20%) (MAFFS, 2009). A similar system of rent-sharing has existed for a long time in Ghana.

Commitments on investment, employment and infrastructure

As financial transfers per se are not a main host government benefit, investor commitments on investment, employment and infrastructure assume an importance they would not otherwise have in purely monetarised outright purchases. This is a key area where international land deals may constitute a development opportunity in recipient countries – by bringing capital and know-how, creating employment and developing infrastructure.

The quantitative country studies did find significant levels of investment commitments and job creation forecasts (see Table 2.2). With regard to employment, time constraints have prevented a detailed analysis of the quality of the jobs created or promised (full or part-time, permanent or temporary, labour conditions). Data collected suggest that investment commitment figures are the overall amounts for the projects documented, including all project costs (e.g. compensation for land takings).

Commitments on infrastructure development seem prominent in some deals – whether under the terms of the contract or applicable national legislation. In Mali's Office du Niger, investors granted long-term leases are required to develop irrigation infrastructure as a condition for their lease (under articles 45 and 55 of Decree 96-188 of 1996). In this context, the draft Mali-UEMOA and Office du Niger – Petrotech/AgroMali contracts require the investor to build and maintain irrigation infrastructure. Similarly, the Syria-Sudan deal requires the government of Syria to develop irrigation for 10,000 faddan (4,200 ha) outside the project area (which is 30,000 faddan) (article 8 of the agreement).

Although infrastructure commitments are part of the overall economic equilibrium of the deal, they may concern infrastructure unrelated to the agricultural project itself. According to media reports, the government of Qatar

is leasing 40,000 ha of land in a fertile River Tana Delta in the North coast of Kenya. In return, it offered a loan of several billion dollars to construct a second deep sea port for Kenya in the island of Lamu. On completion, this port is expected to provide an outlet for trade from Ethiopia and Southern Sudan (Mathenge, 2009). This approach seems in line with the common practice of bundling land deals, other business transactions, loans and development aid. These bundled arrangements may be attractive to governments, but carry the risk that if one component falters, the entire package will fail.

A key issue is the extent to which commitments on investment, jobs and infrastructure are legally enforceable in the same way as government commitments to provide and maintain access to land. This is highlighted by the recent announcement by a biofuel investor in Madagascar to increase mechanisation – despite early promises to pursue a labour-intensive business model.

Contractual provisions and national legislation may clarify the legal value of these commitments, as well as monitoring mechanisms and sanctions for non-compliance. In Mali, legislation on the Office du Niger enables the Office management to terminate 30-year leases for failure to pay fees or maintain the irrigation infrastructure (article 59 of Decree 96-188 of 1996).[43] The draft Petrotech/AgroMali contract gives the investor three years from the feasibility study to develop irrigation; this period can be renewed if by the end of it at least 50% of planned investments have been made; if investment levels are below 50%, the land area is reduced proportionally; while in case of no investment the contract is terminated (articles 3 and 9(2)).

Subjecting the lease to compliance with investment plans seems common practice. In Ethiopia, all the six projects examined in greater depth required compliance with investment commitments as a condition for the continued enjoyment of land rights. The Benishangul Gumuz Regional State land contract analysed by this study requires project activities to be initiated within six months from the land transfer; non-compliance constitutes ground for terminating the contract (articles 5(2)(b) and 11(b)). In Sudan, land leases are usually granted first on a provisional, normally three-year basis, subject to

43. Somewhat strangely, the Decree features no similar provisions for 50-year leases.

compliance with the investment plan.[44] The Syria-Sudan agreement sets a time for the feasibility study (maximum one year), for the construction of irrigation infrastructure (three years after that) and for reaching planned production levels (two years after that; article 13). In Mozambique, large land allocations are usually accompanied by an investment plan annexed to the land allocation instrument.[45]

Timeframes for compliance may be differentiated between national and foreign investors. For example, under Mozambique's Land Act 1997 land allocations are subject to compliance with the investment plan within two years (for foreign investors) or five years (for nationals); in both cases, non-compliance would entail termination of the land lease, while compliance guarantees a definitive title for 50 years, renewable.

In practice, provisions of this kind are rarely applied by governments. Implementation may raise challenges with regard to government capacity to monitor and enforce these provisions. In some countries, no government agency has a clear mandate for this; monitoring is carried out on an ad hoc basis, if at all; and there is no mandate for taking action on any inspection findings.[46]

Apart from projects where investment relates to building the whole irrigation infrastructure within the specified timeframe, two or three-year timeframes may be too short to assess investor performance against a 30, 50 or even 99-year lease. One-off assessments leading to definitive confirmation of land rights allocation (as in Mozambique) do not enable continued monitoring and sanctioning of investment performance.

Specific-enough wording for compliance requirements to be enforceable and transparency in their application are key to ensure fair implementation in the public interest – avoiding on the one hand creeping expropriation of the investment through arbitrary government application of these requirements, and on the other collusion between government officials and investors to avoid sanctioning where investment plans are not complied with.

44. Interview with a Sudanese government official, 22 February 2009.
45. International consultant based in Mozambique, 2 April 2009.
46. This issue is relevant well beyond Africa – as highlighted by an interview with a government official from Laos, 21 February 2009.

3.4. REQUIREMENTS AROUND PRODUCTION MODELS AND MARKETING

Most documented large-scale land investment plans in Africa are based on a single simple model of concentrated production within a single plantation unit, operated for maximum efficiency. But an emerging trend among governments is that investors contribute to local development not only through job provision, environmental protection and social investments, but also through direct involvement of local farmers and small-scale businesses in the supply chain. Apart from considerations linked to the long-standing farm size efficiency debate (which is beyond the scope of the study and is briefly summarised in Box 3.3), the choice of production models may have major implications for the distribution of project benefits. Maximising local benefits may require developing collaborative business models, from properly negotiated contract farming with small-scale producers through to joint ventures (shared equity) with legally recognised community organisations.

National governments in countries such as Tanzania and Sierra Leone are taking first steps to promote involvement of local investors and smallholders. The government of Tanzania is developing standards for biofuels investments that include provisions for involvement of local small-scale producers. New policy in Sierra Leone requires that 5 to 20% of the shares be held by Sierra Leoneans. It also features an obligation to include outgrower schemes (MAFFS, 2009). But government officials may not be sufficiently familiar with contract farming to effectively promote such a model, particularly in the face of pressure from investors more interested in running the project themselves.[47] Provisions for small-scale farmers can also feature in the contracts themselves. The Varun deal in Madagascar (see Table 1.1) combines contract farming with lease arrangements, for instance. The draft Mali-UEMOA Convention provides for agricultural production to be undertaken by private farmers from Mali and other UEMOA countries (article 5).

Most outgrower schemes and other inclusive approaches to production reviewed here are, however, voluntary rather than a response to government regulation. Investors seek to create more robust business models and to pre-empt local conflict and international criticism through building local

47. Interview with a government official from Laos, 21 February 2009; this issue is likely to be relevant in the African context as well.

BOX 3.3. SMALLHOLDERS VERSUS LARGE FARMS

There has been long-standing debate about farm size and productivity. Some argue that the era of the smallholder farmer is over, and that for reasons of efficiency, small farms should be consolidated into fewer large holdings, allowing for economies of scale and increased mechanisation. They point on the one hand to impoverished peasant farmers on the margins of existence with little ability to generate a surplus for investment in the farm enterprise and limited capacity to adopt new technology, and on the other to profitable large farms, accessing world markets, and providing employment and good wages to the local rural workforce. Others refute such arguments and note that for many crops there are few if any economies of scale in agricultural production. They point on the one hand to dynamic smallholder production, in which innovation and investment are very evident, as people adapt to new market opportunities and changing environmental conditions, and on the other hand to inefficient, extensive large farms with few workers, low wages and poor productivity.

There is ample evidence to support either case, depending on the type of crop, the policy context, and forms of support available to different kinds of farmer. Small farms are generally family-run, may be subsistence-based or market-oriented, using few or many external inputs, working manually or with machinery, and tend to be more labour intensive. Large farms are generally market-oriented, may be family-run like small farms or corporate, and use few if any or many labourers. They may also rely on specialised management firms to run the agricultural business. Both small and large farms may be resource-poor or rich, use largely manual methods or machinery, and use the land extensively or intensively. Because of this great variation in farm types, any statements on the relative merits of small versus large farms can only be relevant within specific social, economic and biophysical environments. In addition, empirical research has documented a wide variety of business models involving diverse combinations of small to large-scale players; false dichotomies between small and large-scale should therefore be avoided (on biofuels, for example, see Vermeulen and Goad, 2006, and Cotula *et al.*, 2008).

Scale economies may be achieved by mechanisation in crops such as sugarcane, some cereals and soya, for example, while perennial crops such as rubber, fruit and vegetables tend to do better under intensive production with a significant proportion of manual input. In the absence of economies of scale, small farms may be more efficient than large ones because of the favourable incentive structure in self-employed farming and the significant transaction and monitoring costs associated with hired labour (de Janvry *et al.*, 2001).

Even where there may be few economies of scale in production itself, there are increasing upstream and downstream economies of scale related to access to finance, inputs and markets. Purchasers of commodities prefer dealing with a few larger suppliers because of the transaction costs associated with handling produce

from a large number of individual smallholders, relegating these to less profitable local market outlets. Such local markets are also under threat where local produce is in competition with food grains, often subsidised, from countries with surplus stocks (Vorley, 2001). However, groups of smallholders may also organise themselves to jointly store, grade and sell their produce to gain access to large buyers.

Source: Toulmin and Guèye (2003), with integrations.

participation in from the start. Lonrho proposes contract farming as an integral component of its recent land investments in Angola.[48] Outgrower schemes are popular among biofuels initiatives, such as the D1-BP Fuel Crops project in Malawi, in which the company will augment jatropha production on its plantation with supplies from surrounding medium-scale and small-scale farms.[49] Other projects are exploring variations on this model. For example, the bioethanol company SEKAB proposes a gradual transition from a single-ownership plantation to franchised block-farming for sugarcane for 500,000 ha in Rufiji, Tanzania. Also in Tanzania, the biodiesel company Diligent is sourcing jatropha oil entirely from a network of small-scale farmers under loose contractual terms (Sulle, 2009).

But the vast majority of documented projects continue to be run as large plantations based on concessions or leases. As large areas of land are commonly offered on very favourable terms, an incentive is created for establishing company-managed plantations rather than promoting contract farming approaches. Even "local content" provisions requiring prioritisation of the local workforce in recruitment, common in extractive industry contracts, appear rare; an example is provided by the Varun deal in Madagascar. There is enormous scope here for governments to develop systems of incentives to promote more inclusive business models among large-scale investors.

Market outlets for agricultural produce is another key issue. As discussed in chapter 2, the production of cash crops for export to the investor's home country is a key driver in many recent land acquisitions, particularly those led by foreign governments concerned about their food security. Several host countries are at present food-importing countries, and in some cases recipients of food aid. The Qatar-Kenya deal, mentioned above, has drawn

48. Interview with a Lonrho officer, 20 February 2009.
49. Personal communication from staff at D1-BP Fuel Crops, 3 October 2008.

particular media attention as the project, implying the alienation of land and export of food crops, was revealed just as Kenya had experienced severe droughts and failed harvests, forcing the government to admit it would have to declare a national food shortage emergency (Ochieng-Oron, 2009). While these cases have great traction in national and international media, a counter-argument is that agricultural investment will bring yield increases that will benefit food security in the host country as well as the investor country.

Reconciling food security in both home and host countries requires careful policy responses. Media reports suggest that some investors may be pushing for explicit provisions guaranteeing full repatriation of produce, including where this requires amending the national law of the host state. Outside the African context, Pakistan's Investment Minister was recently reported as saying that incoming Saudi investors would be able to repatriate "100 per cent crop yield to their countries, even in the case of food deficit" (Shah, 2009). Eventually, this proposal did not go through; the current investment guidelines for the King Abdullah Initiative for Saudi Agricultural Investment Abroad provide for "reasonable percentages" of produce to be exported, so as not to exacerbate food insecurity in host countries.[50]

This issue would deserve to be dealt with in contracts – yet most of the sample contracts are silent on the issue. The draft Mali-UEMOA Convention explicitly mentions food security in the UEMOA as a goal in its preamble, but this is not followed up in the main text of the contract. The Syria-Sudan deal leaves Syria free to decide whether to export or sell on local markets (article 9(2)). The Varun contract in the sample provides for 30% of produce to be paid to local landholders, and determines percentages for export and local markets.

3.5. INVESTMENT PROTECTION

Legal devices to protect the investor's assets respond to the long-term nature of agricultural investments (exemplified by the renewable 50- or even 99-year leases documented by this study), coupled with the investor's vulnerability over project duration to host state action that may adversely affect the investment or even expropriate it altogether.

50. Although what such "reasonable percentages" may be is not defined in the guidelines (available online at http://www.mofa.gov.sa/Detail.asp?InSectionID=3981&InNewsItemID=88796).

Common contractual practice for investor-state deals suggests that provisions may explicitly restrict the expropriation of the investment by the host state, for instance requiring public purpose, non-discrimination, due process and payment of market-based compensation. "Stabilisation clauses" included in the contract may commit the host government not to change the regulatory framework governing the investment in a way that affects the project's economic equilibrium (e.g. by raising project costs), and to compensate the investor if it does so. Arbitration clauses may provide that disputes under the contract be settled by international arbitrators rather than domestic courts. While these mechanisms can help protect the investment against arbitrary host state action, if not properly formulated they may also restrict the ability of the host state to take action in the public interest (e.g. to improve social and environmental standards, where this raises project costs) over the long duration of the investment.[51]

None of the contracts included in the sample contains extensive examples of these provisions. The draft Office du Niger – Petrotech/AgroMali lease contains a brief clause requiring payment of compensation if the land is "withdrawn" for a public purpose (article 12); but jurisdiction for disputes is vested with domestic courts (article 13). The Varun deal in Madagascar does contain an arbitration clause, but this is to be carried out under the laws of Madagascar rather than through international systems. It must be borne in mind, however, that the largest investor-state deal in the sample is for under 13,000 ha; and that the much larger Varun deal in the sample is a contract with local landowners, which would not be expected to include the stabilisation commitments typically found in contracts with host government authorities. In moving forward, it would be interesting to extend the legal analysis to larger investor-state deals. It is possible that contracts for larger land acquisitions, possibly linked to ancillary projects such as processing plants (in biofuel production, for instance), may involve more sophisticated contractual arrangements that feature some of these clauses.

As discussed in section 2.1, the content of land deals can only be properly understood in light of their broader legal framework, including investment treaties. All covered countries have signed a number of these treaties (see Figure 2.4). Investment treaties typically contain provisions to protect the

51. For a more comprehensive discussion of these issues, see Cotula (2008b). Shemberg (2008) recently carried out a landmark study about the possible impacts of stabilisation clauses on the realisation of human rights.

investment against adverse host state action – including provisions on expropriation,[52] on non-discrimination (so-called "national-treatment" and "most-favoured-nation" clauses),[53] and on treatment standards like "fair and equitable treatment"[54] and "full protection and security".[55] International arbitrators have tended to interpret these provisions very broadly, and are likely to consider unilateral terminations of land deals by host governments as an expropriation of the investor's assets – and thus require payment of compensation. In addition, BITs may feature "umbrella clauses" that commit a state party to honour contracts with nationals of the other state party, thereby strengthening the legal value of the deal well beyond that of a contract under the national law of the host state.[56] BITs may also enable investors to access international arbitration in case of dispute, even where the contract is silent on this.[57]

National investment codes also typically contain provisions to protect investments, including for example with regard to expropriation (e.g. article 28 of Ghana's Investment Act, and article 13 of Mozambique's Investment Law 1993) and access to international arbitration (e.g. article 24 of Mali's Investment Code 1991, amended in 2005, and article 23 of Tanzania's Investment Act 1997).

Investment treaties and codes usually do apply to agricultural investment and land deals. Therefore, concerns already raised in other sectors about balancing investment protection with public interests (for instance, with regard to tensions between commercial confidentiality and public oversight in investment arbitration,[58] and to reconciling the investor's need for regulatory stability with host state capacity to regulate in the public interest over time[59]) would also apply to land deals.

52. E.g. articles 4 and 5 of the Ghana-China BIT 1989; article III of the Mozambique-US BIT 1998.
53. E.g. article 3 of the Mali-Netherlands BIT 2003; article III of the Mozambique-US BIT 1998.
54. E.g. article 3(1) of the Ghana-China BIT 1989.
55. E.g. article II(3)(a) of the Mozambique-US BIT 1998.
56. E.g. article 7 of the Tanzania-Germany BIT 1965.
57. E.g. article 9 of the Ghana-China BIT 1989. For a more comprehensive analysis of international investment law in Africa, with a focus on a country sample that partly overlaps with the focus countries for this study, see Cotula (2009).
58. See for instance Mann (2005).
59. As discussed in Cotula (2008b).

3.6. LAND TAKINGS

As discussed in section 2.5, most if not all productive land targeted for potential investment is likely to be already claimed by farmers, herders, hunters or foragers. Such land claims may be based on present, seasonal or future use. They may involve multiple and nested claims by communal groups (e.g. lineages, extended families), traditional authorities, households or individuals. They commonly draw on unwritten tenure systems founding their legitimacy on "tradition" – though in practice they have changed profoundly over time as a result of cultural interactions, population pressures, socio-economic change and political processes.

As many large-scale land deals are recent or in the making, reliable evidence of impacts on land access on the ground is still very limited. But land allocations on the scale documented in this study do have the potential to result in loss of land for large numbers of people. As much of the rural population in Africa crucially depend on land for their livelihoods and food security, loss of land is likely to have major negative impacts on local people. These may only partly be compensated by the creation of permanent or temporary jobs. While loss of land to the community is permanent, jobs may decrease as investment projects evolve towards less labour-intensive phases (e.g. through growing mechanisation during project implementation).

In addition to being a livelihood asset, land in Africa also tends to have important spiritual value, to provide a basis for social identity and networks, and to be a catalyst for the collective sense of justice. In this sense, purely economic calculations are unlikely to do justice to local perceptions about proposed land deals.

Secure land rights can help protect local people from arbitrary dispossession (through legally protected rights and fair compensation regimes, for instance), and also provide them with an asset they may use in their negotiations with government and investors. This is key to maintaining and improving local livelihoods, but also to realise fundamental human rights. For example, besides the safeguards provided by the human right to property, the internationally recognised right to food requires that, at a minimum, land takings in contexts where people depend on land for their

food security must be offset by alternative livelihood assets so as to ensure at least the same level of food security.[60]

The next few sections briefly analyse existing arrangements for protecting and compensating local land rights.

Security of local land tenure

The extent to which national legal frameworks protect local land claims varies among countries, but is often limited. As discussed (section 3.2), land is most commonly owned or otherwise held by the state, with important country exceptions like Ghana. Local people may enjoy use rights over state land. Land titles, whether individual or collective, are extremely rare in rural areas (see section 3.2). Overall, the current wave of FDI flows and land acquisitions is taking place in contexts where many people have only insecure land rights – which makes them vulnerable to dispossession.

Some African countries have recently taken steps to strengthen the protection of local land rights, including customary rights – even where land is state-owned or vested with the state in trust for the nation. Customary rights are for instance protected, to varying degrees, under Mali's Land Code 2000,[61] Mozambique's Land Act 1997,[62] Tanzania's Land Act and Village Land Act 1999,[63] and Uganda's Land Act 1998.[64]

But even here legal protection may be conditioned to "productive use" – for instance under "*mise en valeur*" conditions specified in the legislation of much of Francophone Africa (including Mali[65]) and under similar requirements elsewhere (in Tanzania, for instance[66]). Lacking a clear definition of what constitutes "productive use" and given the ensuing broad administrative discretion, these requirements may open the door to abuse, and undermine the security of local land rights. This is particularly so for those groups whose resource use is often not considered as "productive enough" due to widespread

60. The linkages between land rights and human rights were explored in greater depth in an earlier FAO-IIED collaborative study (Cotula, 2008a).
61. Articles 43-48.
62. Articles 12 (a) and (b), 13(2) and 14(2) protect use rights based on customary law or good-faith occupation for more than ten years.
63. For example, Tanzania's Village Land Act 1999 states that customary rights of occupancy have "equal status and effects" to statutory rights (section 18(1)).
64. Article 9.
65. See for instance articles 45 and 47 of the Land Code 2000 (*Code Domanial et Foncier*), which require "evident and permanent" productive use as a condition for the registration of customary rights.
66. Under Tanzania's Village Land Act 1999, section 29. On the other hand, legal protection of customary rights under Mozambique's Land Act 1997 is not conditioned to productive use.

misconceptions – particularly pastoral production systems (Hesse and Thébaud, 2006). More fundamentally, legal provisions may not alter entrenched perceptions among key decision-makers about the value of local land rights. This is illustrated by an interview with a government official from the national land commission of an African country that does legally protect customary land rights, who referred to local land users as "squatters".[67]

Land tenure uncertainty is a central issue for investors. While having signed a deal with the government may make investors feel reassured of their land tenure, local contestation may create tenure insecurity and trigger backlashes that can ultimately threaten the deal. Even where local claims enjoy no or little legal protection, their perceived social and political legitimacy may lend them considerable weight. Social pressures and local resentment can create considerable challenges to investors even where they may have legally acquired the land from the government, as evidenced by the failed Daewoo project in Madagascar, mentioned in section 2.2 above.

Compensation

The terms and conditions for superseding local land rights vary among countries and even among projects within the same country. Where land is owned by the state, legal requirements are commonly limited to compensation for loss of harvests and improvements. This is the case in Ethiopia, Mali and Tanzania, for example (see Table 3.3). Cash compensation for these may not be enough to provide access to alternative land, however, particularly where demographic pressures are growing and land markets not fully developed. Shortcomings in implementation may also undermine the ability of compensation rates to restore affected livelihoods.

Compensation in kind is possible in several covered countries (see Table 3.3). This may be advantageous in contexts where cash compensation is unlikely to restore local livelihoods, for instance due to limited local land markets, banking services and experience with handling relatively large amounts of cash. For example, a large-scale irrigation project in Mali's Office du Niger area, affecting some 800 households, is reported to involve compensation in the form of irrigated land: 5 ha per household, of which 2 free and 3 paid for over a 20-year period (L'Essor, 2008). This compensation package seems

67. Interview, 18 February 2009.

TABLE 3.3. COMPENSATION REGIMES

Country studied	For private ownership	For other legally recognised rights	Paid by	Rates	In-kind compensation allowed?	Compliance*	Deemed sufficient to restore livelihoods*
Ethiopia	Not applicable	Yes	Government in theory, investor in practice	Value of improvements and 10-year harvest	Yes	Mostly	No
Ghana	Yes	Yes		Loss of land and improvements based on national rates	Yes	Yes	No – the values used by the Land Valuation Board are usually the minimum rates; investors may through negotiation decide to pay higher rates
Madagascar	Yes	Yes	Government in theory, investor in practice	Loss of land, loss of improvements	Yes	Mostly (sometimes in the case of rights which are not legally recognised)	Yes, but problems experienced in resettlement
Mali	Yes	Yes	Government in theory, investor in practice	Loss of improvements and harvests; also loss of land if ownership	Yes	Yes if ownership, otherwise dependent on negotiation	Yes for ownership, not for other rights
Mozambique	Not applicable	Yes	Government in theory, investor in practice	Loss of improvements	Yes		
Tanzania	Not applicable	Yes	Government in theory, investor in practice	Loss of improvements	Yes		

* As assessed by in-country researchers

influenced by the nature of the developer (the US donor Millennium Challenge Corporation) and of the project (which aims to promote "modern agrictural enterprises" in the areas; L'Essor, 2008).

As multiple and overlapping land rights are often held through diverse blends of individual to collective rights, a key issue needing to be addressed is who should receive compensation payments – with regard to relations within households (as illustrated by women's "secondary" rights on family land) and groups (in Tanzania, for instance, compensation must be paid to the village as a whole for loss of communal land, and to villagers for loss of their rights of occupancy[68]), as well as between groups (see the "secondary" land rights of "incomers" and non-resident pastoral groups).

Compensation costs may be borne by the governments or by the investor directly – in which case they become part of project costs.[69] In Ethiopia, for example, compensation is supposed to be paid by the government. However, due to budget constraints, it is paid by investors but considered as part of the cost of land lease. A similar situation exists in Tanzania, where in formal terms compensation is payable by the government when land is transferred from Village Land status to General Land status for purposes of leasing to large-scale investors; but in practice it is the investor that negotiates and pays compensation directly to local land rights holders and users.[70]

Involvement of international lenders may raise compensation standards – for instance where the project must comply with IFC or "Equator Principles" banks.[71] It may also provide redress mechanisms beyond those available under national law – for example through the IFC ombudsman. A commercial lawyer interviewed for this study suggested that these gains are likely to be absent in SWF or other government fund deals, as these have enough financial clout to implement projects without involving international lenders.[72]

68. Village Land Act Regulations, section 8.
69. Interview with a lawyer from an international law firm, 22 January 2009.
70. For a more extensive discussion of compensation regimes in selected African countries, see Cotula (2007).
71. "The Equator Principles – A Financial Industry Benchmark for Determining, Assessing and Managing Social & Environmental Risk in Project Financing". Adopted in 2003 and revised in 2006, the Equator Principles are voluntary guidelines adopted by a number of commercial lenders (www.equator-principles.com).
72. Interview with a lawyer from an international law firm, 22 January 2009.

3.7. REMEDIES FOR AFFECTED PEOPLE

Where local people feel wronged by a land acquisition, legal remedies against the government or the investor are mainly determined by the national legislation of the host state. A key issue is whether remedies are only available to owners (i.e. the few with registered land title), or whether they also benefit resource users not having full ownership rights. Whether communities can sue jointly for losses suffered by large numbers of community members is also key, as it would enable people to join efforts and pool resources.

Beyond legal issues, other factors may constrain local capacity to seek redress: lack of resources (with legal aid rarely being available for this type of litigation); low levels of legal and basic literacy; geographical, economic and linguistic inaccessibility of courts; and lack of independence of and trust in the judiciary.

With regard to litigation against investors, there have been rare suits brought against parent companies in their home country, rather than local subsidiaries in the host state ("transnational litigation"). The effectiveness of this strategy depends on the law in force in the home country. In the UK and the US, this strategy has led to some positive results. In the UK, courts may be prepared to hear a case if they are satisfied that "substantial justice [would] not be done in the alternative forum" (*Spiliada* case), including due to lack of legal aid in the host country (*Connelly* and *Lubbe* cases). In the US, transnational lawsuits have been brought under the Alien Tort Claims Act of 1789, which gives US courts jurisdiction over civil tort actions brought by foreigners for acts "committed in violation of the law of nations" – even if these acts occurred abroad.

Apart from major limits in access to these types of proceedings for most local people affected by land acquisitions, the extent to which similar legal principles would apply in some of the home countries involved in the recent wave of land acquisitions (East Asian and Gulf countries in particular) remains to be seen.

In those government-backed investments where land is acquired by a foreign state agency (central ministries, SWF, SOE), a particularly important issue is the extent to which that agency enjoys sovereign immunity from legal proceedings

in the host state. Sovereign immunity does not remove liability. The state agency may still be held responsible, for instance through international law channels or where it waives its immunity. But it would make it more difficult for local people to seek redress against the investor.

The 2004 UN Convention on Jurisdictional Immunities of States and their Property regulates these matters but is not yet in force. As a result, rules vary across states depending on national legislation. Despite this diversity, a key principle emerging under customary international law and in most jurisdictions is the distinction between acts in the exercise of state sovereignty and commercial transactions, with immunity only covering the former. In other words, an entity controlled by a foreign state is still likely to be subject to challenges before courts in the host country (see Clifford Chance, 2008). Arguably, land acquisitions by SWFs or SOEs should be seen as commercial ventures and hence subject to host state jurisdiction, even where home country public policy (for instance, with regard to food security) played a role in investment decisions.

The borderline is less clear where the investor government signs the deal directly, as in the Syria-Sudan agreement. Although these deals should still be seen as falling outside acts in the exercise of state sovereignty, the investor government may well try to claim immunity. The draft Mali-UEMOA Convention explicitly states that UEMOA benefit from the privileges and immunities granted by the 1996 Additional Protocol on the Rights, Privileges and Immunities of the UEMOA (article 8 of the draft contract).

IV. CONCLUSION

4.1. SUMMARY OF FINDINGS

Primary and secondary data on land acquisitions in Africa is scarce and often of limited reliability. This means that evidence and the conclusions drawn from it need to be treated with caution. Nevertheless, a picture is emerging of land deals Africa. Key features include:

- **Significant levels of activity** – the quantitative inventories have documented an overall total of 2,492,684 ha of approved land allocations since 2004 in the five study countries, excluding allocations below 1000 ha;

- **Rising land-based investment** over the past five years, with an upward trend in both project numbers and allocated land areas in all quantitative study countries and anticipated growth in investment levels in future;

- Large-scale land **claims remaining a small proportion of total suitable land** in any one country, but most remaining suitable land is already **under use or claim,** often by local people, and **pressure is growing on higher-value lands** (e.g., those with irrigation potential or closer to markets);

- Possible increases in the **size of single acquisitions**, though with considerable variation among countries – approved land allocations documented here include a 452,500 ha biofuel project in Madagascar, a 150,000 ha livestock project in Ethiopia, and a 100,000 ha irrigation project in Mali;

- **Dominance of the private sector** in land deals, though often with strong financial and other support from government, and significant levels of government-owned investments;

- **Dominance of foreign investment**, though **domestic investors are also playing a major role** in land acquisitions – a phenomenon that has received far less international attention so far.

Where governments are acquiring equity stakes in land, **sovereign wealth funds** play a smaller than anticipated role. More common arrangements for government ownership of land assets in foreign countries are via **state-owned enterprises** and minority shares in private companies. Direct **government-to-government land deals** are rare but not unknown. **Government development**

funds play a major role in providing loans, insurance and other forms of support to state-owned enterprises and private companies operating abroad.

SWFs are subject to various accountability mechanisms: sitting somewhere between government and the private sector, they are subject to scrutiny as public purse, but also, since the banking crisis and subsequent Santiago Principles, to the growing extension of transparency criteria applicable to equivalent private investment – though the extent to which internationally developed principles will translate into internalized governance changes remains to be seen. On the other hand, government development funds and direct government equity in land acquisitions are areas of higher expenditure and much less transparency – and require greater attention. In addition, given the often blurred lines between government and private investment in practice, the differentiation between the two in terms of research agendas and policy responses is somewhat artificial.

Food security concerns, particularly in investor countries, are a key driver of government-backed investment. But many government-backed deals are driven by **investment opportunities** rather than food security concerns (e.g. China). Related drivers behind current land deals in Africa are **global demand for non-food agricultural commodities and biofuels**, expectations of rising **rates of return** in agriculture and **land values**, and **policy measures** in home and host countries.

While there is a **perception that land is abundant** in certain countries, these claims need to be **treated with caution**. In so many cases land is already being used or claimed – yet existing land uses and claims go unrecognised because land users are marginalised from formal land rights and access to the law and institutions. And even in countries where some land is available, large-scale land allocations may still result in displacement as demand focuses on higher value lands (e.g. those with greater irrigation potential or proximity to markets).

For people in recipient countres, this context creates **risks** (such as loss of land access for local people, but also undermining of local businesses and environmental damage) **but also opportunities** (e.g. in terms of access to capital, technology, knowhow and markets), particularly in light of the longstanding underinvestment in African agriculture. Ultimately, the extent to which international land deals seize opportunities and mitigate risks **depends on their terms and conditions**: how are risks assessed and mitigated – for

instance through considerations in project location? What business models are favoured in project implementation (from plantations to contract farming, purchase agreements, policy incentives, or joint ventures)? How are costs and benefits shared – for example, in terms of safeguards against arbitrary land takings, or revenue-sharing arrangements? And who decides on these issues and how?

Although the terms and conditions of investment display a huge diversity among countries and even individual projects, the main study findings, based on a small number of international land deals, include the following:

- Land deals must be **assessed in the light of the often complex overall package** they are part of, including commitments on investment, infrastructure development and employment – the "land grab" emphasised by some media is only part of the equation;

- **Land leases**, rather than purchases, are predominant in Africa, and host country **governments tend to play a key role in allocating them**;

- Land fees and other **monetary transfers are not the main host country benefit**, not least due to the difficulty of setting land prices in absence of well-established formal land markets;

- Host country benefits are mainly seen in the form of investor **commitments on investment levels, employment creation and infrastructure development** – though these commitments tend to lack teeth in the overall structure of documented land deals.

Although on paper some countries have **progressive laws** and procedures that seek to increase local voice and benefit, **big gaps between theory and practice**, between statute books and reality on the ground result in major costs being internalised by local people – but also in difficulties for investor companies.

Many countries do **not have in place legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare.** Even in the minority of countries where legal requirements for community consultation are in place, processes to negotiate land access with communities remain unsatisfactory. **Lack of transparency and of checks and balances in contract negotiations** creates a breeding ground for **corruption**

and deals that do not maximise the public interest. **Insecure** use **rights** on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, and compensation limited to loss of improvements like crops and trees (thus excluding loss of land) all undermine the position of local people.

Virtually all the **contracts** analysed by this study tend to be **strikingly short and simple** compared to the economic reality of the transaction. Key issues like **strengthening the mechanisms to monitor or enforce compliance** with investor commitments, through monitoring and sanctioning, **maximising government revenues and clarifying their distribution**, promoting **business models** that maximise local benefit, as well as balancing food security concerns in both home and host countries are dealt with by vague provisions if at all.

4.2. RECOMMENDATIONS FOR STAKEHOLDERS

This report is only a first step towards better understanding trends, drivers, features and impacts relating to international land deals. Much more work is therefore needed (see Box 4.1). Any recommendations for policy and practice can only be tentative at this stage. In addition, land deals take many different forms and proceed in a wide diversity of contexts. Transactions labeled as "large-scale" may involve 1,000 hectares or 500,000 hectares. This diversity means that recommendations need to be tailored to their contexts.

With these caveats in mind, the next few sections outline sets of general recommendations for the different stakeholders involved in or affected by international land deals:

- Investors;
- Host governments;
- Civil society – organisations of the rural poor and their support groups; and
- International development agencies.

Investors – options for maximising security for investment and sustainable development gains

- Investment funds including SWFs tend to be more familiar with financial deals than agricultural ones. This matters because projects of the size

BOX 4.1. WHAT IS NOT YET KNOWN – AREAS FOR FURTHER DEBATE AND EXPLORATION

This report has only started to scratch the surface of a very complex set of issues. More research is needed, for instance in the following areas:

– Better data on land availability – generated through solid methodology building on a clear definition of "available" land within a context of multiple claims and land use purposes, and undertaken with the participation of local land users and other stakeholders (e.g. national interest groups, conservation).

– Better understanding of land deals – in terms of their negotiation, parties, content and implementation. What does a "good" contract look like? Are contracts usually adhered to, and if so do differently structured deals lead to different outcomes on the ground? What pressure points can be used to maximise sustainable development outcomes, whether in government-investor deals, in financing arrangements or in community partnerships?

– How to secure local land rights within agricultural investment projects? What difference do local land rights make? Are more secure land rights correlated with more locally advantageous deals – across and within countries?

More generally, there is a need to extend the scope of this research: thematically, tackling issues only cursorily mentioned here (e.g. domestic investment) or not discussed at all (e.g. environmental standards); sectorally, to understand commercial pressures from land use demands other than agriculture (e.g. tourism, mining); and geographically, as land acquisitions are relevant well beyond Africa.

documented in this report raise significant challenges even for experienced agribusiness. **Investors need to make realistic assessments of their capacity to manage farming projects at this scale.** They should act appropriately in the light of these assessments.

- **It is possible that media hype is feeding a land rush.** As more reports come out, key players may wish not to miss out, and seek to acquire areas of land. This means that **careful and detached analysis of the factors involved in land investments in developing countries is more important than ever**.

- **Issues of image and reputational risk should not be underestimated**. Investors can be seen as dealing with or propping up corrupt regimes and human rights violators. They may also be perceived as land grabbers in food-insecure countries.

- International land deals may be perceived as bringing back the "bad old days" of colonialism, particularly in Africa. This is particularly so when rental fees are zero or close to zero. Backlashes are possible, as in the Daewoo case: this was a concern for some investors interviewed for this report. **Long-term land leases – for 50 or even 99 years – are unsustainable unless there is some level of local satisfaction.** In this context, innovative business models that promote local participation in economic activities may make even more commercial sense. These include outgrower schemes, joint equity with local communities and local content requirements. On the last point, well-established practice from other sectors like extractive industries may provide useful insights.

- **At the local level, land rights may be hotly disputed.** In relation to disputes, outside investors may think they have successfully purchased land, only to find that the tenure situation may in fact be very complex, involving customary rights. There may be a serious **risk of getting bogged down in disputes**. This means **careful assessment of local contexts** is critical, as well as **long-term engagement with local interests** (**not just elites**).

- Local expectations of benefits may be unrealistically high. Unclear terms and conditions and over-optimistic promises foster this, and may result in frustration and anger vis-à-vis the investment. **Clarity is needed about the costs and benefits of the business transaction from the start. This includes realistic estimates and honest communication of what the project will bring.** This includes information on numbers and types of jobs (including information on skill-sets and seasonality) as well as their longevity (for example, what is the expectation of replacement by mechanisation?). It also includes information on the other positive and negative impacts of the project – from water abstraction to infrastructure development.

- **Clear principles for engagement at the local level are required.** Local consultation is likely to be a key success factor during project implementation, whether or not it is legally required. Decisions will need to be taken about the extent of and timeframes for consultations. Some level of compromise may be necessary between investors, governments and local people on what constitutes a credible process. In all cases basic principles

BOX 4.2. BASIC PRINCIPLES FOR ENGAGEMENT AT THE LOCAL LEVEL

Basic principles that should be followed in engaging communities and local level stakeholders include:

- Consulting when all options are still open;
- Ensuring information is available to the community in understandable forms, including the full prior project proposal, explanation of options, impacts and alternatives, record of any agreement and pledges from either side;
- Making sure that diverse local interests are properly represented, by going beyond local elites and by making specific efforts to include groups who may be left out, such as women, minority ethnic groups and non-resident people like transhumant pastoralists;
- Crystallising any investor-community agreement emerging from the consultation in readily monitorable and legally enforceable terms;
- Providing effective arrangements for local people to voice concerns and seek redress, particularly where access to formal courts is constrained (e.g. grievance mechanisms);
- Committing to clear plans for revisiting the dialogue and reviewing progress in consultation with community.

need to be followed (see Box 4.2). Principles and procedures for **free, prior and informed consent** particularly as developed in the forestry and extractive sectors will increasingly provide guidance relevant to the agricultural sector.

- Recognising that **internationally recognised human rights are at stake**, namely those most directly linked to land access such as the right to property and the right to food (see section 3.5), has implications not only for governments but also for private investors. The conceptual framework recently developed by the UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises highlights how the realisation of human rights entails not only obligations for states, including a duty to protect people from third-party violations; but also the **direct responsibility for business entities to respect human rights**, including through carrying out **due diligence** about possible adverse human rights impacts, **in addition to compliance with national laws** (Ruggie, 2008). These overarching considerations must frame private sector engagement with land deals.

Recipient governments – placing sustainable development at the centre of investment decision-making

- Governments need to clarify what kinds of investment they want to attract. Different investment types and business models are likely to generate different economic, social and environmental impacts, both positive and negative. Given the long-term nature and large scale of much recent land acquisition, **strategic thinking** rather than ad hoc decision-making is needed in order to make incoming agricultural investment one of the pillars for long-term rural development. Well negotiated and selected foreign investment, if properly combined with domestic resources including small-holder farming, could create positive synergies to support long-term rural development.

- **Attention to increased agricultural productivity needs to be balanced with assessment of how gains are achieved** (for example, through mechanised or labour-intensive production) **and how benefits are shared**. This has implications for the **content of land deals**, for instance through mainstreaming minimum requirements for job creation, infrastructure, community benefits, national fiscal benefits and environmental protection. It also has implications for the way government agencies and officials work – for example, by **rewarding agencies and officials based on the quality not just quantity of investment** they attract.

- **State-of-the-art assessments of the social and environmental impacts of proposed investments are needed.** For example, on the environment side, key issues include: whether investments are likely to be associated with a short-term mining of soils and water (through cultivation of crops with high water or nutrient demands); the likelihood of pest or disease problems, particularly associated with monocultural production; possible impacts on biodiversity; and capacity to contribute to longer-term sustainable soil and water management.

- **Governments should ask hard questions about the capacity of investors to manage large-scale agricultural investments effectively.** As discussed, very large-scale projects raise great challenges even for experienced agribusiness. Governments may need to invest in their own capacity to assess investment proposals and investor capacity to deliver.

- **Land contracts must be structured so as to maximise the investment's contribution to sustainable development.** This includes devising incentive systems to promote inclusive business models, and giving legal teeth to commitments on investment levels, job creation, infrastructure development, public revenues, environmental protection, safeguards in land takings, and other aspects. **Skillful negotiation is key, and governments may need to invest in their own capacity to negotiate**.

- **Mechanisms should be developed to discourage purely speculative land acquisitions.** High-level government commitment and capacity across administrative structures are essential to enforce strict compliance with investment plan requirements. Where appropriate, mechanisms to monitor compliance with investment plans beyond the early stages of the project should be developed. Taxation on land allocated but not developed, differentiated rents depending on whether or not the land is being developed, sliding-scale arrangements whereby the allocated land area is reduced proportionally over time in case of under-development are some of the mechanisms that may be experimented with.

- **Investment decision-making must be transparent. Investors need to be given clear information on procedures, criteria for decision-making, and conditionalities.** Greater transparency in government decisions may provide a moral basis for requiring greater disclosure from investors. As long-term, large-scale land deals are likely to affect public and third-party interests (e.g. via local land takings or water abstraction), **decision-making must be open to public scrutiny**; this may increase the legitimacy and ensure the long-term sustainability of land deals. Insights may be gained from experience with promoting transparency in other sectors – for instance, the Extractive Industry Transparency Initiative, which primarily concerns revenue management with regard to mining and petroleum contracts.

- Perhaps most importantly, efforts must be stepped up in many countries to **secure local land rights**. Attempts to attract large-scale investment should not divert attention from the need to improve tenure security for local people. This may help them avoid being arbitrarily dispossessed of their land, and obtain better deals from incoming investors – for instance, through providing land as in-kind contribution to a joint venture in which both investor and community have a stake. **Collective land registration** may

be a valuable policy option in this regard. Where mappings and inventories of "available" lands for possible allocation to investors are undertaken, care must be taken to respect existing land uses and claims. The principle of **free, prior and informed consent** and **robust compensation regimes** should provide a cornerstone of government policy, and must be integrated in national legislation. Provision of **legal aid** and support is key to helping local people make the most of these arrangements in practice.

Organisations of the rural poor and their support groups – options for maximising net benefits from land investments, and limiting exclusionary impacts

- Scope for civil society to influence processes will vary depending on the nature of the land deal. Government-to-government and private-to-private transactions offer different opportunities. While scope for influencing private deals is highly limited, there should be more room for inputing into processes involving government. Evidence for this to date is limited, however, and **advocacy to promote greater government and investor accountability** in land deals is needed. Accountability includes **transparency** (publicly accessible information in appropriate forms at the right time), **answerability** (ability to respond to feedback and to justify why any decision or course of action is followed in favour of any other) and **liability** (clear and operational mechanisms for grievances to be raised and, where necessary, sanctions to be applied).

- **Advocacy and awareness-raising are also needed at each stage of the land investment process.** Rights to free, prior and informed consent should be advocated for. So should provisions to maximise local benefit, such as business models that harness the comparative advantages of smallholder farming (e.g. through outgrower schemes or purchase agreements), job creation commitments, community benefits such as schools and clinics, protection of environmental and cultural resources, provisions on produce shares for local and export markets, and other aspects – as well as effective arrangements to enforce all these.

- **Legal support** to people affected by investment projects can help them get a better deal from incoming investment – through better compensation regimes and investor-community partnerships, for example. This may

include legal literacy training, paralegal programmes, legal clinics, legal advice and representation in negotiations with government and investors, training on negotiating skills, through to public interest litigation.

- In the past, polarised debates about individual titling and "collateralisation" in Africa have witnessed skeptical positions from many civil society groups. But the new land acquisition trend may require revisiting the longstanding debate about land titling in Africa. **Collective registration of community lands can be an effective tool for protecting local land rights vis-à-vis incoming investors.** Local ("customary") land rights systems can work well at the local level, but they are irrelevant to investors. As some have argued, "where the primary source of tenure insecurity is outsider encroachment, the best legal response is to recognise and enforce local group rights, and (where it does not cause undue conflict) to demarcate and record certain lands in the name of that group" (Fitzpatrick, 2005). Experience from countries that have implemented community land registration programmes, in Africa and elsewhere, may provide useful lessons.

International development agencies – catalysing positive change

- **Engage with investor and recipient governments, private sector and civil society to ensure that land deals maximise the investment's contribution to sustainable development.** This may include supporting policy reform in recipient countries towards greater transparency of decision-making and greater consideration of social and environmental issues. The ongoing, FAO-led process to develop **Voluntary Guidelines for Responsible Governance of Land** and Other Natural Resources, and the **Framework and Guidelines for Land Policies in Africa** being developed under the leadership of the African Union, the UN Economic Commission for Africa and the African Development Bank are useful steps in that direction.

- **Help address the lack of clear and easily accessible information on land acquisitions and agricultural investments.** Effective systems to monitor land deals (inventories, maps, databases) can improve transparency and public scrutiny, as well as access to information for governments and prospecting investors. International agencies can play a role in making this happen.

- **Provide expert advice, capacity building and other support for governments, private sector and civil society**, for instance with regard to the negotiation of contracts, to tackling food security issues, to promoting innovative ways to provide legal support to local people, and to developing business plans that build on know-how of the wide range of business models for agricultural production beyond plantations.

Final remarks

The land investment story currently unfolding, and analysed in this report, reflects deep global economic and social transformations. These ongoing processes have profound implications for the future of world agriculture. Decisions taken today will have major repercussions for the livelihoods and food security of many, for decades to come. This means that choices made now must be based on strategic thinking rather than piecemeal and opportunistic negotiations.

What should African agriculture look like in 30 years' time? What place should large investment and smallholders play within that, and why? These basic questions should frame decision-making. Public deliberation is essential to ensure that this question is properly addressed and factored into choices between different options. It is hoped that this report can contribute to meeting this challenge.

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Land grab or development opportunity?

Agricultural investment and international land deals in Africa

Lorenzo Cotula, Sonja Vermeulen,
Rebeca Leonard and James Keeley

Large-scale acquisitions of farmland in Africa, Latin America, Central Asia and Southeast Asia have made headlines in a flurry of media reports across the world. Yet international land deals and their impacts still remain little understood. This report is a step towards filling this gap. The outcome of a collaboration between IIED, FAO and IFAD, the report discusses key trends and drivers in land acquisitions, the contractual arrangements underpinning them and the way these are negotiated, and the early impacts on land access for rural people in recipient countries – with a focus on sub-Saharan Africa.

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International Institute for
Environment and Development
3 Endsleigh Street
London WC1H 0DD, UK
Tel: +44 20 7388 2117
Fax: +44 20 7388 2826
Email: info@iied.org
Website: www.iied.org

Food and Agriculture Organization
of the United Nations
Viale delle Terme di Caracalla
00100 Rome, Italy
Tel: +39 06 57051
Fax: +39 06 570 53152
Email: FAO-HQ@fao.org
Website: www.fao.org

IFAD
Enabling poor rural people
to overcome poverty

International Fund for
Agricultural Development
Via Paolo di Dono, 44
00142 Rome, Italy
Tel: +39 0654591
Fax: +39 065043463
Email: ifad@ifad.org
Website: www.ifad.org