

GOVERNANCE OF LARGE-SCALE LAND ACQUISITIONS IN UGANDA: THE ROLE OF THE UGANDA INVESTMENT AUTHORITY

Author: M. Mercedes Stickler, Associate, World Resources Institute

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Acronyms

ABCG	Africa Biodiversity Collaborative Group
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization of the United Nations
NEMA	National Environmental Management Authority
PSCP	Private Sector Competitiveness Project
SDIP	Social Development Sector Strategic Investment Plan
UIA	Uganda Investment Authority
ULC	Uganda Land Commission
WRI	World Resources Institute

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Background

LAND ACQUISITION CONTEXT

Following the spike in commodity prices in 2007-2008, media reports revealed that investors (*e.g.*, government, international companies, venture capitalists) had expressed interest in 56 million ha of land for agriculture and forestry production in less than one year.¹ Sub-Saharan Africa accounted for 2/3 of this expressed demand. Despite the poor record of large agricultural investments in Africa and parts of Asia, the global median project size of 40,000 ha implies that these investments could have major implications for rural land rights and existing land users, especially smallholders. Alarming, countries with weak legal frameworks for recognizing rural land rights and poor business environments were most likely to be targeted by recent large land investments (Deininger et al. 2011).

Investor interest in farmland is expected to continue to increase as a result of several major global trends. The FAO (2009a) predicts that food production will have to increase by at least 70% by 2050 to meet the daily calorie needs of more than 9 billion people. This increase food demand is in turn driving demand for arable land. At the same time, demand for biofuels is growing in response to policy mandates in Europe, the United States, and elsewhere, that is creating competition for the world's finite supply of arable land. Demand for biofuels is likely to rise further as oil prices creep upwards. Meanwhile, the unpredictability of global food markets has led some major net food-importing nations (*e.g.*, Bahrain, Saudi Arabia, South Korea) to pursue direct farming investments abroad to guarantee their food supplies. All of these trends are driving international (but also domestic) investor interest in large-scale land acquisitions for agriculture (food and biofuel crops). Nowhere is this trend more prominent than in sub-Saharan Africa, where governments are competing to attract investment in large areas of currently uncultivated arable land. While these investments are often justified for their potential to create jobs and increase food security, they also have the potential to cause profound effects on natural environments, critical ecosystem services and biodiversity in areas that have remained unaltered by large-scale agricultural production to date.

Considerable international attention has focused on investments in Ethiopia, Madagascar and Sudan, but other African countries are also allocating large plots of land to investors (Table 1). In Kenya, land in the Tana Delta is being allocated for sugar cane plantations, displacing hundreds of families and destroying one the Africa's most important bird habitats (McVeigh 2011). And in Cameroon, DR Congo and Congo (Brazzaville), natural forest is being allocated to foreign companies to develop large palm oil plantations (Land Matrix Portal 2012).

¹ Compared with an annual average growth in the global cultivated area of just 1.9 million ha from 1990-2007 (FAO 2009b).

PURPOSE AND METHODOLOGY

Considerably less international attention has been focused on Uganda, where the government has a history of allocating land for large-scale agricultural production. For example, media reports indicate that a deal is underway to lease 840,000 ha in Uganda (2.2% of the country's farmland) to Egypt for wheat and maize production to be shipped back (Sharma 2008). It has also been widely reported that the government has allowed large-scale farming operations in a number of protected areas, including Butamira Forest Reserve and several Forest Reserves on Bugala Island (Veit et al. 2008).

This paper aims to help decision-makers better understand the process through which investors—whether domestic or foreign, public or private—acquire agricultural land outside the protected estate² in Uganda. Because of its key role in facilitating investor access to land, this paper will focus primarily on the role of the Uganda Investment Authority and its enabling legislation—the Investment Code Act of 1991. Other relevant government institutions and legislation will also be discussed to the extent that they interface with the duties of the Uganda Investment Authority.

Table 1: Large Scale Land Acquisitions in East and Southern Africa

Target country	Number of deals	Total ha	Average ha per project
Ethiopia	71	4,748,753	67,839
Kenya	13	633,500	48,731
Madagascar	39	3,779,741	96,916
Malawi	7	310,147	44,307
Mozambique	103	2,190,473	24,892
Rwanda	1	3,100	3,100
Somalia	2	21,500	10,750
Uganda	7	121,512	20,252
Tanzania	55	1,324,475	25,471
Zambia	8	273,413	34,177
Zimbabwe	2	201,171	100,586

Source: Land Matrix Portal (2012)

This paper is based primarily on interviews with key informants in the Uganda Investment Authority (UIA), the Uganda Land Commission (ULC), and several leading Ugandan NGOs and private sector consultancies focused on land governance and environmental conservation. However, interviews with more than 15 other experts in government, the private sector, and civil society were completed to provide context for and corroborate information obtained from the key informants. Due to the sensitive nature of this topic, the names of all interviewees will remain anonymous, as will the names of all NGOs and private organizations. Information obtained from these interviews was also fact-checked and supplemented with a review of relevant literature on recent large-scale land acquisitions and legislation that applies to agricultural land acquisitions. Given the limited availability of peer-reviewed

² Challenges related to private land acquisition in protected areas have been well documented in Uganda (see, for example, Tumushabe 2003, Tumushabe and Bainomugisha 2004, and Veit et al. 2008).

literature on this subject in Uganda and the resulting heavy reliance on key informant interviews, it is recommended that the results of this study be validated through further research.

The structure of the remainder of this paper is as follows. Section 2 presents a short overview of the land tenure context in Uganda and explains the restrictions on the rights of foreigners to hold land rights. Section 3 provides a brief overview of the mechanisms through which investors can acquire rights to agricultural land in Uganda. Section 4 highlights key features of the Investment Code Act related to land acquisition and describes how the UIA works in practice with other government agencies, especially the Uganda Land Commission, to help agricultural investors acquire farmland in Uganda. Based on the preceding information, Section 5 offers some suggested reforms to ensure that agricultural investments in Uganda contribute to national policy objectives, including poverty reduction and sustainable natural resource management. Section 6 concludes the paper.

Land tenure in Uganda

The Constitution (Section 237(1)) states that “Land in Uganda belongs to the citizens of Uganda...in accordance with the land tenure systems provided for in this Constitution”, which are customary, freehold, *mailo* and leasehold. This principle—that land belongs to the people of Uganda—significantly diminishes the government’s authority to acquire land for agricultural investment. The Land Act of 1998 Cap 227 confirms that land belongs to the Ugandan people (Section 2) and elaborates upon the four categories of land ownership as follows.

Customary tenure is “owned in perpetuity” (Section 3(1)(h) of the Land Act) by the local people and is subject to “local customary regulation and management” (Section 3(1)(e)), including communal ownership (Section 3(1)(f)). Holders of customary land can acquire a certificate of customary ownership (Section 4) that “is conclusive evidence of the customary rights and interests specified in it” (Section 8(1)). Section 8(7) states that “a certificate of customary ownership shall be recognized by financial institutions, bodies and authorities as a valid certificate for purposes of evidence of title.” Thus, the Land Act provides for the certificate of customary ownership as conclusive proof for ownership of customary land (NGO A 2012). However, in many areas, customary land owners have not applied for the certificate because the government has not provided a framework through which the certificates can be issued—as a result, land registries do not have a system in place to issue the certificates (NGO A 2012). Moreover, in practice banks do not recognize certificates of customary ownership as collateral (UIA 2012). To promote official recognition of customary ownership that is on par with the documentation provided for other tenure categories, such as titles and leases on freehold or *mailo* land (see below), the Ministry of Lands, Housing and Urban Development has recently introduced a “customary title” (NGO A 2012; UIA 2012). Although this new document does not differ appreciably from the certificate of customary ownership envisaged under the Land Act, it is hoped that the customary title will increase the security of customary tenure (Ojwee 2012) and “facilitate investment” by making customary titles commensurate with freehold titles (UIA 2012). Roughly 69 percent of all land in Uganda falls under customary tenure; much of this land is in the north and east of the country (MLHUD 2010, Terra Firma 2011).

Freehold tenure “involves the holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition” (Section 3(2)(a)). It provides the holder with full rights to use, develop, transact, or dispose of the land (Section 3(2)(b)(i-iv)). Holders of freehold land are eligible to register their rights through a freehold title (Section 3(3)). Freehold tenure represents about 18.6percent of all land in Uganda (MLHUD 2010).

Mailo tenure “involves the holding of registered land in perpetuity” (Section 3(4)(a)) and “permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant” (Section 3(4)(b)). The tenets of land holding under *mailo* tenure are almost the same as under freehold tenure, except that *mailo* tenure derives from lands that were historically awarded in freehold to chiefs of the Buganda kingdom who collaborated in the British conquest of the Buganda from 1890-1900 (Terra Firma 2011; NGO A 2012). The term “*mailo*” is derived from the

measurement of these land grants in square miles. The Land Act (Section 3(4)(b)(c)) also recognizes the usufruct rights of tenants, known as *kibanja* (pl. *bibanja*). Both the Act and its 2010 Amendment uphold the rights of *mailo* tenants (*bibanja* holders) and limit the powers of *mailo* owners to make land management decisions without the consultation and consent of *bibanja* holders (Terra Firma 2011). In practice, however the relationship between *mailo* tenants and owners has been interpreted in different ways that reflect a long history of unequal power relations (Terra Firma 2011). *Mailo* tenure is found in the central region and parts of western Uganda and covers some 9 percent of the land (MLHUD 2010).

Leasehold tenure is created by contract or by law that describes the relationship between a landlord (lessor) and a tenant (lessee) (Section 3(5)(a)). It is usually limited to a specified time period and may be subject to rent (Section 3(5)(c-d)). Leasehold tenure essentially confers freehold rights to both the landlord and the tenant “subject to the terms and conditions of the lease” (Section 3(5)(e)). Leasehold tenure accounts for just 3.6 percent of land in Uganda; some of this land falls within the *mailo* areas (MLHUD 2010, Terra Firma 2011)

Foreigners cannot own land in Uganda—they can only acquire leasehold rights to land (Land Act of 1998, Section 40(1)). A noncitizen of Uganda cannot acquire a lease exceeding 99 years (Section 40(3)), and all leases of at least five years acquired by noncitizens must be registered in accordance with the Registration of Titles Act (Section 40(2)). By law, noncitizens are not eligible to acquire or hold *mailo* or freehold land (Section 40(4)).

Land acquisition for agricultural investment

Before describing the various mechanisms through which investors acquire agricultural land in Uganda, it is important to briefly consider why the government may want to help investors secure agricultural land in the first place and what implications different agricultural development models may have for various policy goals, including poverty alleviation and agricultural productivity.

GLOBAL EVIDENCE ON LAND ACQUISITION FOR AGRICULTURAL INVESTMENT

Although recent investor interest in large-scale land acquisition for agricultural production has generated considerable international attention, neither large-scale farming nor private investor interest in commercial agricultural production are new phenomena. As such, recent and historical evidence on large-scale agricultural land acquisitions worldwide can provide some insights into why investors would want to secure rights to agricultural land for production enterprises. This sub-section will provide some context for the detailed discussion on the Ugandan experience, but readers are encouraged to review the literature on farm sizes and agricultural development models.

In the absence of policy distortions, agricultural production is characterized by dis-economies of scale that make smaller farms more competitive than larger ones (Binswanger, Deininger, and Feder 1995). In fact, with the exception of some plantation crops that require timely and expensive processing, such as sugarcane and oil palm, smallholder production models have proven efficient vehicles for increasing agricultural productivity while combatting poverty (Deininger et al. 2011). However, a number of policy and market factors may make large farms more attractive to private investors.

Firstly, larger farmers are often able to obtain domestic finance on better terms than smaller farmers because of the high transaction costs associated with lending in dispersed rural markets. Larger farms may also be able to more easily access global financial markets, which can offer loans at much lower costs than domestic markets (Deininger, et al. 2011). Secondly, large farms can reportedly reduce input costs by 10-20 percent, which can give them an important edge in highly competitive global agricultural markets (Manciana, Trucco, and Pineiro 2009). Thirdly, large investors can provide services to their farms where public sector support is lacking, for example by building their own transportation and logistics infrastructure (Deininger et al. 2011). Finally, larger farms may be better able than smallholders to meet “importing countries’ increasingly stringent requirements on product quality and food safety,” particularly given larger farms’ greater ability to access capital-intensive technology (Deininger et al. 2011, p. 31).

However, direct land acquisition may not be always required to facilitate private investment in agricultural production. An emerging model tested in Argentina and elsewhere in Latin America involves farm management companies that rent land and equipment rather than own it outright (Manciana, Trucco, and Pineiro 2009; Regunaga 2010). Competitive land lease markets in Argentina are based on clear property rights, and the annual lease contracts offered by the management companies

suggest that landowners can also benefit from this model (Manciana, Trucco, and Pineiro 2009). The experience to date with this innovative model implies that while investors do not necessarily need to acquire freehold rights to implement large-scale farms, secure land rights are critical for both investors and existing landholders to benefit from increased agro-investment.

Furthermore, international evidence on the impacts of different agricultural development models suggests that production models based on smallholders—whether as independent producers or outgrowers—result in higher job and income gains without efficiency losses compared to large commercial farms. In fact, experience with large-scale agricultural concessions in Africa, Southeast Asia, and other regions suggests that this model may not always lead to local job creation on a scale commensurate with the costs to existing landholders displaced to create the concession (Table 2). Given that each hectare of rural land in Uganda is estimated to support roughly four rural people (Fischer and Shah 2010), at least 4,000 jobs—or commensurate compensation—would be needed just to offset the average number of people displaced to create a 1,000-ha commercial farm. However, as Table 2 shows, the large-scale investments that replace smallholder farms typically fall far short of this level of job creation.

Table 2: Key Factor Ratios in Case Studies of Large-Scale Investments

Commodity	Jobs per 1,000 ha	Investment US\$/ha	Investment US\$/job
Grains	10	450	45,000
Jatropha	420	1,000	2,400
Oil palm	350	4,000	11,400
Forestry	20	7,000	360,000
Rubber	420	1,500	3,600
Sorghum	53	900	17,000
Soybean	18	3,600	200,000
Sugarcane-ethanol ^a	153	5,150	33,600
Sugarcane-ethanol ^b	150	15,500	105,000
Sugarcane-ethanol ^c	700	14,000	20,000
Wheat-soybean	16	6,000	375,000

Source: Deininger et al. (2011, p. 39)

Note: a. Rainfed, one-third mechanized harvest (Brazil). b. Irrigated, mechanized harvest (Mozambique). c. Irrigated, manual harvest (Tanzania).

Moreover, evidence suggests that the wages farm workers earn laboring on commercial farms are often considerably lower than the income they would have earned cultivating a comparable area independently or as outgrowers (Deininger et al. 2011). A recent global review of farm incomes for smallholders relative to wages earned on large-scale farms found that (in all but one case) smallholders earned more income from independent cultivation than they would as laborers on commercial farms (Table 3). The farm income-to-wage ratio for an irrigated sugarcane farmer in Zambia was 6.09, and for an independent oil palm grower in Cameroon it was 3.05 (Deininger et al. 2011). Therefore, to the extent that poverty alleviation remains an important policy goal for agricultural development, the

government of Uganda may want to promote smallholder-friendly agricultural development models rather than help investors acquire large areas of farmland.

Table 3: Summary of Analysis of Farm Incomes for Smallholders Relative to Wage Employment on Large-Scale Farms

Commodity	Ratio of smallholder to large-scale for:			Family labor days/yr ^a	Farm income US\$/yr ^b	Wages US\$/yr ^c	Farm income-to-wage-ratio
	Yields	Labor/ha	Cost/ton				
Sugarcane							
Zambia 1 ha irrigated	0.78	4.8	0.86	598	2,118	348	6.09
Oil palm							
Indonesia 2 ha outgrower	0.89	0.92	1.04	322	2,067	990	2.09
Indonesia 2 ha low output	0.47	0.48	1.00	192	873	990	0.88
Cameroon 2 ha independent	0.62	0.90	0.36	200	1,770	580	3.05
Rubber							
Malaysia 1 ha independent	0.60	1.22	1.63	72	810	624	1.30
Grains							
Nigeria 5 ha independent maize	0.50	0.53	1.18	100	1,563	500	3.13
Zambia 5 ha independent maize	0.67	5.06	0.91	260	1,316	290	4.54
Cameroon 5 ha independent maize	0.74	0.84	0.93	490	1,526	154	9.91
Sudan 20 ha sorghum	1.00	2.00	0.74	200	1,994	319	6.10

Source: Deininger, et al. (2011), based on the following: Sugarcane and maize for Nigeria and Zambia using emerging farmer category where possible (World Bank, 2009); oil palm and maize for Cameroon using high input smallholder (World Bank, 2008); oil palm for Indonesia (Zen, Barlow and Gondowarsito, 2006); rubber for Malaysia (Barlow, 1997); sorghum for Sudan (Government of Sudan, 2009).

Notes: a. Not corrected. b. Corrected. c. Wages for cultivating an equivalent area on a commercial farm.

Large farms are often promoted for their perceived ability to increase agricultural productivity beyond the level smallholders could achieve. However, evidence from Africa and elsewhere has shown that small-scale farms are more efficient (and produce more jobs) than larger farms (e.g. Binswanger, Deininger, and Feder 1995; Christodoulou and Vink 1990; van Zyl et al. 1995). Moreover, the experience of Sudan, which promoted large-scale, semi-mechanized commercial farms in the 1970s, offers a particularly cautionary tale. The government awarded some 5.5 million hectares to investors to boost sorghum and sesame seed production; although, as much as 11 million ha were encroached upon (UNEP 2007; Government of Sudan 2009). Small-scale farmers and pastoralists who had previously used the land lost their land rights, which contributed to severe conflicts over land access locally and to broader conflict in the region (Johnson 2003; Pantuliano 2007). Moreover, crop yields actually decreased over time (Figure 1), partly as a result of low investments in technology and soil fertility maintenance due to the tenure insecurity and conflict caused by displacing the existing land holders (Deininger et al. 2011). After the land was cleared of its natural vegetation and degraded by poor production practices, many large farms were abandoned.

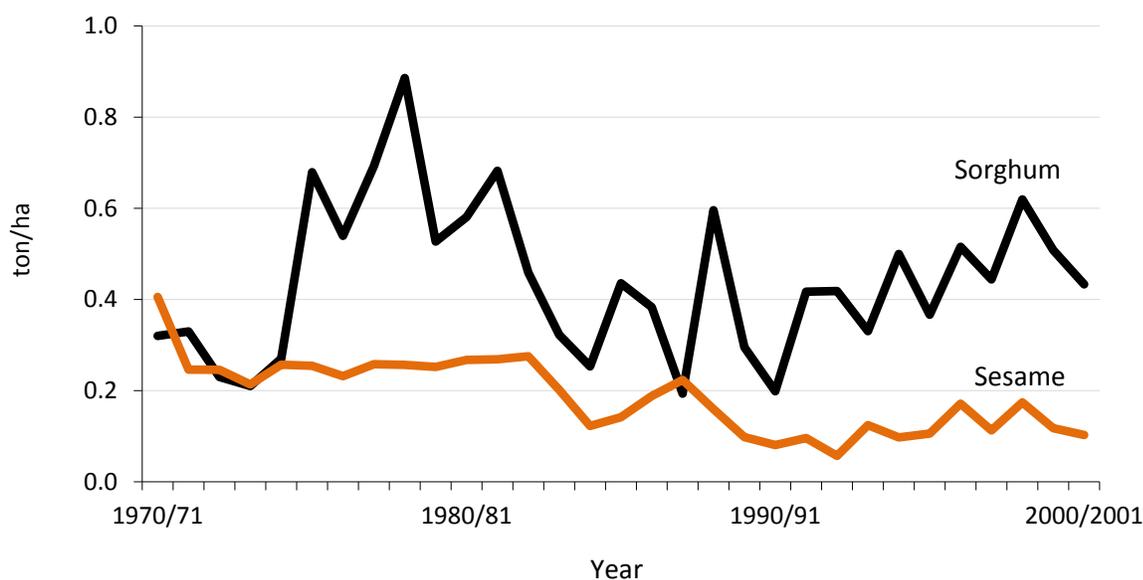


Figure 1: Yields on semi-mechanized farms in Sudan.
Source: Deininger et al. 2011 based on Government of Sudan, 2009; official statistics.

Experience with large-scale farming schemes elsewhere in Africa suggests Sudan’s experience is not isolated. Efforts to introduce large-scale rainfed wheat farms in Tanzania displaced pastoralists from some 40,000 ha of prime grazing land, yet wheat production has been declining as these enterprises were ultimately deemed unprofitable (Lane and Pretty 1991; Rogers 2004). In Nigeria, large-scale mechanized irrigated wheat projects begun in the 1970s and 1980s have also been largely abandoned (Andrae and Beckman 1985). These examples suggest that other countries in the region will need to carefully weigh all of the costs involved in creating large-scale commercial farms—not just the production costs as compared to other global producers, but also in terms of displaced livelihoods and lost natural vegetation—before embarking on new efforts to promote large-scale production models that displace and exclude existing smallholders and other land users, such as pastoralists.

Despite this international experience, the government of Uganda has apparently concluded that making land available for commercial agriculture investments is a pre-requisite for attracting private investment. However, a number of external reviews of Uganda’s private sector competitiveness have highlighted the difficulties that businesses in all sectors face in acquiring any land in Uganda (World Bank 2004; US DOS 2011). Inefficient (and sometimes corrupt) administration of the title registration system reportedly makes it expensive to verify land ownership, which complicates land transfers (World Bank 2004; US DOS 2011). The inability to efficiently identify landowners and execute foreclosures makes commercial banks reluctant to accept land as collateral for loans (World Bank 2004). The low overall rate of land registration (only some 20% of land is registered) and difficulties of navigating customary tenure systems on unregistered land make it difficult for investors to acquire

land with a clear title (World Bank 2004; US DOS 2011). As a result, many businesses have identified access to land as a primary constraint to their establishment and growth.

To address these shortcomings, the government has implemented a number of reforms—that will be discussed below—to facilitate the land acquisition process for investors. However, these reforms have been implemented in the absence of any coherent, over-arching policy framework to govern land acquisition or agricultural development. The government’s decision to help investors acquire large areas of agricultural land was apparently taken without even considering the broader policy goals it hopes to achieve by promoting private investment in agricultural production or the role of existing smallholders in developing the competitiveness of Uganda’s agriculture sector. As will be shown below, this lack of an organized policy framework has created opportunities for various agencies to interpret the existing laws in different ways that can undermine the security of tenure not only for investors, but especially for existing owners and tenants.

Given rising investor interest in Uganda’s farmland, there is an urgent need for the government—in consultation with a wide variety of stakeholders, especially local landholders—to determine which policy goals it wants to promote through its agricultural development policy framework, and then—only after these goals have been agreed—to develop the appropriate policy, legal and institutional frameworks to meet these goals. An agricultural development policy whose primary aim is to alleviate poverty *may* require different policy tools than a policy that aims to increase export or tax revenues. Determining the fundamental goals of an integrated agricultural policy will be critical to support the design and implementation of a coherent policy framework for private investment in agricultural production and agricultural development more broadly. While identifying these goals is the responsibility of the government on behalf of—and in consultation with—the people of Uganda, this policy discussion could benefit from existing evidence on the impacts of different agricultural development models in Uganda and other countries in the region and around the world.

LAND ACQUISITION MECHANISMS FOR AGRICULTURAL INVESTORS IN UGANDA

Currently, there are two primary mechanisms through which investors can acquire land for agricultural investment in Uganda: through direct negotiation with private land owners (possibly with government facilitation) or through the acquisition of government land held by various agencies, including the District Land Boards, the Uganda Land Commission, or the Uganda Investment Authority. Each of these mechanisms will be discussed briefly below before a deeper analysis of the role of the Uganda Investment Authority is presented.

Private land acquisition

Investors can purchase (domestic investors only) or lease (domestic or foreign investors) land through direct negotiation with private land owners. The Investment Code Act of 1991 defines “foreign investor” to mean “a person who is not a citizen of Uganda; a company...in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; [or] a partnership in which the majority of partners are not citizens of Uganda” (Part III, Section 9). In practice, foreign investors

most often acquire leasehold land because of the complex tenure systems governing *mailo* and customary land (US DOS 2011).

All leases on *mailo* land are subject to the interests of bonafide or lawful occupants who have the right to reside there (US DOS 2011). Investors are further required to compensate lawful occupants for improvements on the land (UIA 2012). Compensation procedures for land acquired by the government are regulated by the Land Acquisition Act of 1965; however, it is not clear that any legislation regulates compensation where private investors acquire land directly. Although the UIA helps investors determine which occupants are ‘bonafide’ or ‘lawful’, dealing with *mailo* land occupants has proved particularly difficult for investors (UIA 2012, ULC 2012).

Customary land is also typically unattractive to investors because it lacks title and is not surveyed, making it ineligible for use as collateral with banks (UIA 2012, US DOS 2011). Since customary land is governed by the “unwritten, customary laws” specific to the area, it is difficult for investors to identify legitimate holders of customary land (US DOS 2011). However, the new customary titles are intended to facilitate investment by making it possible to register these titles as collateral with banks (UIA 2012).

Government land acquisition

Investors can also lease land held by various government agencies, including the District Land Boards, which are authorized to hold land on behalf of local governments, and the Uganda Land Commission (ULC), which, according to Section 49(a) of the Land Act, is authorized to “hold and manage any land in Uganda which is vested in or acquired by the government in accordance with the Constitution” (UIA 2012, ULC 2012). As will be discussed below, a limited number of investors have also acquired lands directly held by the Uganda Investment Authority. However, there is currently no enabling legislation that specifies the procedures for any of these agencies to allocate land to investors. There is also no legal definition of “public”, “government”, and “local government” land, which makes it difficult to determine which agency has authority on a given parcel of land (Bogere 2011).

There are also important on-going debates about the authority of the government to compulsorily acquire land for the purpose of allocating it to investors. The Constitution (Section 26(2)(a)), the Land Act of 1998 and the Land Acquisition Act Cap. 226 of 1965 prohibit the government from using compulsory acquisition to promote investment. The government has tried to overturn these provisions, including most recently through the Draft National Land Policy, but its attempts to include the authority to use compulsory acquisition for investment promotion in the Draft National Land Policy were rebuffed by stiff opposition from civil society and communities consulted on the draft document (NGO A 2012, NGO B 2012). As a result, the final Draft National Land Policy (March 2011) prohibits compulsory acquisition for private investment (MLHUD 2011). However, the government can still purchase or lease privately held land for the purpose of allocating it to an investor (UIA 2012).

Because the UIA is legally authorized to facilitate investor access to land, the next section provides more detail on the role of the UIA in helping investors acquire farmland—in law and in practice.

The role of the UIA in helping investors acquire agricultural land

The Uganda Investment Authority is legally empowered to promote investment in Uganda, including by facilitating investor access to land. The first sub-section below briefly describes provisions of the Investment Code Act (“the Act”), Cap 92 of 1991³ and other legislation relevant to the process of acquiring and allocating agricultural land for large-scale investment. The next sub-section critically examines how these provisions have been applied in practice based on key informant interviews with the UIA, the Uganda Land Commission, and civil society experts.

AUTHORITIES PROVIDED IN THE INVESTMENT CODE ACT

At just twenty-two pages, the Act is fairly concise. The Act creates the Uganda Investment Authority (UIA), whose functions are, *inter alia*:

- “to promote, facilitate, and supervise investments in Uganda;
- to receive all applications for investment licences for investors intending to establish or set up businesses enterprises in Uganda under this Code and to issue licences and certificates of incentives in accordance with this Code.
- to secure all licenses, authorizations, approvals, and permits required to enable any approval granted by the authority t[o] have full effect;
- to do all other acts as are required to be done under this Code or are necessary or conducive to the performance of the functions of the authority” (Part II, Section 6).

In establishing the Uganda Investment Authority, the Act specifies that “The authority shall be a body corporate...capable of acquiring and holding property” (Part II, Section 2(3)). It appears that the UIA has chosen to broadly interpret this authority, which was meant to empower the UIA to acquire land for its own use as a body corporate, to include acquiring and holding property for allocation to investors (NGO B 2012). However, the authority was “never granted express power to acquire land and then either sell it to investors or [otherwise] allocate it to them” (NGO C 2012).

Given that the UIA is not explicitly legally authorized to acquire land on behalf of investors, it is perhaps unsurprising that there are no rules or regulations governing the UIA’s identification or acquisition of agricultural land for private investment. Neither does the Act itself specify any rules or

³ Although revisions to the Act have been proposed and forwarded to the Ministry of Finance, these revisions are awaiting “onward consideration by Parliament” (UIA 2012).

regulations governing the allocation of agricultural lands⁴ held by the UIA for private investment (UIA 2012). Significantly, however, the Act does state unequivocally that “[n]o foreign investor shall carry on the business of crop production or acquire or be granted or lease land for the purpose of crop production or animal production” (Part III, Section 10(2)). However, a company that is 49% foreign-owned could still register as domestic company and circumvent this rule.

Although the Act does not explicitly provide the UIA with the authority to acquire, hold, or allocate land to investors, it does provide the UIA with the authority to *facilitate* investor access to land:

The executive director shall liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary in order to [sic.] assist an investment licence holder in complying with any formalities or requirements for obtaining any permissions, authorizations, licences, land and other things required for the purpose of the business enterprise (Part III, Section 15(2)).

However, there are no codified rules or regulations governing the UIA’s authority to facilitate investor access to land. The Act does not specify whether the UIA is responsible for helping investors acquire land from private owners or from other government agencies that hold land, such as the ULC or the District Land Boards. Neither does the Act specify how the UIA should interface with the other government institutions that have played roles in recent land acquisitions, including the Ministry of Agriculture and the National Forestry Authority.

The Investment Code Act stipulates that the UIA should appraise the capacity of the proposed investment to contribute to “locally or regionally balanced socioeconomic development” when considering an investment application (Section 12(e)). It also explains that a license may contain provisions requiring the investor “to take necessary steps to ensure that the operations of his or her business enterprise do not cause injury to the ecology or environment” (Section 18(2)(d)). However, the Act does not specify any sanctions for non-compliance with this optional provision. Beyond these two guidelines, the Act does not stipulate any social or environmental safeguards that apply to agricultural investments in Uganda. The Act also does not cross-reference relevant environmental laws and regulations governing the project development in Uganda.

Neither does the Investment Code Act specify or cross-reference any compensation procedures for existing occupants on land acquired for private investment. The Land Act (Section 59(1)(e)&(f)) stipulates that compensation for land acquired by the government is paid based on the current market price of the land in the area of the land to be acquired, which is valued annually by the District Land Board. Following the completion of established procedures⁵— which include surveying the land, making a declaration by law that the land is suitable, and providing at least 15 days’ notice for all people with interest in the land to present their claims—the Uganda Land Commission pays

⁴ The UIA does, however, have criteria for allocating land within its Industrial and Business Parks. In addition to meeting the minimum requirements for an investment license, investments wishing to obtain “free land” from the UIA must meet two out of three additional criteria: (i) total investment per acre must exceed US\$ 1 million; (ii) a minimum of 80 percent of the total product value must be exported as value added products; (iii) local employment must support a minimum of 30 semi-skilled or 15 skilled workers per acre (UIA 2010c, reported in Zeemeijer 2011).

⁵ For further information on acquisition procedure, see “Fact 6/8/2011: The procedure through which Government can acquire private land” on the Uganda Land Alliance website (<http://ulaug.org/fact-sheets/>). Last access 11 April 2012.

compensation for the value of the land (Section 6(4)(b) of the Land Acquisition Act of 1965). The extent to which the UIA implements this legislation when acquiring land for investors will be discussed in the next section.

IMPLEMENTATION OF THE INVESTMENT ACT

This sub-section relies primarily on key informant interviews to illustrate the *de facto* role of the Uganda Investment Authority in allocating land for agricultural investment and to draw conclusions about the implementation of the Investment Code Act of 1991. The section analyzes the UIA's role in facilitating investor access to land—which is explicitly authorized by the Act—separately from the UIA's role in directly acquiring, holding and allocating land for large-scale agricultural investment—which is not explicitly authorized by the Act—before highlighting challenges related to both roles.

Land acquisition facilitation

The Investment Code Act does explicitly authorize the UIA executive director to “liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary” to help investors acquire land (Section 15(2)). However, no rules or regulations have been promulgated to govern the exercise of this authority. Interviews with both the UIA and the Uganda Land Commission provided some insights into the role of the UIA in helping investors acquire both government and private land for agricultural production.

Government land acquisition

When an investor requests UIA assistance in identifying land for an agricultural investment, the UIA may liaise with other government agencies to identify land that may be suitable for the investment (UIA 2012, ULC 2012). Several government agencies have recently been involved in allocating agricultural land for private investment in Uganda. These include the Uganda Land Commission, the District Land Boards, the Ministry of Agriculture, the Uganda Wildlife Authority, and the National Forestry Authority (UIA 2012, ULC 2012, Tumushabe 2003, Tumushabe and Bainomugisha 2004, Veit et al. 2008).

As previously mentioned, the Uganda Land Commission⁶ (ULC) is authorized to “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution” (Section 49(a) of the Land Act). Prior to the 1995 Constitution, which created the ULC (Section 238(1)), various government institutions held and managed government land. For example, the government, through the Ministry of Agriculture, previously maintained model farms of 1,000 to 2,000 acres at each of 52 District Farm Institutes. This land, along with all other land vested in or acquired by

⁶ District Land Boards are authorized to “hold and allocate land in the district which is not owned by any person or authority” (Section 59(1)(a) of the Land Act). However, there is no legal distinction between lands under the authority of the Uganda Land Commission and those subject to the authority of District Land Boards (Bogere 2011). Moreover, one legal expert interviewed indicated that, in his view, it was not the role of the Land Boards to allocate land—that is the responsibility of the Uganda Land Commission (NGO C 2012). Therefore, this discussion focuses on the ULC.

the government⁷, is now held and managed by the ULC (UIA 2012). As such, the UIA typically helps investors acquire government land through the Uganda Land Commission (UIA 2012, ULC 2012).

In response to an investor's request for land, the UIA may write a letter of recommendation to the government agency that formerly managed lands suitable for the investment (e.g. the Ministry of Agriculture) requesting that the agency authorize the ULC to transfer the title to the investor as a leasehold (UIA 2012, ULC 2012). The UIA recommendation is based on the information presented in the investment license (e.g. financial qualifications, technical qualifications, and experience in the sector). The ULC then consults its registry of government properties to identify properties that might meet the investor's needs (ULC 2012).

There are no specific criteria or procedures for identifying government land that would be suitable for a given investment. At a minimum, the ULC considers the project profile, including the size of land required and the proposed use of the land, to determine which properties might be suitable. Once a suitable property has been identified, then the agency writes a letter to the ULC requesting them to permit the investor to lease the land (UIA 2010).

If the ULC approves the agency request, the ULC would then begin the process of transferring the title to the investor as a leasehold, typically for up to 49 years. As part of this process, a site visit is required to determine the current land use and identify any "squatters" (i.e. tenants) occupying the land (ULC 2012). As described above, these tenants must either be resettled or compensated before the land can be transferred to the investor. While the investor is responsible for paying the compensation, various government agencies, including the ULC and the Chief Government Valuer, facilitate this process. However, it is not clear which authority has ultimate authority over the resettlement or compensation. Investors also typically pay ground rent⁸ for the land (ULC 2012).

Private land acquisition

Given that only some 15% of land in Uganda is considered "government land," including forest reserves and national parks, it is unsurprising that investors would be interested in acquiring *private* land (NGO B 2012). The UIA maintains a database of private landowners who are interested in selling or leasing their land to investors. Using this database, the UIA "links investors to landowners" to help investors identify private land suitable for their proposed investment (UIA 2012, Mitti 2011). The UIA does not hold rights to these properties. Rather, it acts as a broker by connecting investors and land owners, who privately negotiate the terms of lease or sale of the land.

⁷ The ULC (2012) considers that all national parks, forest reserves, and other protected areas are also 'government land' that can be allocated to investors. A thorough analysis of the legal challenges inherent in allocating protected areas for crop or livestock production is beyond the scope of this paper. However, the Constitution clearly states that the government is only empowered to hold such lands "in trust for the people...for ecological and touristic purposes for the common good of all citizens" (Section 237(2)(b)). It is also worth noting that recent legal challenges to the degazettement of protected reserves (e.g., Pian Upe Wildlife Reserve and Butamira Forest Reserve) to provide land for agricultural investments have confirmed that the government's authority as trustee of such lands does not include the power to degazette them for private investment (Tumushabe 2003; Tumushabe and Bainomugisha 2004; NGO A 2012).

⁸ The Land Act (Section 31(3) requires "the tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall be determined by the board", i.e. the District Land Board. Section 31(5) limits this ground rent to a maximum of one thousand shillings per year regardless of the area or location of the land.

When an investor requests the UIA's assistance in acquiring private land, the UIA prepares a "short list" of properties tailored to meet the investor's needs based on the information provided in their investment license application and/or the Land Request Form (UIA 2012). Typically, the UIA consults with the Ministry of Agriculture to determine which areas of the country are best suited for growing different crops. The UIA also relies on local knowledge of which crops grow best in different areas to identify properties that would likely suit the investor's needs. Beyond this desk review, investors are expected to complete their own site visit and any other investigations (e.g. soil sampling) necessary to determine the suitability of the land for their proposed investment (UIA 2012).

Once a suitable property has been identified, the investor must negotiate directly with land owners (and tenants, where relevant) on the price and terms of the lease or title transfer (NGO C 2012; UIA 2012). The Land Act of 1998 Cap 227 (Section 29) recognizes the rights of "bona fide" and "lawful" tenants to occupy and utilize lands held by a registered owner (i.e. title holder). The 2010 Land (Amendment) Act further reinforced tenant rights on *mailo* land (Terra Firma 2011).

A thorough discussion of the statutory protections granted to tenants (occupants) is beyond the scope of this study. However, it is worth noting that, according to the Land Act, all tenants are entitled to tenure security (Article 31(1)) and to the right of first refusal where the owner wishes to sell land occupied by tenants (Article 35(1) and Article 35(2)). In practice, "bona fide" and "lawful" occupants are entitled to compensation or resettlement when an investor wishes to acquire the lands they occupy (UIA 2012). Interviews with both UIA and Uganda Land Commission confirmed that land identified for investment must be cleared of "squatters" before the investor can acquire the land (Box 1; UIA 2012, ULC 2012).

**Box 1: Loaded Vocabulary—“Squatters” and “Encroachers”
vs. “Occupants” and “Tenants”**

The use of the term “squatters” or “encroachers” to refer to occupants or tenants suggests that tenant rights may not be adequately enforced in the context of land acquisition for investment. It “illustrates the hard-line position that (some) landowners take towards people who have established historic land rights over their land” (Terra Firma 2011). In fact, occupants displaced without compensation by recent high profile investments have disputed their classification as “squatters” rather than “bona fide” or “lawful” occupants (see, for example, Grainger and Geary 2011).

As Grainger and Geary (2011) note in their case study on the evictions that made way for the New Forests Company timber plantations (see below), the word “encroachers” or “illegal encroachers”

...is a dangerously loaded term because it pre-judges people’s rights and dehumanizes them, making it easier to justify violent tactics. And it is arguably a misleading term too, because the people maintain that they did in fact have lawful entitlement to the land and were testing that argument in ongoing legal cases. (Page 4)

It is troubling, then, that both the UIA and the ULC used the term “squatters” in recent interviews (UIA 2012, ULC 2012, Mitti 2011).

The UIA helps the investor identify legitimate owners and “bona fide” or “lawful” occupants by conducting a title search at the Ministry of Lands (UIA 2012). However, only about 20 percent of all land in Uganda is registered (NGO B 2012). Uganda is also estimated to have over 8,000 fake titles, making it difficult to determine legitimate land owners even if the land is registered and a title can be located (US DOS 2011, World Bank 2011).

As such, it is unsurprising that “businesses generally deem acquisition of land with a ‘clean title’ as one of their biggest challenges” (US DOS 2011). Moreover, “the bureaucracy in land departments, land boards and Registrars of titles office is such that it is near impossible for a genuine investor to get the land required for investment even if it is just an acre” (NGO C 2012). For all these reasons, many investors thus prefer to acquire lands from the government rather than from private owners. This may be why the UIA started acquiring land itself for allocation to investors (NGO C 2012).

While it is the responsibility of the investor to pay compensation to these occupants, the UIA reportedly engages the expertise of the Chief Government Valuer to inspect the property and determine its value for the purpose of setting compensation fees (UIA 2012). Officially, the “Government Valuer has no role in private land acquisition,” which “is between willing buyer and willing seller” (NGO C 2012). However, the Valuer may give an indicative price to the current owners for the purpose of facilitating a transaction with an investor (NGO C 2012). Investors typically retain lawyers to handle compensation negotiations with occupants (NGO B 2012). The Uganda Land Commission may also negotiate on behalf of the investor with the tenants to ensure the investor pays a fair compensation value (ULC 2012).

Once the investor has compensated any occupants and agreed on the price and terms of the sale or lease with the owner(s), the investor is eligible to apply for a transfer of the lease or title. The Ministry of Lands published a detailed newspaper advertisement that describes the procedures and fees for land registration services in Uganda⁹. The World Bank’s “Doing Business” website¹⁰ also provides details on this process (World Bank 2012a). Since the UIA is not directly involved in this process, no further discussion is merited here.

Direct land allocation by UIA

Despite lacking clear legal authority to acquire land for investors, the UIA has acquired several rural properties¹¹ for allocating to agricultural investors (NGO C 2012; UIA 2012). Although the UIA does not use the term “land bank” to refer to these properties, the Draft National Land Policy does envision creating such an institution (Box 2). The UIA does maintain a registry of lands acquired by UIA and allocated to investors. This registry specifies the terms of the land deal, including the property name, name of investor, effective date, land area, location, period of lease, premium paid, annual ground rent, and date the ground rental payment is due annually. Although this registry was made available for this research, these data remain private at the request of the investors (UIA 2012).

Box 2: Proposed Creation of a “Land Bank”

The final version of the Draft National Land Policy (Section 89(1)(e)) calls for the government to “assemble land and allocate it through a land bank” to facilitate private investment (MLHUD 2011). The draft policy does not specify the management or activities of the proposed land bank. Nonetheless, interviews with government officials and civil society leaders knowledgeable about the draft policy suggest that the land bank would be managed by either the UIA or the Uganda Land Commission, which is responsible for managing government land (UIA 2012, ULC 2012). The land bank would hold titled land purchased proactively (i.e. without a specific investment application) by the government for allocating to future investors (NGO B 2012). The government would also ensure the land is free from occupants (ULC 2012).

According to the UIA, the Authority can purchase land directly from individuals, communities, or cooperatives wishing to sell land that is “unencumbered (free of squatters)”, properly titled, and free of conflict (Mitti 2011). Once the UIA has purchased the land, the titles are “automatically” converted to freehold (UIA 2012). Since 1997, the UIA has purchased six rural properties from private individuals using government funds. In total, the UIA has purchased some 25,570 acres (6 parcels) of agricultural land from private land owners, of which 6,460 acres (4 parcels) were freehold; 12,800 acres (1 parcel)

⁹<http://ulaug.org/new/wp-content/uploads/Procedures-Fees-for-Land-Registration.pdf>

¹⁰ <http://www.doingbusiness.org/data/exploreeconomies/uganda/registering-property>

¹¹ Since this research is focused primarily on land for agricultural production, all figures relevant to industrial and business parks, which are primarily urban developments designed to promote the ICT, agro-processing, and mining industries, will be omitted from the analysis (UIA 2011).

were leasehold; and 6,200 acres (1 parcel) were *mailo* land¹² before they were purchased by UIA (UIA 2012c). The parcels range in size from just 20 acres to 12,800 acres, with an average of 4,262 acres.

The prices paid by the UIA for these lands vary widely and do not reflect average market prices¹³. On average, the UIA paid private land owners \$296/acre for these properties, with a high of \$728 for land in Kasangati and a low of \$19 for Masindi farmland. According to the UIA, the price of an acre of farmland varies between roughly \$330 in Mubende and \$500 in Mukono (UIA 2012). However, the UIA paid just \$57/acre for acquiring 6,205 acres of farmland in Mubende.

Moreover, lands acquired by the UIA are not always unencumbered of legal or illegal occupants¹⁴ (UIA 2012c). In such cases, the UIA works with the local council (local administrative authority) to identify tenants eligible to receive compensation (Mitti 2011, UIA 2012). The Chief Government Valuer determines the value of compensation based on the values set annually by the District Land Board for crops and other property (UIA 2012). The compensation value paid to tenants includes the value of crops and improvements on the land (e.g. house or other structures), plus a disturbance allowance of 30% of the value of the compensation (UIA 2012).

The total value assigned to any crops grown on the property depends on the terms of any lease agreement governing the occupant's rights. Where a lease agreement will be taken over by the new investor, the current lessee is entitled to the value of their crops for the remaining term of the lease. Where occupants do not possess a lease agreement or other form of legal documentation of their rights (e.g. title), they are entitled to crop compensation for the value of one year's harvest (UIA 2012).

Investors must hold a valid investment license¹⁵ to be eligible to acquire agricultural land from the UIA (UIA 2012, UIA 2012b). Licensed investors are free to complete an online "Land Request Form" that specifies their investment license number, intended land use (agricultural, industrial, or other), the size of land required, the type of "terrain (e.g. highland, flat, swampy etc)", preferred tenure status (freehold, leasehold, or *mailo*), offer price, preferred location, service requirements (power, water, telephone, other), and acquisition type (purchase, lease, joint venture) (UIA 2012b). Applications for agricultural land are considered on a case-by-case basis; there are no standard criteria for determining which investors can acquire UIA land (UIA 2012). Suitable land is identified based on the specifications in the investment application, including the area and type of land required (UIA 2012).

In addition, since 1999 the UIA has been required to seek Cabinet approval for leases to foreign agricultural investors above 50 acres for crop or animal production (UIA 2012, US DOS 2011). This requirement stems from the government's interest in promoting skills transfer to smallholder

¹² While the UIA shared a hard copy of the properties it holds for allocation to investors (UIA 2012), no information on these rural properties appears to be available on the UIA website (UIA 2012a).

¹³ All prices were converted to USD in the year of acquisition using historic exchange rates from <http://www.gocurrency.com/v2/historic-exchange-rates.php>.

¹⁴ See Section 29 the Land Act for an explanation of "bona fide" and "lawful" occupants.

¹⁵ The Act does stipulate the minimum information that an investor seeking an investment license must provide in their application. This includes, *inter alia*, the proposed business name and address, the legal form of the business, the nature of the proposed business activity, the proposed location, the estimated number of persons to be employed, the qualifications and experience of project management and staff, and "any other information relating to the viability of the project" (Section 11(1)). Before awarding an investment license, the Act requires the UIA to "carry out an appraisal of the capacity of the proposed business enterprise to contribute to" a number of objectives, including employment, advanced technology introduction, and "locally or regionally balanced socioeconomic development" (Section 12).

outgrowers through 50-acre model farms. Although the UIA has requested that this requirement be repealed, it does not appear to have stopped foreign investors from acquiring land for agricultural production—which is explicitly prohibited by Part III, Section 10(2) of the Act (UIA 2012).

The six agricultural properties owned by the UIA have all been leased to investors, some of them foreign, typically on 99 year leases¹⁶ (UIA 2012d). As specified in the UIA land registry, investors most often pay a premium for acquiring the land in addition to an annual ground rent for the duration of the lease (UIA 2012d). The UIA “sets standard prices according to the Chief Government Valuer’s guidance” (UIA 2012). The “government price” so determined sometimes varies slightly from the market price (UIA 2012). On average, investors have paid \$291/acre premiums to acquire UIA agricultural properties, with a range of \$16 to \$693 per acre. Annual ground rents (exclusive of value added tax) vary from \$0 to \$676 per acre, with an average of \$197.

Notably, these premiums are generally below the cost UIA paid to acquire the properties. Across all five properties for which both cost and premium data are available, the UIA lost approximately \$502,950 in the process of acquiring and allocating private agricultural lands to investors. However, if annual ground rents are paid according to the terms specified¹⁷ for the three properties for which all data are available, the total net present value¹⁸ to the UIA is \$4.1 million, or roughly 0.24% of net official development assistance and official aid received in 2010 (UIA 2012d, World Bank 2012b).

CHALLENGES RELATED TO POLICY AND PRACTICE

Firstly, and perhaps most troublingly, the UIA has acquired land and allocated it to investors despite the lack of any clear legal authority to do so (NGO B 2012; NGO C 2012). Only under the broadest interpretation of the UIA’s authority to acquire and hold land as a body corporate might this activity be justified (NGO B 2012). Moreover, there are currently no policies, laws, or regulations in place to govern the UIA’s authority to acquire, hold, and allocate land to investors. This makes it difficult to determine whether these transactions followed legal procedures for government land acquisition. For instance, it is not clear whether these allocations of government land followed the public notice and compensation procedures specified in the Land Acquisition Act of 1965 (see further discussion below) or the legal requirements governing the disposal of public assets as codified in the Public Procurement and Disposal of Assets Act of 2003. The “complete lack of [a] legal framework and accountability mechanism” leaves this process vulnerable not only to poor management, but also to “corruption and injustice” (NGO C 2012).

Secondly, the UIA registry clearly indicates that it has allocated large areas of land to foreign investors for crop production—which directly contravenes Part III, Section 10(2) of the Investment Code Act. The UIA reports quarterly on the number of projects approved by sector (e.g. agriculture,

¹⁶ The length of leases for two properties was unavailable.

¹⁷ UIA records indicate only one investor has paid their ground rent in full for the life of the lease, while another has paid through 2007; no data were available on the status of ground rents paid by the other investors (UIA 2012f).

¹⁸ The following assumptions were used to calculate the net present value: the term is 99 years; the discount rate applied was 14%, which is the estimated rate used in 2010 by the central bank of Uganda (CIA 2012); annual ground rent payments were summed over the total acreage for each investment; the cost of land purchased by the UIA and the premium paid by investors to UIA occurred at the beginning of the first term.

forestry, etc.) and by investor country of origin. However, beyond the UIA registry, no official data on government or private land acquired by approved domestic or foreign investors are available (UIA 2012). Thus, it is not possible to determine how much land foreign investors have acquired for agricultural production in Uganda. However, recent research suggests that there are several foreign companies operating agricultural production investments in Uganda (Land Matrix Portal 2012). Furthermore, by allowing companies that are up to 50% foreign-owned to register as domestic entities, the Investment Code Act leaves investors with ample room to circumvent restrictions on foreign land acquisition (NGO B 2012).

Thirdly, the Investment Code Act and the Land Act, among other relevant laws, assign unclear and sometimes overlapping authorities to different government institutions that in practice play a role in the process of transferring land to investors. There are no established procedures governing the authorities of either the UIA or the ULC¹⁹ to manage government land (Bogere 2011). Nor are there any regulations to guide the interaction of different government agencies, for example in identifying government land suitable for a particular investment (UIA 2012; ULC 2012). Moreover, the District Land Boards also have the authority to “hold and allocate land in the district which is not owned by any person or authority”, but it is not clear how the Land Boards exercise this mandate with respect to the UIA or the ULC (Section 59(1)(a) of the Land Act).

At a minimum, the lack of legal and procedural clarity on the duties of the UIA and other government authorities in allocating government land to investors creates opportunities for inefficiencies—and perhaps even corruption (Bogere 2011). In fact, a recent audit of the Uganda Land Commission found several cases where the same parcel of government land was allocated to two or three different investors with different lease titles²⁰ (Bogere 2011). Some investors apparently go directly to the President of the Republic to secure land (NGO B 2012; ULC 2012).

Fourthly, the absence of clear and transparent procedures for the UIA and other relevant government agencies to facilitate investor access to land makes it difficult to monitor this process and ensure it adheres to the letter and spirit of the law. For example, there are no criteria for assessing the technical feasibility of proposed investments or determining which investors should have preferential access to lands held by the UIA or other government agencies (UIA 2012; ULC 2012). The UIA apparently consults with the Ministry of Agriculture on the feasibility of agriculture projects, but details on this process were unavailable (UIA 2012).

The lack of clear procedures for identifying and compensating legitimate claimants to either private or government lands allocated for investment is particularly problematic (NGO B 2012). The Investment Code Act does not specify how to determine who is eligible to receive compensation, the criteria for determining the value of compensation, or the actor responsible for implementing (or monitoring) this

¹⁹ Although a thorough investigation of the authorities of the ULC is beyond the scope of this report, it should be noted that a recent audit reported a number of shortcomings in the ULC’s performance (Bogere 2011). In particular, the audit highlighted the lack of legal clarity over the authority or ownership of different types of government land and the “lack of an effective working and collaborative relationship between the Commission and other partner institutions like local governments” (Bogere 2011). In addition, the ULC has not followed the public advertisement procedures mandated by the Public Procurement and Disposal of Assets Act.

²⁰ The report found that the ULC does not work effectively with “other partner institutions” and specifically references local governments and District Land Boards (Bogere 2011).

process. In practice, numerous actors are reportedly involved in the compensation process, including the investor, the UIA, the ULC, the Chief Land Valuer, and District Land Boards²¹, and various other local authorities, including the local council (UIA 2012, ULC 2012).

The situation is further complicated where investors acquire government land, as the government authority with rights to use this land may also be involved in the compensation process—despite lacking the legal authority or competency to do so (NGO B 2012). In some cases, the compensation process has apparently been handled by the Office of the Prime Minister (NGO B 2012). Regardless of which actors are involved, the lack of transparency and accountability governing the identification and compensation of rights holders risks undermining the legitimate rights of owners and especially occupants (NGO B 2012, NGO A 2012).

Finally, the lack of publically available data on the land acquisition process and its outcomes undermines effective monitoring and increases the likelihood of abuse. The UIA does not have sufficient resources to monitor even the most basic information about approved investments. With the exception of the six rural properties the UIA has directly allocated to investors, neither the UIA or the ULC collects data on the amount of land investors have acquired for agricultural production or the processes through which investors have acquired farmland (UIA 2012; ULC 2012). Although the UIA shared its registry of six properties for this research, there is no map or publically available registry of government lands allocated to investors (UIA 2012; ULC 2012). Nor does the UIA monitor the outcomes of these investments in terms of, for example, job creation, income generation, or rural development. In fact, since its creation in 1991, the UIA has not been able to determine whether approved projects were actually operational²²(Mitti 2011). This makes it impossible to determine whether approved projects have, at a minimum, met the objectives specified in the Act, including job creation and “locally or regionally balanced socioeconomic development” (Section 12(c)(e)).

The lack of data on the land acquisition process and its outcomes also precludes effective monitoring that could inform current policy debates on the role of foreign investment in developing Uganda’s agricultural sector. It also obscures aggregate statistics on how much farmland foreign investors have acquired in contravention of the Investment Code Act. Furthermore, the lack of publically available data on the land acquisition process increases the likelihood that such transactions will be subject to manipulation by powerful interests (NGO C 2012). Making the land acquisition process more transparent—especially for government lands, which should be used for the benefit of all Ugandans – will be particularly critical to ensure that agricultural investment leads to sustainable and equitable development in Uganda.

²¹ The Land Act (Section 59(1)(e)(f) authorizes the District Land Boards to “compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed” on an annual basis.

²² New funding from the European Union and UNIDO is meant to help the UIA establish the status of the roughly 5,000 investments licensed since UIA opened its doors in 1991 (Mitti 2011).

Way forward

Based on the information presented above, this section will aim to identify reforms to laws and practices that improve the implementation and outcomes of large-scale agricultural production investments in Uganda. The primary goal of the suggested reforms is to ensure that agricultural investments reduce rural poverty in Uganda and advance the interests and needs of existing land holders. Given that this research is based heavily on literature and interviews with knowledgeable stakeholders, the suggested reforms should be subjected to further research and public debate (NGO C 2012). Still, it is hoped that these suggestions will inform the debate on agricultural investment in Uganda to ensure these projects contribute to sustainable and equitable development.

CLARIFY THE RIGHTS OF FOREIGN INVESTORS TO ACQUIRE FARMLAND

To begin, it is important to recall that the Investment Code Act explicitly prohibits foreign land acquisition “for the purpose of crop production or animal production” and instead encourages foreign investors to “provide material or other assistance to Ugandan farmers in crop production an [*sic*] animal production” (Section 10(2)(a)). The goal of this provision is thus to use foreign investment to promote rather than displace domestic production. This is a laudable policy objective that is arguably justified given the limited community benefits that have been derived from large-scale land acquisitions globally, particularly in the first few years of operation (Deininger, et al. 2011).

Nonetheless, foreign investors have acquired large areas of farmland in Uganda despite the Act’s rather generous definition of “domestic” investments, which includes companies with up to 49% foreign ownership. This suggests that the political will required to enforce this provision is lacking. Moreover, given that the UIA has difficulty monitoring the most basic information about approved investments—such as whether they are currently operating—it would be difficult, if not impossible, to enforce this provision on private lands.

Therefore, there is a need to produce an overarching policy on land for foreign investment that is based on sound analysis and public debate (NGO C 2012). This is particularly urgent given that foreign farmland acquisitions continue in the absence of an overarching land policy—the government still has not adopted the Draft National Land Policy after more than a decade of debate. Through the policy development process, the government needs to clarify whether foreign investors will be allowed to acquire land for agricultural production and, if so, under what conditions.

Ideally, all investors—whether domestic or foreign—interested in targeting direct crop or livestock production should be encouraged to create joint ventures and outgrower schemes with existing land owners and occupants. These types of investment are more likely to facilitate skills and technology transfer to the local population and will avoid displacing existing land holders, with potentially significant negative impacts on their livelihoods. Promoting investment in the projects that seek to increase the productivity of existing land holders would be in line with current provisions of the

Investment Code Act that encourage foreign investors to assist domestic producers. Also, the Act's current emphasis on crop and meat processing as priority areas for investment could be reinforced in negotiations with potential investors to provide domestic producers with a reliable market.

CODIFY THE PROCEDURES FOR INVESTORS TO ACCESS FARMLAND

To the extent that (domestic or foreign) investors retain rights to directly acquire land for agricultural production through lease or purchase, the government needs to urgently develop and codify procedures for eligible investors to acquire farmland. These procedures should specify which parties are responsible for implementing and overseeing each step of the process and elaborate:

- i. The types of land that the UIA can help investors acquire (e.g. public or private, and if public, whether only lands held by the ULC or also lands held by the District Land Boards);
- ii. A process for making information about both public and private landholdings available for investment publically available, possibly through a registry;
- iii. Transparent procedures for investors to identify lands appropriate to specific investments;
- iv. Detailed criteria for determining the eligibility of interested investors to acquire farmland, including specific minimum financial and technical qualifications;
- v. A transparent, up-front process for establishing all claims on lands proposed for investment—whether public or private—compensating occupants, and resolving any existing disputes;
- vi. The type of rights that investors can acquire on public vs. private land, including whether these rights can be transferred and what happens to the land in case of investor bankruptcy;
- vii. A model contract for transferring land rights to an investor that specifies, inter alia, the type of rights being transferred, the terms of the transfer (e.g., purchase price, annual rent, taxes), the identity of existing rights holders and any compensation paid or resettlement plans;
- viii. Mechanisms for addressing any disputes that arise over any land transfer or compensation;

Until such time as the necessary amendments and regulations are in place, it is recommended that all government agencies discontinue further public land allocations to either domestic or foreign investors for agricultural production. Regulating the acquisition of private land will be more difficult. However, the UIA could selectively approve investments in agricultural processing or outgrower schemes and disallow production investments. Another way to regulate land acquisition for agricultural production would be to require interested investors to submit a detailed cost-benefit analysis of their proposal for government review. Such an analysis would need to compare existing land uses—including the benefits existing users derive from the land—to the proposed land use. Where direct land acquisition—through lease or purchase—can be justified given expected costs to existing land holders, the process needs to be transparent and consistently regulated and monitored.

FOCUS GOVERNMENT EFFORTS ON PROVIDING PUBLIC GOODS TO FACILITATE INVESTMENT

At the same time, arguments for the government—whether through the UIA or another agency—to proactively assemble land in a “land bank” for investors require further justification (Private Consultant 2012). Identifying, acquiring, holding, and allocating land for investment is a time- and capital-intensive process that requires adequate information on, *inter alia*, the suitability of a given piece of land to the financial and technical specifications of an investment proposal; the legitimate rights of current occupants and owners; the value of the land and any improvements on it; and the financial and technical qualifications of proposed investors. The evidence presented above suggests that while various government agencies are involved in one or more of these tasks, overall government capacity in all of these faculties remains limited.

Moreover, experience in neighboring Tanzania suggests there are a number of challenges associated with the government proactively acquiring land for subsequent allocation to investors. A recent World Bank review of the Tanzanian experience found that the government’s use of expropriation to acquire land for investment has been accused of “pushing out poor indigenous landowners to provide land cheaply to the rich,” “often with delayed or insufficient compensation” for the displaced (Deininger, et al. 2011, p. 106). In addition, “relying on expropriation as the primary means of making land available to investors...makes land supply subject to capacity constraints in the public sector and runs the risk of embroiling investors in political disputes” that could create costly delays in project implementation. It also precludes joint ventures that could transfer technology and skills to local people through genuine participation in farm operations. The authors conclude that “[a]s long as landowners can be identified and a regulatory framework to guide the [land acquisition] process and uphold basic standards is in place, the private sector will often be able to negotiate more flexibly and quickly than the government” (Deininger, et al. 2011, p. 106).

Therefore, the government should focus its limited time and resources on creating an enabling legislative and institutional framework that supports a fair and transparent land acquisition process. This framework should include an accurate and transparent land information management system, a clear process for investors to access land—whether through lease, purchase, or joint venture—and public education to ensure all landholders are aware of their rights (Deininger, et al. 2011; Private Consultant 2012). Instead of compiling land for investors, the government should focus on clarifying, recording, and mapping public and private land rights for the entire country to allow potential investors to quickly identify legitimate land holders and negotiate with them directly (Private Consultant 2012). Given information and power imbalances between local land holders and potential investors, land owners and occupants should also have access to negotiation assistance from third parties, such as lawyers or civil society organizations (HLPE 2011).

In fact, the World Bank, through the \$70 million second Private Sector Competitiveness Project (PSCP), has since 2005 been supporting the government to index and scan all land titles and cadastral sheets and survey all government land (World Bank 2004). However, progress in the latter has been slow. As of December 31, 2011, all existing land titles and cadastral sheets had been scanned and indexed, but

only 5% of government land had been surveyed (Kibirige 2012). Under the PSCP, the government has also streamlined the land and business registration processes.

While these are important reforms, the best way to attract legitimate agricultural investors may be to resolve existing land disputes and systematically record land rights to address investors' primary complaint—the difficulty of obtaining clean title to land in Uganda. Thus, even after all the land title and cadastral sheets are scanned and all government land surveyed, the government will need to undertake a major investment in resolving multiple claims and other land disputes. Through the PSCP, the government has already completed pilot registration projects in at least five districts, and the World Bank recently extended the PSCP to ensure that a comprehensive land information system can be completed (Kibirige 2011; World Bank 2012c). The process of resolving land disputes and systematically recording land rights will no doubt be time and resource intensive, but it is absolutely necessary to ensure that the rights of both investors and local landholders are respected.

CLARIFY THE AUTHORITIES OF RELEVANT AGENCIES TO FACILITATE LAND ACCESS FOR INVESTORS

It will also be important to clarify the roles and responsibilities of the UIA vis-à-vis other government agencies with respect to land acquisition for agricultural investment. This clarification could be accomplished through amendments to the Investment Code Act, the Land Act, and other relevant legislation, or through the promulgation of new laws that regulate all of these agencies. Distinguishing the authorities of the ULC, the District Land Boards, and the Ministry of Lands in will be particularly critical to align agency competencies and responsibilities.

For instance, given its mandate to manage government land, the ULC may be a more appropriate host of a registry of public lands available for investment. The role of the District Land Boards in allocating district land for investment also needs to be clarified. Given that the Land Act does not allocate any land exclusively to the Land Boards, it may be more appropriate for them to focus on increasing the land rights of existing users in the district (NGO C 2012). Likewise, the Ministry of Lands is likely better placed than the UIA to advise on matters related to the identification and compensation or resettlement of legitimate owners and tenants (NGO B 2012). Due to the low rate of land registration and incidence of fraudulent titles, additional guidance will likely be required for both investors and the Ministry to ensure a fair and standardized process for identifying existing rights and calculating fair compensation. To avoid challenges related to the multiple allocation of government land and ensure that the rights of existing land owners and tenants are respected, the roles of each of these agencies should be clarified prior to new farmland acquisitions for investment.

Related to this, the government needs to immediately clarify the different types of public land rights and specify what duties and authorities different government entities hold in relation to these rights. Neither the Constitution nor existing legislation clearly defines the terms “government land,” “public land,” or “local government land”; in practice the terms are often used interchangeably (Bogere 2011). There is also no distinction of rights and responsibilities among the various agencies that hold, manage, or allocate non-private lands, including the ULC, the District Land Boards, and the various ministries

and agencies that in practice manage government land, such as the National Forestry Authority and the Uganda Wildlife Authority (MLHUD 2011, Section 24).

The Draft National Land Policy proposes a number of reforms to address these shortcomings, including statutory definition of “government land” and “public land” (Section 25(a)). The Draft Policy also proposes legislation to, *inter alia*, “define the manner in which government or local government will hold and manage such land taking into account the principles of public trusteeship, transparency and accountability” (Section 26(ii)) and “define the terms and conditions under which such land may be acquired, used or otherwise disposed of by the government and local governments” (Section 26(iii)). The Draft Policy recommends that the government “adjudicate, survey, register or title these lands in the names of Uganda Land Commission or Local Governments” (Section 27(i)). These are urgent reforms that are particularly important in the context of large-scale land acquisition for agricultural investments.

INCREASE THE TRANSPARENCY OF ALL INVESTMENTS IN AGRICULTURAL LAND

Increased transparency is urgently required to ensure that land acquisitions follow standard procedures and to enable future monitoring and analysis of investment planning and implementation. The government should make information about land available for investment publically available to all interested parties—not just investors. Before any government land is offered for private investment, a public land use planning process should be implemented ensure that the proposed land use change is in the public interest. In addition, the Ministry of Land should publish an inventory of existing claims to the land to ensure that legitimate rights holders are entitled to participation in any joint venture or compensation (Global Witness, et al. 2012).

Non-proprietary information about all approved investments should also be made public, particularly those involving government land acquisition. This follows the conclusions of a recent global review of the information required to improve transparency in large-scale land acquisitions (Global Witness, et al. 2012). Based on this review, the following information should be made public about all approved investments:

1. The identities and responsibilities of all Parties involved in the investment
 - a. Names and affiliations of all parties involved in the investment
 - b. Financial intermediaries and investors, capital investments and deposits
2. Rights, responsibilities, and obligations of the implementing Party
 - a. Land area and location and nature of rights awarded
 - b. Business plan (excluding any proprietary information)
 - c. Terms for local employment and other forms of benefit sharing
 - d. Cost-benefit analysis
 - e. Value of land, rents, and fees
 - f. Tax liability
 - g. Monitoring and reporting obligations and penalties for non-compliance

- h. Dispute resolution mechanisms and jurisdiction(s) applicable for foreign investments
 - i. Closure plans
3. Impact assessment and mitigation plans
- a. Environmental impact study/assessment and management plan
 - b. Other impact assessments (e.g., socio-economic) and mitigation plans
 - c. Resettlement and compensation plans

In addition, the UIA and other appropriate authorities should regularly collect data to monitor the contribution of approved investments to, *inter alia*, job creation, agricultural production, and socio-economic development. The UIA could also work with the National Environmental Management Authority to publish environmental monitoring data and thereby ensure approved investments do not harm the environment. This type of monitoring would be in line with the UIA's responsibilities as outlined in current provisions of the Investment Code Act (e.g., Section 12(c)&(e) and Section 18(2)(d)). Ideally, the Ministry of Lands or another competent authority should also publish information on the resettlement and compensation of any existing landholders.

The overall lack of transparency that currently surrounds land acquisition for agricultural investments in Uganda complicates credible analysis of investment outcomes and increases opportunities for fraud and corruption. By making these data public, the government and investors can manage expectations about investments, and citizens can hold both investors and government authorities accountable to their responsibilities. This information can also be used to inform policy debates about the contribution of domestic and foreign investment to national policy objectives.

Conclusion

In conclusion, this study has revealed a significant gap between existing laws and policies governing large-scale land acquisition for agricultural investments, on the one hand, and the actual processes that have been applied to recent investments, on the other. Despite lacking clear legal authority or codified procedures, the Uganda Investment Authority has directly acquired agricultural properties for allocation to private investors. Moreover, the UIA has allocated at least some of this land to foreign investors for commercial agricultural production, which is in direct contradiction to the Investment Code Act. The UIA has also assumed various roles and responsibilities that appear beyond its core competencies, including helping investors identify legitimate owners and occupants.

Private investment in Uganda's agriculture sector can have an important role to play in transferring new technologies to local farmers, increasing rural incomes, and promoting balanced socio-economic development. However, a number of reforms to existing policy, law, and practice will be necessary to ensure that this investment leads to sustainable and equitable development in Uganda. In particular, investors should be encouraged to create joint ventures and outgrower schemes with local land owners and occupants to facilitate skills and technology transfer and avoid displacing existing land holders. Where direct land acquisition is justified, detailed rules and regulations will need to be codified and implemented to clarify the role of the UIA and other government institutions in helping investors acquire agricultural land. The government needs to complete a comprehensive recording of rights to public and private lands and resolve existing land disputes to protect the rights of both existing landholders and investors. The UIA also needs to work closely with the Ministry of Lands, the Uganda Land Commission, and the District Land Boards to ensure that the rights of existing land owners and occupants are consistently recognized and enforced during the investment planning and implementation process. Finally, information about all investments –particularly those involving government land acquisitions—should be made publically available to support on-going monitoring and reform and to decrease opportunities for abuse.

Only through reforms that promote investments in existing farmers and clarify the roles of all parties can Uganda ensure that these investments lead to sustainable and equitable development.

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