

'Land grabs' in Africa: can the deals work for development?

Policy pointers

■ **Large land acquisitions** have a deep, lasting effect on livelihoods, food security and the future of agriculture, so recipient countries need to foster strategic thinking, vigorous public debate and government responsiveness to public concerns.

■ **Effective safeguards in** national law, and skilfully and transparently negotiated contracts, are key to ensure secure local land and water rights, inclusive business models, specific and enforceable investment commitments, robust social and environmental safeguards, and local food security.

■ **Development agencies can** help by creating space for public debate, strengthening host government capacity to negotiate and civil society capacity to scrutinise, supporting efforts to improve land governance, and ensuring that international rules establish robust safeguards and are accompanied by effective monitoring and enforcement.

For many millions in the developing world, land is central to livelihoods, food security, even identity – the result of a direct dependence on agriculture and natural resources. It is not surprising, then, that a recent wave of large-scale land acquisitions in poorer countries has sparked a major debate. Through these acquisitions, interests in richer countries are buying or leasing large tracts of farmland for agricultural investment in Africa, Central and Southeast Asia, Eastern Europe and Latin America. With some deals involving hundreds of thousands of hectares, these investments have been dubbed 'land grabs' by the media. But this is too simplistic. Depending on the way they are structured, these investments can either create new opportunities to improve local living standards, or further marginalise the poor. An analysis of this complex and shifting situation, focusing on Africa, lays out key trends, drivers and main features, and outlines how to make the renewed momentum in agricultural investment work for local development and livelihoods.¹

International land acquisition: trends and drivers

Large-scale, international land acquisitions have recently been much in the news. But quantifications of the phenomenon, such as its scale and whether it is in fact on the rise, are still thin on the ground. Some aggregate estimates of scale, based on media reports of land deals, are available; but a high level of uncertainty and the limited reliability of some media reports mean these figures must be treated with caution.

Quantitative inventories of documented, approved land allocations in Ethiopia, Ghana, Madagascar and Mali are helping to shape an accurate picture of trends via the following findings.

■ **Levels of activity are significant.** Allocations in the four countries from 2004 to early 2009 total some 2 million hectares (ha), including allocations to foreign investors for over 1.4 million ha (an area somewhat less than the size of Swaziland or Kuwait). This excludes allocations below 1000ha and those pending negotiation. Allocations account for relatively small shares of total land suitable for agriculture in any given country (ranging from 0.60 per cent in Mali to 2.29 per cent in Madagascar). But some

approved deals may not have been recorded, and figures on allocations are therefore conservative; they are much higher if deals still under negotiation are considered. Many approved deals have not yet been implemented on the ground.

■ There has been a cumulative increase in land investment. The past five years have seen an upward trend in both project numbers and allocated land areas in the four countries. Further growth is anticipated. For example, in July 2009 the government of Ethiopia marked out 1.6 million ha of land, extendable to 2.7 million, for investors willing to develop commercial farms.

■ The size of single acquisitions can be very large. Allocations include a 452,500ha biofuel project in Madagascar, a 150,000ha livestock project in Ethiopia and a 100,000ha irrigation project in Mali.

■ Private sector deals account for about 90 per cent of allocated land areas. Government-owned investments make up the remainder. The home country governments of investors may play a major supportive role, providing diplomatic, financial and other support to private deals. Equity participations in investment projects by home country governments,

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through state-owned enterprises, development funds or sovereign wealth funds, may also be growing.

Foreign investment accounts for the bulk of the deals. While media reports have focused on acquisitions by Middle Eastern and East Asian investors, the quantitative inventories suggest that key investor countries are in Europe and Africa as well as the Gulf and South and East Asia (as illustrated by the breakdown for Madagascar in Figure 1, below left). Land acquisitions by domestic investors are also significant.

What is driving these investments? A key driver in investor countries is concern over food security, which burgeoned during the food price hikes of 2007/8. Another is the biofuels boom of the last few years. Related factors include business opportunities linked to expectations of rising food prices and land values, industrial demand for agricultural commodities, water shortages and climate change impacts in home countries and, in recipient countries, policy reforms aimed at attracting foreign direct investment.

Mitigating risks, seizing opportunities

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

But as outside interest rises, and as governments or markets make land available to prospecting investors, local people could lose access to the resources on which they depend – not just land, but also water, wood and grazing. While there is a perception that farmland is abundant in certain countries, these claims are not always substantiated. In many cases land is already being used or claimed – yet existing land uses and claims go unrecognised because people using the land have no formal land rights or access to the relevant law and institutions. 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 evidence suggests that some of these lands were used for shifting cultivation and dry-season grazing.

Even where some land is available, large-scale allocations may result in people's displacement as demand focuses on higher-value lands (for example, those with greater irrigation potential or proximity to markets). In Mali, for instance, where only a relatively small area of suitable land has so far been allocated,

investor interest has focused on the more fertile lands of the Office du Niger area (see Figure 2, opposite). Water may also be a constraint, and priority in water use may prove a source of conflict.

Ultimately, if international land deals are to boost opportunities and mitigate risks, each project will need to be properly scrutinised, and have the right terms and conditions. These will have to consider how risks are assessed and mitigated (for instance, with regard to project location), what business models are used (from plantations to contract farming, through to local people having an equity stake in the project), how costs and benefits (including food produced) are shared, and who decides on these issues and how. So it is important to 'unpack' details on specific deals to examine how they tackle these issues.

Unpacking the contracts: the challenges to fair deals

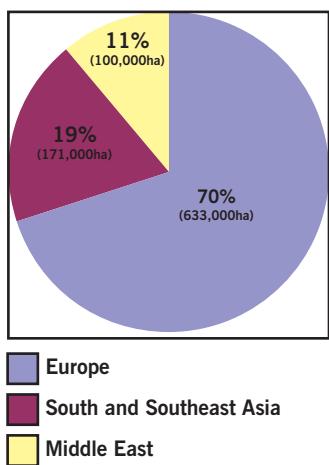
Land deals are embodied in one, or several, contracts. These need to be examined along with other legal texts defining their broader legal context, including national and international law. Contracts are complex and differ hugely among countries and even projects. More work is needed to identify trends in contractual practice and compare contractual options. But the analysis of a small number of contracts from Africa highlights a number of challenges that can threaten the balance of a deal.

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

An important problem in this regard is that host governments may contractually commit themselves to providing land before any consultation with local land users has taken place. Also, lack of transparency and of checks and balances in contract negotiations encourages corruption and benefits ending up with the rich and powerful. In Mozambique and other countries, national law does require investors to consult local people before land allocations are made. In Ghana, deals with local leaders are common. But even in these cases, shortcomings in implementing legal requirements and in the accountability of local leaders are a recurrent problem.

Security of local land rights is also vital – both to protect people from arbitrary dispossession, and to give them an asset to negotiate with. National laws vary, but some recurrent features undermine the position of local people. These include insecure use rights on state-owned land, inaccessible registration procedures, vaguely

Figure 1. International land allocations over 5000ha in Madagascar, by region of origin (as % of allocated land area)



defined productive use requirements, legislative gaps, compensation only for loss of improvements such as crops rather than land, and often outdated compensation rates. As a result, local people may lose out, and investors that aim for good practice suffer from a lack of clear government procedures and guidelines.

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

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

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

The role of international law International treaties may compound imbalances in individual deals. For instance, investment treaties between home and host states usually protect investment against adverse host government action (expropriation, broadly defined unfair treatment); strengthen the legal value of individual contracts by making their violation a breach of international law; and give investors direct access to international arbitration in case of disputes with the host government.

Over the past few decades, these mechanisms have proved effective at holding governments to account for the way they treat investors. Rulings issued by international arbitrators have granted investors substantial compensation for host state breaches of contracts or treaties; and investors can enforce these rulings internationally, for instance by seizing assets

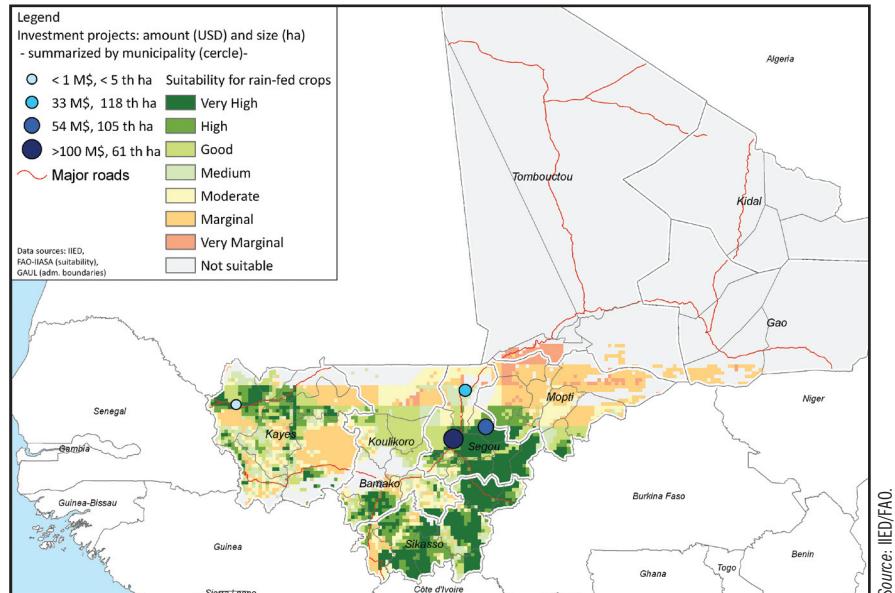


Figure 2. Documented land acquisitions in Mali, 2004-2009

held by the government overseas. These international legal devices tend to be much more effective than those available to local people for protecting their land rights, for instance under human rights treaties. So when local people challenge government land allocations and seek protection for 'customary' rights, national and international institutions will probably offer little comfort, while the investor may rely on much more effective legal protection to discourage adverse changes to the land acquisition.

Not just any investment: promoting good deals

The land investment story currently unfolding in a number of developing countries reflects deep global economic and social transformations with profound implications for the future of world agriculture. Decisions taken now will have major repercussions on the livelihoods and food security of many people for decades to come. Today's choices must be based on strategic thinking about the future of agriculture, the place of large and small-scale farming within it, and the role and nature of outside investment – bearing in mind that in many parts of the world, small-scale farming has proved economically competitive and able to respond to changing challenges.

Therefore, while land deal negotiations are unfolding fast, there is a need for vigorous public debate and government responsiveness to public concerns in recipient countries. The risks of not doing this are high for both investors and host governments. The experience of Daewoo in Madagascar is a case in point.

In November 2008, the South Korean firm announced that it had secured a 99-year lease for some 1.3 million ha of land in Madagascar. Public opposition to the deal contributed to riots that culminated in a change in

government. When the new government came to power in Madagascar in March 2009, the incoming president cancelled the deal.

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

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

Governments should also seek more specific and enforceable investor commitments on investment levels, job creation, infrastructure development and public revenues; and effective mechanisms to hold investors to account, for instance through contractual provisions that empower the host government to impose penalties or terminate the deal in case of non-compliance. Some recipient countries are themselves food insecure, and workable arrangements must protect local food security, particularly in times of food crisis. These improvements can be achieved, and experience with improving transparency and contractual terms in other sectors such as oil can provide useful lessons.

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

legal recognition of local (including customary) rights; collective land registration where appropriate; ensuring the principle of free, prior and informed consent; providing legal aid and assistance; and improving governance of land and related resources. Adequate representation and protection of local interests in water allocation decisions are also important.

Roles for the international community Development agencies can play a useful role by engaging with the governments of both investor and recipient countries, private sector and civil society to ensure that land deals maximise the investment's contribution to sustainable development. The international community can:

- **create space for public debate and support policy reform** to maximise positive outcomes (for example, through greater local participation in and public oversight of negotiations)
- given the major power asymmetries in contract negotiations, **strengthen host government capacity to negotiate** and civil society capacity to scrutinise
- **accompany efforts to secure local land rights**, and support local groups in their negotiations with government and investors
- **share lessons from international experience**, for instance on tackling issues of food security, the balance of large and small-scale agriculture, robust contracts and equitable business plans
- **review the lending conditions of governmental development funds** available to private sector investors, to predicate lending on better practice in land acquisition
- **ensure that international rules establish robust safeguards** and are backed by effective monitoring and enforcement.

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Notes

¹ This briefing draws on a collaborative study undertaken by IIED with the Food and Agriculture Organization of the UN (FAO) and the International Fund for Agricultural Development (IFAD). The study involved analysing a small sample of contracts, undertaking in-depth case studies in two African countries, and carrying out national inventories of agricultural land acquisitions over 1000 hectares from 2004 to March 2009 in four African countries. The inventories relied primarily on host government sources (such as investment promotion agencies, ministries for agriculture) cross-checked through multi-stakeholder interviews. The full report, *Land Grab or Development Opportunity? Agricultural investment and international land deals in Africa*, is available at www.iied.org/pubs/display.php?o=12561 IIED.