



The Global Land Rush: What This Means for Customary Land Rights

Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa - Brief #5 of 5

Briefs on Reviewing the Fate of Customary Tenure in Africa

1. Customary Land Tenure in the Modern World
2. Putting 20th-Century Land Policies in Perspective
3. Land Reform in Africa: A Reappraisal
4. The Status of Customary Land Rights in Africa Today
5. **The Global Land Rush: What This Means for Customary Rights**

NOVEMBER | 2011

Liz Alden Wily*

Other briefs in this series examine the history and current status of customary land rights in Africa. These are rights enjoyed by more than half a billion people in sub-Saharan Africa, most of them (75%) definably poor.¹ Customary rights apply to lands that are acknowledged locally to be under the jurisdiction of a community. They are acquired, defined, and upheld by modern rural communities to meet present-day circumstances, but shaped by practices (“customs”) which may be longstanding (“traditions”). Customs usually include the right of members of the community to access lands to cultivate and to share use of remaining off-farm resources such as forests, rangelands, marshlands, ponds and streams.

absorb only a tiny area—around 3 million hectares. Outside southern Africa, formal land entitlement is limited (1–10 percent coverage in most states, excepting Uganda and Kenya).²

While the most valuable forest and wildlife lands have been withdrawn from the customary sector and placed under formal state protection, protected areas still comprise only 300 million hectares, leaving around 1.4 billion hectares of land outside such areas. These lands are mainly classified in law as belonging to the state (or government), or as un-owned lands held in trust by governments. The customary sector largely falls within these lands. Very little of it (around 200 million hectares) is permanently cultivated. A significant proportion of the remainder is believed to have potential for rain-fed farming but is also usually already actively used as forests, rangelands, and marshlands.³

Following a century of population growth, capitalist transformation, and evolving policies encouraging large-scale farming, Africa today is characterized by unequal farm sizes, rising rural landlessness, and growing competition between generations and social classes for land access. Unfarmed commons are declining as cultivation and towns expand. These lands are routinely captured by wealthier, politically connected families, including chiefs. Rural class relations often build on and exaggerate historical inequities, including those deriving from pre-colonial relations, to help create a flourishing education-based and wealth-based class system.

The main concern here is that, in accordance with African tenure regimes/customary laws, much of the 1.4 billion hectares is not rightfully state property at all, but rather, the lands of individual rural communities, traditionally arranged in more or less discrete domains (“community land areas”). Outside of densely populated areas where no unfarmed land remains, a typical community domain comprises settlements and farms but predominantly surrounded by lands which by tradition constitute the shared property of all members of community. Forests, rangelands and/or marshlands may dominate in these areas. Access to some of these areas or resources within them, may be customarily

Nevertheless, in 2011 the resources theoretically available to the customary sector in sub-Saharan Africa are immense. Cities and towns

RRI PARTNERS



* Liz Alden Wily is an international land tenure specialist and a Rights and Resources Fellow.

shared with neighboring villages or clans. Seasonal access rights held by pastoralists may also apply. However the founding owner/controller of the lands is usually an identifiable community. With some exceptions, no such thing as “un-owned” land exists in Sub-Saharan Africa. Every corner of every state has a customary owner. The extent to which this tenure is respected in modern national law is at the crux of concerns discussed here in relation to an emerging rush for land on the continent.

1 What is the global land rush?

The global land rush refers to the sharp rise in large-scale north–south land acquisition since 2000 and especially since 2007.⁴ The term “north” means developed, exceptionally wealthy, or industrial economies, now including the BRICs (Brazil, Russia, India, China) and Middle Eastern states, while “south” means largely poor agrarian economies in Africa, Asia, and Latin America.

DRIVERS TO THE GLOBAL LAND RUSH HAVE BEEN CRISES IN INTERNATIONAL MARKETS AND CAPITALISM

The rush was triggered by the global oil and food crises of 2007/08. Political commitments by especially the European Union, to replace a percentage of oil use with biofuels triggered a rush by companies looking for lands to grow jatropha, sugar cane and especially oil palm at industrial scale for this purpose. Looming shortages of cereals and animal protein drove countries in the north to seek ways to increase supplies that their own production sectors cannot provide. This coincided with a determination by Middle Eastern states to secure water resources to reduce the immense costs of crop production at home and an unstable international food market. It also coincided with the BRICs looking abroad to secure rights to areas rich in oil, minerals, timber and other assets needed by burgeoning economies. The 2009 financial crisis fuelled the land rush further, making

available expansive capital withdrawn from failing sectors, and adding to the speculative stakes of cheap land acquisition enormously.

The speed and scale of the trend definitely suggests a land rush. Steady expansion of cultivation, livestock ranching, and large-scale enterprise is not new in developing countries, but has been quite low in Africa until this current surge.⁵ Latest figures suggest that deals struck or under negotiation between 2005 and September 2011 may be several times greater than reported in 2009 and 2010.⁶

These figures also confirm a trend observed from the outset, that two thirds of lands being acquired are in Africa. The strong (if not uniform) north–south orientation, and the prominent involvement of governments and state companies as buyers has invoked the popular label of “the new colonialism”. The dominance of sub-Saharan Africa as a land provider also suggests to some a new “scramble for Africa”.

There is some truth in this. Africans have endured major land losses over the last century associated with foreign dominance.⁷ This arose through state policies, as well as population growth, changing settlement patterns, and social transformation. Surges in land losses occurred after 1890 with the formal establishment of European colonies in Africa; after 1920 and 1945 with sharp rises in settler and plantation farming following the two world wars; and during the 1970s and 1980s with African-led large-scale land acquisition, as independent governments distributed large areas of native lands under their control to aligned elites.⁸ A commonality between these surges and the land rush today, is that ordinary, rural communities have lost their lands in largely involuntary ways. Moreover, as was the case under colonialism, a frequent intention in the current land rush is not to openly trade the commodities produced on the land but to channel them to the investor country, bypassing markets—suggesting a lack of confidence in or a failure of international commodity markets. Similarly, speculative land acquisition

(“profiteering” as it was then called) was as common in the 1880-1900 period as it is today, an unknown proportion of colonial land acquirers doing so with the intention of not producing on the land at all but selling the land on at substantial profit.

On the other hand, the current land rush could not exist without the full encouragement of investment-hungry host governments, who, as shown below, lay down a smooth path for this to occur.

Thousands of pages of academic, journalistic, and international agency policy analysis have been written on the current land rush, or “land grab” as it is often termed, often with few data. Factual field studies and in-country verification are therefore critical.⁹ Based on factual studies, the following general features of the global land rush may be listed:

- a. Most large-scale acquisitions are not through outright purchase but leases. Given that most leases are renewable, and many already for terms of 50 to 99 years, the distinction is moot.²⁰ Where community areas are affected, leases take community lands for up to five generations and likely more.
- b. It is not known for how long large-scale land deals will continue. Data to be published soon may suggest a tapering off.²¹ However this could be due to governments keeping deals more, rather than less secret.
- c. It is difficult to be absolute about where most leases are being signed and where most hectares are involved. This is because data for many countries is seriously incomplete, including in Africa. Information is least available in Congo Basin states. With these reservations data published in the past as to largest land lessor states are likely to unevenly confirm.²² Indonesia, Brazil, Ethiopia and Sudan will almost certainly remain among prominent lessor states.

REFERENCE TO THE LAND RUSH AS THE NEW COLONIALISM IS NOT ENTIRELY MISPLACED

- d. The commonest purpose for acquiring lands is to produce biofuels. Emerging data suggests this absorbs nearly twice the area being acquired to produce food crops or livestock.²³ New concessions for oil, mining, and timber extraction, and for taking over forested areas or planting trees in order to secure carbon credits, are fewer but could absorb as many hectares.
- e. By far and away the major seller or lessor of lands to investors are governments. Private sector sales are few. This is because most land in lessor states is owned or controlled by governments in absence of customary/indigenous land interests being recognised as amounting to property.²⁴ That is, governments especially in Africa, legally have an immense land resource to draw from.
- f. Claims by governments that they only lease out “vacant and idle lands” or “marginal lands” are not being borne out in practice. Many leased estates are fertile, accessible to roads and markets, and actively used by local communities.²⁵ Moreover, all these lands are owned under customary norms.
- g. Many land buyers or lessees are also governments or government-sponsored agencies and companies. This may further constrain the annulment of arrangements should the investor not perform or should the developments prove deleterious to local populations. This is especially because land deal contracts are nested in bilateral investment treaties.
- h. Delivery in terms of buyers actually clearing the land and establishing crops is slow or not even begun. While there are often good reasons for this, there is also concern that much land is being captured for longer-term resource security or speculation.²⁶ The

active presence of hedge funds, banks and even pension funds acquiring land for medium term returns tend to confirm this likelihood.¹⁷

INTERNATIONAL ORGANIZATIONS ARE PLAYING A KEY ROLE IN LOCAL LAND LOSSES AT SCALE FOR THE SAKE OF HOPED-FOR GROWTH

- i. The land rush is underwritten by international trade law. This includes bilateral investment treaties and free trade agreements signed between governments (by 2009 there were already some 2,600 signed since 2005).¹⁸ As well as assuring the investor compensation should there be expropriation or denial of the right to export the products produced, these give subsequent contracts the backing of international trade law and arbitration services, which some studies find have historically favored investor interests.¹⁹
- j. Acquisitions are normally expressed in binding contracts, not just issue of land deeds. The former usually include “stabilization” clauses which preclude the application of, or require compensation for, new or changed regulatory measures in the host country. These limit the control or recourse which lessor governments have over land uses or even the failure to develop the land.²⁰
- k. Large-scale leasing is also backed by international lending conditions, advice, protocols and institutions, such as the International Finance Corporation (IFC), the investment arm of the World Bank Group. This and other World Bank departments along with other international bodies have actively promoted market-led land leasing by poor states, with some rebuke that this has so far been at the expense of due diligence on human rights and socio-economic impacts.²¹ They have directly assisted host governments to draft the plethora of investment promotion laws enacted over the last decade, to streamline “Doing Business” procedures (such as getting permits), to change laws limiting sale or lease of lands to foreigners, removing provision in land laws which place ceilings of lands obtainable, or impose development conditions, and have assisted in the establishment of Investment Promotion Centres to help investors acquire lands and to smooth the steps to doing business in those states.
- l. No such organized assistance has been given to rural communities to protect their occupancy and use in face of investor invasions. International human rights law is weak to begin with, unevenly adopted in domestic law, and often protective of only minority populations who declare themselves as indigenous peoples.²²
- m. Land acquisitions are not being forced upon host countries. On the contrary these are welcomed by present-day governments, persuaded of this as a main route to economic growth and having let their own smallholder sectors fall into demise after decades of minimal investment.²³ Investors are enticed with extremely attractive conditions including virtually total import and export duty exemption and VAT and other exemption for the first decade of operations, the right to introduce foreign labour relatively freely, and to access low interest loans from state banks using their new entitlements as collateral.²⁴ Moreover purchase or rental costs of land are exceptionally cheap, often around \$1 per hectare per annum in Africa. Indeed, the benefits to investors are so multiple that it must be asked what governments hope to gain in return. Setting aside likely personal gains by those facilitating or signing the deals, expectations are for technology transfer, perhaps the ‘pickings and leavings’ of goods which are not dispatched for export, some amount of infrastructural development, and job creation. It is too early to say if these benefits will be forthcoming. Jobs are certainly not emerging to the level anticipated.²⁵

- n. Communities in affected areas also hope for jobs, training, and infrastructure. Leaders have been known to sign off on deals or give their approval without community members knowing about the proposition. More broadly, governments gain significant support from business communities in their countries, anxious to partner or facilitate multinational land investments. Local universities routinely provide environmental impact assessment reports advising on soil suitability, frequently directly employed by the land investor.
- o. The land rush reflects a shift in the global balance of leading economies. Although companies from Europe, Japan and America are active land lessees, others are from Bahrain, Brazil, China, Libya, Malaysia, Qatar, South Africa, South Korea, Thailand, and United Arab Emirates, along with smaller actors.²⁶
- p. A regional bias is appearing; Middle Eastern states favoring Africa, and Asian states favoring Asian locations. South Africa is emerging as a major investor in Sub-Saharan Africa, with negotiations by the South African Farmers Union (AgriSA) underway in 22 African states, and a land deal already sealed for 200,000 hectares in the Republic of the Congo, with an option to expand to ten million hectares.²⁷ Two large-scale farming zones by South Africa farmers are already active in Nigeria.²⁸ China could emerge as a major competitor to South African interests in Africa, with already large portions of Congo Basin states and Sudan under its aegis through oil, mining and timber concessions, and with an unknown number of land deals for industrial scale rice and oil palm production reported in Cameroon and DRC.²⁹
- q. Despite the publicity generated by the land rush, a great deal is *not* known about it. It is not known how much land has been brought purely for speculative purposes; how many deals are joint ventures with host governments or local companies, or shell

companies; how many deals do make provision for local communities to become contract farmers, tenants, or workers; what employment, technical training, and other benefits are legally binding in contracts; or what arrangements have been made to secure water access for local farmers. Lack of information is due to the secrecy often surrounding large-scale land leasing, although one or two countries (Ethiopia, Tanzania) have pledged to make deals public. Field studies have largely found that deals lack attention to such issues.³⁰

LOCAL ELITES JOIN HANDS WITH INTERNATIONAL ELITES IN THE PURSUIT OF LAND-BASED WEALTH PRODUCING A DIFFICULT-TO-CHALLENGE TREND

- r. While the impact of large-scale leasing on rural communities has become a major concern of international agencies, this has been delivered in mainly rhetoric and advisory guidelines on investment and land matters.³¹ There is scant evidence of this making investors or host governments more cautious in what lands they lease or on what conditions. On the contrary, a recent critique suggests improvements are the exception, not the rule.³² Very little if any attention is being given to improving international human rights law, so that the imbalance in support for investors and investment through international trade law, and human rights is growing.³³
- s. Attention focuses on the larger and foreign leases of sales, but smaller acquisitions in the 500-1000 ha range are proceeding apace or possibly at an even faster rate. These lands are being leased by both domestic and foreign investors.³⁴ In some countries most lessees are nationals, although not acquiring the largest areas (e.g. Ethiopia). The surge is also triggering a wave of local speculative acquisitions, wealthy nationals buying up land to sell at profit to

larger enterprises.³⁵ Polarization between rich and poor in rural areas has been increasing for some time³⁶ and is now accelerating as rural lands become more valuable. In such circumstances, the majority ordinary poor tend to lose out. A recent study showed this to be the case in Benin, Burkina Faso, Mali, and Nigeria due to the land rush and acquisitions by a new class of domestic agro-investors.³⁷ Chiefs in several countries are also reported to be selling off their communities' lands for private benefit.³⁸

- t. Lesson-learning seems limited. As pointed out by the World Bank, the degradation of soils under large-scale mechanised sorghum and sesame farming in Sudan during the 1967-2000 era was swift and immense, similarly the case with colonial British-managed groundnut schemes and more recent Canadian funded and managed wheat schemes in Tanzania.³⁹ Large-scale rice schemes of the past were also not significantly successful in the Niger Basin.⁴⁰ Calculated impact on water availability and downstream access is proving especially weak.⁴¹ Surveys by investors or contractors tend to focus on soil study to determine the best use of the land, without attending to the impact of large-scale mechanized agriculture on fragile lands, and the impacts which clearing of woodlands will cause.

LIKE THE FIRST BIG “SCRAMBLE FOR AFRICA” THIS LAND RUSH IS ABOUT ESTABLISHING ECONOMIC SPHERES OF INFLUENCE AND CREATING NEW MARKETS FOR HOME GOODS NOT JUST ABOUT ACQUIRING LAND AND RESOURCES

- u. The global rush for land does not exist alone. This is complemented by a rush by foreign firms to secure contracts in especially Africa for especially major infrastructure projects (Chinese companies now

dominate road and rail building around the continent) and a rush for buying up local enterprise. South African ownership now extends widely in Africa in manufacturing, including food and non-food items, mining, coastal and safari tourism, communications, and banking.⁴² In addition, foreign companies are looking to poor agrarian countries to expand markets for their own goods, including creation of Special Economic Zones, most advanced in India but also being created in African countries; these enable foreign countries to establish finishing hubs for their products, often with duty-free imports, and to use local labour to create export items. China is among those establishing such hubs in Africa, with eight sites indicated.⁴³

- v. The land rush is triggering a new leap in potentially irreversible social transformation wherein the poor, already the majority in Africa and Asia, become even more poor and disadvantaged and minority elites become even more deeply entrenched as majority land and resource beneficiaries.⁴⁴ Concerns around this are especially focused in sub-Saharan Africa, which is providing so many resources and yet is so poorly equipped to transparently shape and regulate large-scale investment so that it benefits the majority.

2 Why does the global land rush matter to customary landholders?

The global land rush matters to customary rights-holders in Africa for the following reasons:

It is *their* lands that are the targets of large-scale allocations to investors. Their lands are being targeted because in most African states (and also Asia) lands held and used under customary norms are still not considered owned by these users, but in effect, lent by the state, which makes itself the legal owner of these properties.⁴⁵ There are exceptions, and in those cases, wilful reallocation of customary lands is proving less smooth and more open to local challenge. In prime host states

like Sudan, Ethiopia and the Democratic Republic of Congo, the taking of lands by governments and handing these over to investors is perfectly legal.

- a. Often the most valuable land assets of rural communities are reallocated to investors.** This is because, in practice, rural huts and farms receive a little more protection than collectively held forests, rangelands, and marshlands belonging to communities. Governments do not wish to remove people from their homes and farms more than necessary. This brake is not applied to their commons, which are not only treated as un-owned but also as *idle and available lands* for governments to reallocate, because they are not permanently cultivated or not cultivated at all, being dedicated to off-farm uses and livelihood. This makes forests, rangelands, and marshlands a main target for allocation to investors, especially where they are accessible to roads and markets and/or fertile. Yet these lands make substantial contributions to livelihoods and, given their extent and potential, are highly valuable to poor communities.⁴⁶ The leasing out of these lands by the state limits the potential for communities to realise that value. Opportunities for communities to emerge as lessors of these lands in their own right, as a route to moving out of poverty is now being fairly firmly closed to them by the precedents being set by the land rush.
- b. Despite the focus on common properties held by communities, direct evictions and loss of farmlands is occurring.** This is because a good many of these presumed “unoccupied and idle” lands are used for shifting cultivation and are interspersed with settlement and impermanent farms. This adds to livelihood losses due to losing all or some parts of traditional commons. To take one country as example, in Ethiopia investors (many of whom ally with local politicians and companies) are clearing forests, damming rivers and diverting irrigation from smallholders, causing wetlands crucial to fishing, seasonal fodder production and grazing to dry up,

and enclosing thousands of hectares of grazing lands for mechanised biofuel, horticulture and floriculture projects for export. Assisted (or rather, forced) relocation is at least being provided for communities living within one 10,000 ha area, allocated to a Saudi-Ethiopian company, with many more relocations anticipated as the company’s lease is expanded to half a million hectares. Local food security is already an issue in a number of leased zones, in a country which already has a history of droughts and famines.⁴⁷

- c. There are minimal legal constraints to the wilful reallocation of customary lands.** Two constraints that could come into play are the need to *pay compensation* when people are removed and the need for state allocations to be *in the public interest*. Neither presents an impediment if customary lands are considered to be less than real properties. Compensation for un-owned but occupied lands is usually limited to covering the value of lost standing crops and houses. Most domestic legislation also allows that compensation can be paid after the fact of eviction. Public purpose is usually broadly defined to include private enterprise on the grounds that this may deliver taxes and jobs in due course.
- d. Transparent, democratic and just governance is also being impeded by practices under the land rush.** Opportunities for meanings of “public purpose” to be limited to genuinely public purpose are diminished by the practices of the land rush. Public purpose as including private purpose is being consolidated as acceptable. This will contribute to even greater involuntary lands losses in the future. Bad practices are being sustained in even those states where customary lands are recognized as private properties. In order to avoid payment, governments have been known to persuade owners to surrender their lands for public benefit (as seen in Tanzania and Uganda), to encourage investors to deal directly with pliable (corruptible) chiefs or

other community representatives (as seen in Mozambique and Ghana), and to make arrangements to pay compensation at a later date.⁴⁸

- e. Additionally, large-scale allocation is not often undertaken in consultation with affected communities.** Customary landholders are not protected by fair information and consultation procedures. Nowhere is free, prior, and informed *consent* for the allocation of customary lands obligatory when the public interest is involved. Where there *is* consultation, local permission is rarely granted on the basis of full information. Villages in Sierra Leone, Kenya, Ethiopia, Rwanda and Mali are among those who were not told that canal construction for industrial sugar cane production or rice would dry up their wetlands, critical for seasonal rice production, fishing, reed collection, hunting and grazing and deprive them of the waters they themselves need to farm.⁴⁹ A case is recorded of a community in South Sudan agreeing to hand over 179,000 ha for an annual fee of \$15,000 and construction of a few boreholes to a Norwegian company aiming to make millions on carbon credit deals.⁵⁰ Another community in the same region will lose its commons to the tune of 600,000 ha should a deal with a Texas-based company go ahead.⁵¹
- f. There is no assurance that evicted customary landholders or those deprived of parts of their lands will be able to find jobs or other livelihoods to compensate for their losses.** The losses endured by local communities can be very great, including the commercial value of the land, the recurrent-use values of the resource, and the future value of the land for commercial enterprise. There are additional major social costs, such as those caused by dislocation, which may be incalculable. They may include the loss of community and socio-economic support and the breakdown of families, such as can occur when men have to move to look for work, leaving behind women and children with little or no land to farm and without other support. There are

also uncalculated costs in the loss of family farming activity which may be difficult to restart.

- g. The likelihood of legal support for customary rights becomes more remote** with the land rush. Reformism is already incomplete and fragile in especially Africa and Asia.⁵² Land reform is likely to be placed even more strongly on the back burner as governments enjoy the benefits of being able to freely lease vast lands out to persons, countries or companies of their choice, including nationals; and as a mesh of binding contracts make changes to policies impossible. Restitution will also become even more remote, even where pledges to this have been made such as in Sudan.
- h. The global land rush is also weakening the application of existing international human rights law** in matters of land rights, and the adoption and interpretation of which is already flawed in Africa because the African Union considers only certain Africans to be indigenous to the continent.⁵³
- i. The land rush is also hastening class formation and concentration of land ownership,** including providing a more permissive environment for land hoarding, absentee landlordism, and simply failure to develop all the thousands of hectares which are being made available to investors.⁵⁴
- j. The global land rush undermines the future of smallholder agriculture,** maintaining a focus on industrial agriculture, in circumstances where this is unproven and where the smallholder sector is already starved of investment.
- k. The land rush threatens civil peace.** The deprivation of land and denial of rights to land have been shown historically to be major triggers to conflict and outright civil war.⁵⁵ The case of Sudan is topical: the civil war of 1984–2001 was caused in part by local resentment of land-takings by Khartoum for private commercial agriculture, including allocations to

politicians, officials, and foreign banks and enterprises, especially from Egypt. Instead of returning those lands as required by the 2005 Comprehensive Peace Agreement, Khartoum has since allocated yet more lands to other foreign and local parties. This has generated sufficient fury among communities that militia have been formed and Khartoum is increasingly responding with violent attacks in the most affected areas; Southern Kordofan and Blue Nile States.⁵⁶

3 How are customary land rights affected in practice?

Relatively few large-scale enterprises are fully established on the ground and many communities do not yet know how they will ultimately be affected, or even that some or all of their lands now belong to private investors, not the state. Communities often do not discover this until the tractors arrive. Others are signed without specifying exactly which areas in a district will be leased, this being subject to feasibility studies carried out by the investors.⁵⁷

Nevertheless, impacts are already apparent in early cases.⁵⁸ A snapshot of several cases follows.

- a. A Swiss company leasing 40,000 hectares in **Sierra Leone** has broken its promise to local farmers that their collective marshlands, on which rice is grown, would not be affected by sugarcane production for ethanol. Irrigation channels have drained those swamps, halting local rice production. Only 50 of the promised 2,000 jobs have been created, at lower-than-promised wages. Pastoralists and land tenants have been displaced to make way for the sugarcane plantation, and the large-scale use of chemical pesticides and fertilizers is threatening groundwater and harvests beyond the plantation.⁵⁹
- b. In Southern **Mozambique**, villagers evicted from an area declared as a national park have seen the areas promised to them for resettlement granted to a private investor for sugarcane production (30,000 hectares). This land already belongs to other communities, who can also expect to be evicted.⁶⁰ Meanwhile, a minimum of 22 large-scale leases to international companies for the production of jatropha and sugarcane directly affect fertile land, forested land, and wildlife areas customarily owned by communities.⁶¹ These allocations stretch the boundaries of domestic land law, which protects customary rights in theory but, in practice, involves procedures that do not promote full and informed consent by all members of the community.
- c. In **Democratic Republic of the Congo**, three large leases covering three million hectares have been made to companies from China, Italy, and Canada for oil-palm and eucalypt plantations. All affected land is customarily owned and much of it is forested; it is likely that the forest will be cleared and the communities evicted. In a fourth case, dispossessed villagers are now squatting in the Kundelungu National Park, from which they will in due course be evicted again.⁶²
- d. On the instructions of the federal government of **Ethiopia**, regional state governments have identified millions of hectares of land to lease to investors for commercial production, in accordance with its Agricultural Development Led Industrialization Program. Nearly one million hectares has been so identified in Benshanguel Gumuz Regional State, leaving scant room for any generational expansion for even settlements and farms, and concern among local populations that their off-farm woodland livelihoods will be lost and their ability to farm curtailed by the clearance of these lands for industrial agriculture, decimating water and soil conservation needed to enable farming in lower areas. Only a handful of the 4,338 jobs that were promised under four of the leases have so far materialized, most of them filled by outsiders.⁶³ The Bechera Agricultural Development Project in Oromiya Regional State leased 10,700 hectares to an

Indian company for multi-crop production, incorporating most of the rangelands and wetlands used for grazing and seasonal farming, forcing families to sell their stock. Around 300,000 hectares have been leased to the same investor in Gambella Regional State for rice and banana cultivation, with a similar loss of the grazing lands.⁶⁴ Commercial exploitation of forests is encouraged and plans are in place to direct investment towards forests that are “encroached, cleared or abandoned” and are considered idle and available by government. This does not reflect reality on the ground, such as in the case of the Arsi Forest, historically occupied and used by Oromo agro-pastoralists.⁶⁵

- e. In **Madagascar**, a new (2008) law has simplified land access for foreign investors. Although the two largest allocations (1.3 million hectares to Daewoo and 370,000 hectares to VARUN) were famously suspended, multiple smaller allocations to foreign and domestic investors continue to be made. Forests (of which there are 12.7 million hectares in the country) are considered state property and able to be allocated. The same applies to 37.3 million hectares of pasturelands in dry zones, some of which are seasonally cultivated and/or regarded as future farming expansion areas. State law classifies them as un-owned lands, even though they are, by custom, the common property of rural communities. Newly established commune land bodies are actively involved in leasing these lands to investors, despite a lack of information on the impacts of such action, or on the basis of promises of employment and other benefits that may not be fulfilled.⁶⁶
- f. In **Ghana**, 17 commercial biofuel developments—15 of them foreign-owned—have emerged since 2007 with access to a total of 1.075 million hectares.⁶⁷ These developments are largely on unfarmed lands that are owned customarily with the root title vested in chiefs. Chiefs receive the rent from any allocation, which they are not required by law to distribute. Compensation is being paid for

encroached farmlands but at only US\$1 per hectare. The loss of livelihoods heavily dependent on commons is not being compensated. In one study, families had lost 60 percent of their livelihoods and were forced to leave the area to find employment or to indulge in petty trading to survive. Fallow periods have been sharply reduced, with a likely consequent loss of soil fertility. Interviewees still hoped that jobs would emerge once the development gets fully under way.

- g. In **Rwanda**, communal marshlands have been declared to be the property of the state and then handed over to private sugarcane companies. A recent study examined the impact of the 50-year lease of 3,100 hectares to the Ugandan-owned Madhvani Group.⁶⁸ Most of the 1,000 families affected consider themselves to have been wrongfully dispossessed and uncompensated and are angry that they cannot use the land that the company is not using. They have seen their incomes plunge over the past 13 years and cannot compensate this with the limited, low-paying jobs offered by the company. A smaller, better-off group of farmers have established themselves as out-growers on lands they were able to retain. The loss of the marshes has also placed pressure on hill lands, where steep slopes are now being cultivated and fallow periods have been shortened.
- h. Among several large-scale leases in **Mali** is a 99-year lease of 100,000 hectares of prime rice lands to Libya for the production of rice for export. Despite being customary land overlaid with seasonal pastoral use, passage, and watering rights, the land was declared “free from any juridical constraints or individual or collective property that hinders the exploitation of the land” because it had been registered as the property of the Niger Basin Authority some decades previously. Already in 2009 it was reported that families had been displaced, farmlands lost, villages flooded, forests felled, and transhumance halted.⁶⁹ Moreover, the availability of water had declined

because of diversion to the Libyan projects, and dust pollution was growing. Since the Libyans are using mainly Chinese labor, local employment has been minimal. No compensation for the loss of access or land-use rights has been promised or paid to affected citizens. Local resistance is being mobilized.

4 What does the global land rush mean for forests?

FORESTS ARE DIRECTLY THREATENED BY THE LAND RUSH

Forests and woodlands have always been vulnerable to land-takings by the state for conservation or commercial logging. In the process, customary rights have been lost on a large scale. In practice, many forests have also been destroyed because of poor management by governments, who historically took control of all forests on the continent.

The land rush increases the risk of forest conversion for agriculture. Indigenous rights to forested lands are also threatened. Unfarmed lands such as forests, rangelands, and marshlands are in the firing line of reallocation for large-scale commercial enterprises. And communities can do little about this for so long as they are not recognized as the legal owners of these lands.

Not only unclassified or ungazetted forests are at risk. Forests created for conservation or designated as national forests are also vulnerable. There are cases in Democratic Republic of the Congo, Ethiopia and Senegal, among others, where investors are being allocated lands within reserves.

DEMOCRATIZATION OF FOREST GOVERNANCE IS THREATENED

An impressive shift in national forest management strategies grew during especially the 1990s, most reflected in the thousands of community forest reserves created around the world. Cutting-edge examples

devolved more than managerial rights, empowering rural communities to be recognized as the owner-managers of these reserves. In Africa, most such cases today are found in Gambia and Tanzania. Even without the important anchor and incentive of ownership, thousands of African communities have been incentivized to sustainably use and manage local forests in return for rights to use those resources and regulate their use. As governments look around for fertile lands to give to investors—and biofuel crops (jatropha, sugarcane, and oil palm) grow best on once-forested land—forests come back into their sights, and there is a high risk of a severe weakening of community forest rights and interests. This has already been seen in regard to carbon-trading—governments are less ready to acknowledge local rights when many millions of dollars that may be earned from carbon credits are at stake.

The more avaricious and determined governments such as mainly the case in the rich Congo Basin zone, and forested West African states, may be expected to put a brake on new or emerging initiatives to recognize forest resources as community property. Certainly, it is unlikely that many governments will accelerate the restitution of forest lands to customary owners. Given the overriding failure of state-led forest management in so many situations, and the more effective success of most community-based forest management regimes, this will be a loss to good governance and conservation, as well as to land rights.

THE LAND RUSH COULD SERVE AS A TIPPING POINT FOR A RADICAL RETHINK OF TRADITIONAL POLICIES

It is possible to end this series of briefs on a more positive note, however. The devolution of forest governance and the recognition that most of the continent's forests are rightfully the property of rural communities have proceeded far enough in the last two decades to awaken hope in millions of rural Africans. The theft of local forest lands and other communal assets by governments and commercial investors may not be

endlessly tolerated. When promises of benefits to local populations fail to materialize, the tide of hopeful acquiescence could turn. Forest rights advocacy in Africa needs to focus on helping the rural poor to constructively demand a fairer deal and the upholding of their founding forest-tenure rights.

Endnotes

¹ Refer brief 1 for details.

² Alden Wily, Liz. 2011. *The Tragedy of Public Lands: The Fate of the Commons Under Global Commercial Pressure*. Rome: International Land Coalition. <http://www.landcoalition.org/cplstudies>

³ Bruinsma, J., ed. 2003. *World Agriculture: Towards 2015/2030*. London: Earthscan; and the World Bank's African development indicators at <http://data.worldbank.org/data-catalog/africa-development-indicators>

⁴ The main recent source on the land rush is The World Bank's report by Klaus Deininger and Derek Byerlee with others, 2010. *Rising Global Interest in Farmland Can it Yield Sustainable and Equitable Benefits?* The World Bank, Washington D.C.

⁵ There was an overall rise in the area of land under cultivation of 5.3% in developing countries between 1990 and 2007, and a 2.5% rise in sub-Saharan Africa: World Bank 2010 as cited in endnote 4.

⁶ A Land Matrix has been compiled by the International Land Coalition, Oxfam, CIRAD, CDE at University of Bern, GIGA at University of Hamburg, and GIZ, to be made available on the Land Portal website managed by the International Land Coalition before the end of 2011.

⁷ See brief 2.

⁸ A well-known example of this is Kenya, where the post-independence policies of especially President Daniel arap Moi saw public lands used less for settlement schemes for the landless than for lucrative land-purchase schemes affordable only by the rich and for rewarding politically-connected elites. Refer Republic of Kenya. 2004. *Report of the Commission of Inquiry into Illegal/Irregular Allocation of Public Land*. Nairobi: Government Printer; and Klopp, J. 2000. Pilfering the public: the

problem of land grabbing in contemporary Kenya. *Africa Today* 47(1):7–26.

⁹ Refer case studies at <http://www.landcoalition.org/cplstudies> Also see case studies at http://www.future-agricultures.org/index.php?option=com_docman&Itemid=971. Also refer to the *Journal of Peasant Studies* 38(2), March 2011; GTZ. 2009. *Foreign Direct Investment (FDI) in Land in developing Countries*. Bonn: Division 45, Agriculture, Fisheries and Food; Cotula, L., S. Vermeulen, R. Leonard and J. Keeley. 2009. *Land Grab or Development Opportunity?* London: International Institute for Environment and Development, Rome: Food and Agriculture Organization of the United Nations, and London: International Fund for Agricultural Development; FIAN. 2010. *Land Grabbing in Kenya and Mozambique*. Heidelberg: Food First International Action Network; World Bank 2010 (as cited in endnote 4); CHR&GJ. 2010. *Foreign Land Deals and Human Rights: Case Studies on Agricultural and Biofuel Investment*. New York: Center for Human Rights and Global Justice; and Oakland Institute papers at <http://media.oaklandinstitute.org/special-investigation-understanding-land-investment-deals-africa>

¹⁰ A sample of twelve contracts described by Cotula, L. 2011 *Land Deals in Africa: What is in the contracts?* IIED, London, includes nine for 99 year terms and three for renewable terms of 20–50 years.

¹¹ See endnote 6.

¹² As indicated by GTZ and ILC papers as cited in endnote 9 and by The World Bank as cited in endnote 4. Also see upcoming data of the Land Matrix to be published by the International Land Coalition.

¹³ See endnote 6.

¹⁴ See brief 4.

¹⁵ Such as seen in Malawi, Mali, Mozambique, Rwanda, and Senegal; refer case studies at <http://www.landcoalition.org/cplstudies>.

¹⁶ World Bank 2010 as cited in endnote 4. Odhiambo find only 20 percent and 25 percent of ventures, respectively, have started production in East Africa; Odhiambo, Michael Ochieng. 2011. *Commercial Pressures on Land in Africa: A Regional Overview of Opportunities, Challenges and Impacts*. Rome: International Land Coalition.

endnote 46; and Veldman, M. & M. Lankhorst (2011) 'Socio-economic impact of commercial exploitation of Rwandan marshes. A case study of sugar cane production in rural Kigali'. International Land Coalition, Rome.

⁵⁰ Deng, 2011. As cited in endnote 46.

⁵¹ Oakland Institute, 2011b. As cited in endnote 46.

⁵² Refer briefs 3 and 4.

⁵³ Alden Wily, 2011. As cited in endnote 2.

⁵⁴ This does not mean that such provisions do not continue to appear in new land laws and even new constitutions (e.g. Kenya) but the force of these at application is tangibly limited.

⁵⁵ For various country overviews of this see Van der Molen, P. and C. Lemmen, eds. 2004. *Land Administration in Post Conflict Areas*. Denmark: International Federation of Surveyors; and Pantuliano, S., ed. 2008. *Uncharted Territory Land, Conflict and Humanitarian Action*. London: Overseas Development Institute.

⁵⁶ Alden Wily, Liz. 2010. *Making Peace Impossible? Failure to Honour the Land Obligations of the Comprehensive Peace*

Agreement in Central Sudan. A resource paper. Rome: International Land Coalition.

⁵⁷ Cotula, 2011. As cited in endnote 10.

⁵⁸ See endnote 9 for case studies. See also Alden Wily 2011 as cited in endnote 2 for a summary of cases in eleven African states as of 2010.

⁵⁹ Da Via, 2011. As cited in endnote 23.

⁶⁰ Cotula, 2011. As cited in endnote 10

⁶¹ FIAN, 2010. As cited in endnote 9.

⁶² GTZ, 2009. As cited in endnote 9.

⁶³ Shete, 2011. As cited in endnote 46.

⁶⁴ Fisseha, 2011. As cited in endnote 46.

⁶⁵ Guillozet and Bliss, 2011. As cited in endnote 46.

⁶⁶ Burnod, Perrine, Mathilde Gingembre, Andrianirini Rivo Ratsialonana, and Raphael Ratovoarinony. 2011. *From international land details to local informal agreements: regulations of and local reactions to agricultural investments in Madagascar*. Paper presented at the International Conference on Global Land Grabbing, 6–8 April 2011. Land Deals Politics Initiative.

⁶⁷ Schoneveld et al. 2010. As cited in endnote 47.

⁶⁸ Veldman and Lankhorst, 2010. As cited in endnote 48.

⁶⁹ GTZ, 2009. As cited in endnote 9.

The Rights and Resources Initiative (RRI) is a strategic coalition comprised of international, regional, and community organizations engaged in development, research and conservation to advance forest tenure, policy and market reforms globally.

The mission of the Rights and Resources Initiative is to support local communities' and indigenous peoples' struggles against poverty and marginalization by promoting greater global commitment and action towards policy, market and legal reforms that secure their rights to own, control, and benefit from natural resources, especially land and forests. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit www.rightsandresources.org.

This publication was made possible with the support of the Ford Foundation, Ministry of Foreign Affairs of Finland, Norwegian Agency for Development Cooperation, Swedish International Development Cooperation Agency, Swiss Agency for Development and Cooperation, and UK Department for International Development. The views presented here are those of the authors and are not necessarily shared by the agencies that have generously supported this work, nor by all the Partners of the RRI coalition.