

Land rights and the “global land rush”

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Introduction

A global land rush—sparked initially by a dramatic rise in global food prices and now driven by a variety of factors including increased demand for food and biofuels, carbon markets and speculation—is remaking the face of agriculture and land use in the developing world.

These investments, whether by purchase, lease, or concession of land, typically shift the land from traditional uses, such as smallholder farms or communal grazing, to commercial uses, often on a large-scale. These transactions are frequently negotiated between governments and potential investors behind closed doors, without consultation with—or adequate compensation to—the residents and farmers whose land is at stake. Because investors and speculators consider land, particularly agricultural land, to be increasingly valuable, the competition for land is intensifying.

The underlying economic fundamentals indicate that this rush for land may well continue for decades to come. But this need not necessarily signify an unwelcome trend. Increased investment has the potential to generate micro and macro benefits. Connecting capital, technology, knowledge, and market access with poor farmers’ land and labor can lead to improved rural livelihoods and increased agricultural productivity. At the macro level, large-scale investments can increase government revenues and GDP growth. Moreover, increased agricultural investment is needed in order to reduce poverty and hunger in the developing world. The Food and Agriculture Organization estimates that in order to feed the world’s population by 2050, food production must increase by 70%.¹ This would require an average annual net investment in

developing country agriculture of USD 83 billion, or average gross investment (including the cost of renewing depreciating investments) of USD 209 billion.²

Importantly, in light of current estimates that three-quarters of the world’s poorest people depend on farming small plots of land for their food and income, agricultural investment must improve the productivity and well-being of farming families in the developing world. These farming families are well-positioned to implement innovative agricultural practices to improve productivity—in the proper enabling environment.

The massive commercial pressure on land, however, is occurring primarily in low-income and middle-income countries, often in settings where land rights are weak, unclear, and poorly governed. In light of this poor land governance, these transactions have caused many rural land users to lose the most important resource for their livelihood—their land—as well as access to water and other natural resources. These land deals can also result in the displacement of individuals and communities, and dramatically impact the livelihoods and food security of area residents. This creates enormous risks for investors and governments—and especially for the poor people on the ground who can lose their livelihoods and identity.

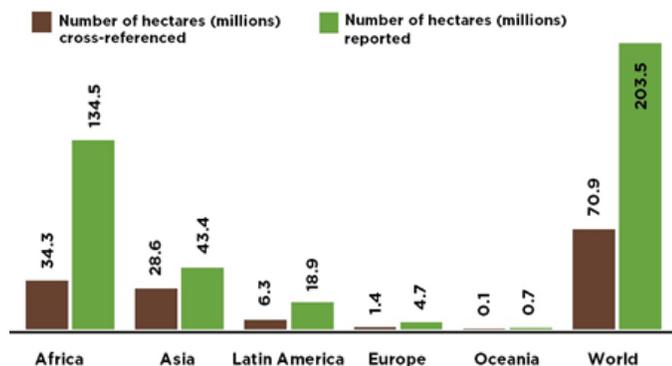
Unfortunately, a large majority of farm families, especially in Africa, lack secure rights to the land they cultivate. This not only negatively affects their incentives to invest in their land; it also places them at risk of displacement by large-scale land acquisitions. The global land rush can therefore deprive small-scale farmers of the opportunity to apply new and innovative techniques to improve agricultural productivity that can help them achieve self-sufficiency and lead to other positive socio-economic impacts.

Accordingly, interventions to address the global land rush cannot ignore the issue of land rights and land governance. These issues play a critical role in determining how the land rush will impact various stakeholders, especially the rural poor.

Features of the global land rush

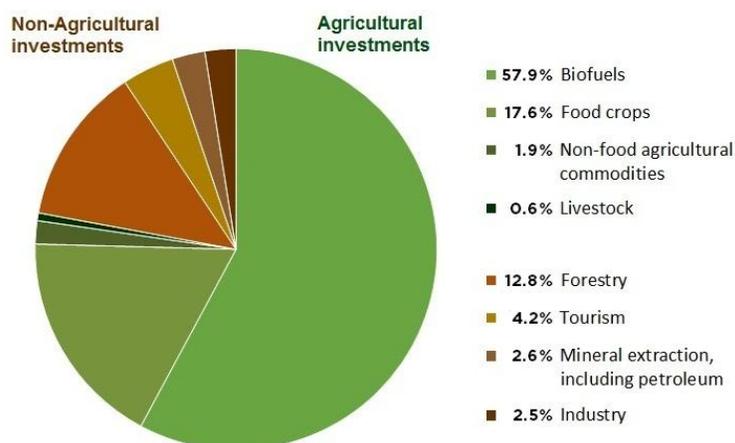
Scale of Investments. Although commercial land transactions are not new, the scale of some recent deals and the growing pressure on land resources are unprecedented. Estimates of the amount of land involved vary because many of these transactions occur behind closed doors and are not publicly disclosed. But all credible analyses lead to the same conclusion: the scale of this trend is enormous.

For example, a January 2012 report by the International Land Coalition (ILC) indicates that large-scale land investments (those exceeding 200 hectares) reportedly approved or under negotiation from 2000 to November 2011 covered 203 million hectares of land. Of the 203 million hectares “reported,” approximately one-third, or 71 million hectares, represents transactions that are “cross-referenced” by more than one non-media source.³ The majority of the land acquired is in Africa.



Source: W. Anseeuw, et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project 23* (International Land Coalition 2012).

Investments by sector. Several factors drive the demand for land. Agricultural production, including food, biofuel, livestock, and non-food agricultural products, accounts for 78% of the area acquired (again, where the transactions involve at least 200 hectares, are referenced from more than one non-media source, and the commodity is known).⁴ Perhaps surprisingly, biofuel production is by far the greatest demand driver. Other factors driving demand include carbon offsets, mineral extraction, and tourism.



Source: W. Anseeuw, et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project 24* (International Land Coalition 2012).

Major stakeholders. Governments are the major sellers or lessors of land to investors. However, local communities and individuals in these countries frequently have informal, customary rights to the targeted land that are often not formally recognized by statutory law. As a result, these rights are often not reflected in formal legal documents or public records. Moreover, although these lands may be underutilized, very little is vacant or unused throughout the year. Local farmers may leave land fallow in order to improve productivity. Seemingly “empty” land may actually be used during particular times by pastoralists or those engaged in hunting and gathering. Generally, if land is fertile, someone is claiming it for use for all or part of the year. The failure to formally recognize customary land rights combined

with what may sometimes appear to be vacant land allows governments to maintain that the land at stake is unused and unoccupied.

Foreign investors feature prominently in media reports on the land rush and many investors are foreign governments or companies. However, the majority of investors in many countries are domestic companies and individuals. Focusing only on deals involving foreigners might result in overlooking the many investments by politically powerful national and local elites that can cause great harm to local communities.

Risks posed by the global land rush

Local communities. As currently implemented, and despite the potential benefits, investments in farmland have often harmed local communities. A World Bank study of nineteen recent cases in seven countries found that local communities often are left worse off by the investment.⁵ Investors and governments have ignored land rights, especially informal ones. Too often governments resort to expropriating land held by small farmers and others who do have formal rights, often without proper process or adequate compensation. Where local communities are consulted the consultation is typically not meaningful, largely because the communities are denied the information needed to make a proper assessment of risks and benefits.

As noted above, these land deals can result, and unfortunately have resulted, in a loss of access and rights to land, water, and other natural resources and in the displacement of individuals and communities. This in turn has a severely adverse impact on the livelihoods and food security of poor and vulnerable populations. Displaced farmers lose the opportunity to utilize new agricultural technology that can make their fields more productive. Moreover, displacement and reduced livelihood opportunities can lead to the increased potential for conflict over scarcer resources. Furthermore, these transactions can also cause environmental damage such as land degradation, depletion of water resources, and elimination of forests.

Because women are already generally more vulnerable than men in their access to and

ownership of land and their ability to access any compensation that might be awarded, the land rush can have particularly negative impacts on women's land rights and related negative effects on social and gender relations.

Investors. Investors cannot assume that they can obtain secure legal rights to land and avoid risks by negotiating solely with governments. Where land rights are inadequate, unclear, and poorly governed, and where local communities do not have a seat at the table when deals are negotiated, the result may be aggrieved local communities that can pose substantial risks for investors. Respecting and, indeed, taking steps to boost local land rights is not charity or corporate responsibility; it is simply proper risk management and good business.

Governments. Poor governance of land deals undermines the rule of law and public confidence in government. The process for accessing land often lacks the transparency necessary to hold all parties accountable, and leads to distrust of governments. Moreover, many investment contracts, in which the government is often the seller or lessor, provide inadequate compensation, limited access to dispute resolution if agreements are violated, and are mostly unenforceable. The lack of enforceability means that investor promises of new jobs and new infrastructure such as roads, irrigation systems, or schools, can go unfulfilled, with no real recourse for governments. These transactions also pose risks to governments because they can create an anti-market backlash that has a negative impact on the investment climate. Finally, with poorly structured deals, governments may be faced with aggrieved, displaced local communities and conditions ripe for conflict and instability.

The need to address land rights and land governance

Although the global land rush presents many economic, social, and environmental risks, it also has the potential to provide benefits to local communities, investors, and governments. As noted earlier, by combining outside capital, technology, and market access with poor farmers' land and labor, investment in the developing world's land can improve rural livelihoods, advance

broader development goals, and earn financial returns. The benefits may be better realized if investors partner with local communities by investing in smallholder farmers rather than acquiring their land. This investment model, coupled with innovative new technologies created with small farmers in mind, can lead to substantial increases in productivity and in farmers' standards of living.

The benefits of increased agricultural investment, both in land and in technology, cannot be realized, however, unless governments and investors take steps in the area of land tenure policy and practice—in particular to address land governance shortcomings—to increase positive outcomes and reduce harm. There is promising movement among multilateral organizations, the private sector, and other joint public-private initiatives in the development of guidelines and principles for good land governance and for responsible investment in agriculture. However, still missing are practical tools that can translate broad policies into actionable standards that will be implemented and honored by investors, developers, and governments and that can reduce the adverse impacts of these investments and protect the rights of vulnerable populations.

¹ FAO, *How to Feed the World in 2050*, at 2, 8 (FAO 2009).

² *Id.* at 16. The numbers reflect constant 2009 prices.

³ W. Anseeuw, et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project 18-19* (International Land Coalition 2012). “Reported” data covers deals obtained from published research reports, media reports, and government registers where information is made public. “Cross-referenced” data refers to reported deals referenced from more than one non-media source. *Id.* at 18.

⁴ *Id.* at 18, 24.

⁵ K. Deininger, et al., *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* 64-70 (World Bank 2011).