



Large-scale agricultural investments under poor land governance in Zambia



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ABSTRACT

This paper looks at how large-scale land acquisitions made by foreign investors in Zambia are implemented. It scrutinizes both the steps that an investor has to go through in order to attain land within the Zambian land governance system as well as the actors shaping the acquisition process.

As the most important formal change introduced to the Zambian land governance system, the Lands Act 1995 paved the way for foreign investments in land. The new actor “investor” on the other hand has emerged as a result of rising prices for food and non-food commodities. The study finds that the enforcement of formal rules in the process of acquiring land is currently weak and largely determined by a number of actors: while investors, local authorities and government officials have strong leverage, local land users are excluded from the process. If the process of transformations of customary land into state land continues, land administration will be inevitably shifted toward statutory jurisdiction. As a result, local chiefs will lose their discretionary power thereby further marginalizing local land users. As it stands, welfare implications are chiefly down to the individual actors. However, it is only the government that can issue a guarantee that local land users will also benefit from land acquisition.

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Introduction

In the last decade, a surge in worldwide demand for agricultural land in developing countries has grabbed the headlines and more recently it has also attracted an interest from the academic community. Despite a general lack of transparency surrounding large-scale land acquisitions, evidence on these deals has been growing over the last years (Cotula, 2013). However, the confusion on the actual scope of these deals persists (Cotula et al., 2009). While Edelman, (2013) questions the usefulness of aggregating data of a dubious quality, various figures do exist. The estimates range from 15 to 20 million ha of farmland in developing countries between 2006 and 2009 (von Braun and Meinzen-Dick, 2009), to 35.4 million ha of concluded land deals (under contract) from 2000 to today (Land Matrix, 2014), to 45 million ha of farmland under negotiation in 2009 alone (World Bank, 2010). Despite these imprecise figures, evidence suggests that considerable land areas are indeed targeted in developing countries (Deininger, 2011; Hall, 2011; Anseeuw et al., 2012). Even if we assume that figures are blown up and that

the implementation of these deals is slow, we can assert that we are talking about a real phenomenon.

One strand of the literature deals with the actual process of acquiring land, in particular the different steps of an acquisition process and the different actors that participate in it. For instance, German et al. (2013) study the policy and practice of customary rights protections in the context of large-scale land acquisitions in Ghana, Mozambique, Tanzania and Zambia. They find – even in countries with high standards of legal protection – that customary rights to vast areas of land are lost with limited or no compensation and emphasize the importance of human agency in shaping the process and outcomes. Cotula and Vermeulen (2011) study the process of acquiring land with a focus on the local population. They find that claims of current right-holders and resource users are ignored, consultation and compensation is poor. The result is adverse outcomes for the local population. Wolford et al. (2013) concentrate on a key player in the process, the state. They argue that the challenge in understanding land deals is to “unbundle the state”. Government and governance have to be regarded as processes, people and relationships of a dynamic nature.

In terms of the actual process, another strand of the literature focuses on the impact of land deals. This strand relies heavily on case studies that concentrate on (short-term) socio-economic impacts on local communities. For instance, Schoneveld et al.

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(2011) find immediate negative local impacts on biofuel plantations in Ghana: communities lose access to land – their source of livelihood – which cannot be mitigated through new employment opportunities. A recent study by the FAO (2013) discusses several case studies from nine countries in Sub-Saharan Africa, Asia, and Latin America. The study finds that impacts are very diverse and vary according to a range of factors, such as the underlying business model. The authors assess that land deals tend to have negative impacts in cases where land rights are poorly specified and insecure and in cases where the land in question had previously been used by local people. Based on the analyses of two Zambian investment cases dating back to the 1970s and 1980s the study by Mujenja and Wonani (2012) is one of the rare studies that finds positive socio-economic outcomes. The study concludes that local land users benefit from job creation and indirect livelihood opportunities through increased household incomes.

This paper adds to the strand of literature that concentrates on processes. It focuses on the implementation of land deals within the Zambian land governance system. In particular, it investigates the process of land acquisitions and the role different actors play in this process. This research also contributes to the growing evidence on impacts by shedding light upon welfare implications of such land deals and how actors are able to shape them. This study takes into account that these processes and relationships between different actors are dynamic and illuminates changes of bargaining power.

The paper is organized into seven sections. The section to follow introduces the research design. Section “Large-scale land acquisition in the context of land governance in Zambia” examines the evolution of the land governance system, as well as the actual process of acquiring land. Section “Actors” takes a close look at the actors involved. Finally, Section “Welfare implications” discusses welfare implications before Section “Discussion and conclusion” discusses results and draws conclusions.

Research design

The methodology to assess the functioning of the land governance system and the acquisition process is based on a content analysis of key legal and government documents underpinning land tenure, investment promotion and environmental protection. Further, the research builds on a literature review. The methodology to assess de facto processes and actors' behavior relies on original field data: first, the author conducted 34 expert interviews with actors involved in the process of acquiring land. These actors were identified through literature research and during a first scoping trip to Zambia. Contact to potential interviewees was established through various channels, mostly through references of colleagues or former interviewees or simply through walking in. While the author set out to have a balanced sample of involved actors, the actual sample hinged on the availability of potential interviewees. In particular, the author interviewed actors such as officials in ministries or from the Zambia Development Agency (ZDA), a chief, as well as investors themselves. Moreover, the author consulted those who – while not directly involved in this process – are still highly knowledgeable about it, such as representatives from the Zambia Land Alliance, other nongovernmental organizations or international organizations.¹ The majority of these interviews took place in Lusaka as land administration in Zambia is highly centralized. Only a few interviews took place in three study regions introduced below. Second, focus group discussions (FGDs) were implemented in three regions in which investments have taken place: Lusaka

West, Mkushi Farmblock and the area around Chisamba/Kabwe. Also, one pilot FGD was carried out in Chongwe,² results of the pilot are also included in this paper. FGDs aimed to have between 7 and 15 participants, comprised of both men and women. In each of the three study regions, we attempted to hold (and largely succeeded, see references) one FGD with smallholder farmers, one with landless smallholder farmers and one with farm employees.

Large-scale land acquisition in the context of land governance in Zambia

Evolution of the land governance system

As in most sub-Saharan African countries, Zambia has a dual land tenure system reflecting the customary land tenure arrangements (communal land) as well as the colonial legacy of statutory laws (privately titled) (see Subramanian, 1998; Mulolwa, 2002; Brown, 2005; Chizyuka et al., 2006; Metcalfe and Kepe, 2008; Sichone, 2008). All land is formally owned by the state (vested in the president), and can either be state land (“land which is not situated in a customary area” (GRZ, 1995)), which is titled, or customary land held in trust by traditional authorities. Today, customary rights are officially recognized in the Zambian constitution (GRZ, 1995). Typically, agricultural activities are divided along the lines of these two different types of land: commercial agriculture is concentrated on state land while smallholder agriculture is carried out in customary areas. The majority of the Zambian population relies on land in customary areas which is administered by chiefs (Adams, 2003).

A key change in the land tenure system was the 1995 Lands Act that was adopted in the wake of market liberalization (Metcalfe and Kepe, 2008, pp. 241–242) as “requested by donors” (Brown, 2005, p. 80). Not only were the previous restrictions on foreign investors eased, but the conversion from customary to state land was also made possible. Since independence until 1995, only 6 per cent of the country's land was tradable – the remainder was administered by traditional chiefs and could not be sold or exchanged.³ After the 1995 Act, the conversion of land became possible and therewith all land, in theory at least, entered the marketplace. The amount of customary land in existence has since greatly diminished, as a result of having been made available to foreign and domestic investors. Furthermore, the Lands Act established the Lands Tribunal. The congested High Court was intended to be unburdened through a more accessible, affordable and efficient institution to resolve conflicts over land. However, the Lands Tribunal remains unknown, especially to rural Zambians; it mainly works in Lusaka; is chronically underfunded and understaffed; and has a backlog of cases more than two years (Brown, 2005, p. 91; ZLA, 2005).

While it is beyond dispute that land acquisitions have been facilitated by the Lands Act 1995 (Brown, 2005, p. 88), a new peak in interest in land acquisition has been experienced only recently in Zambia – in light of changed global context conditions, such

² These investment regions are relatively close to infrastructure (along the “line of rail”). All investments are located on state land that has been state land even before the investment. Farmers interviewed live in customary areas adjacent to these investments. Obviously, this study set-up neglects remote rural areas that make up the majority of Zambia's agricultural land. This may lead to an underrepresentation of such areas, where land is typically customary. However, other studies find that investors are primarily targeting well-connected areas (Anseeuw et al., 2012, pp. 34–36). This gives us a strong rationale for concentrating on these areas along the line of rail.

³ During colonial times, the British governed customary areas (trust and reserve land) through ‘indirect rule’. Compared to other colonies, much land in Rhodesia was set aside for the use of indigenous people and chiefs retained great control over the use and allocation of land. Nonetheless, this concerns marginal land as the best land was declared as ‘crown land’ (Adams, 2003; Brown, 2005).

¹ More details are provided in the references. Please note, that in total 34 interviews were conducted but only those cited in the text are listed.

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