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Interplay of Land Governance and Large-Scale Agricultural Investment: Evidence from Ghana and Kenya*

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ABSTRACT

Recognising the increased demand for agricultural land, this comparative analysis examines the effect of large-scale land acquisitions on their surrounding institutional environment. An embedded case study design allows us to analyse two specific land deals in Ghana and Kenya. We find that insufficiencies in these countries' land governance systems are partly caused by discrepancies between *de jure* and *de facto* procedures; and that weak legal frameworks, coupled with poor enforcement, produce outcomes that depend to a large extent on the investors. We also find that large-scale land acquisitions have a feedback effect on the land governance system, which suggests that large-scale land acquisitions can be drivers of institutional change.

INTRODUCTION

In recent years, an increased demand for agricultural land has fuelled fears of a neo-colonial land rush. This is associated with various risks to rural households' livelihoods, such as the loss of access to land, the exploitation of wage labourers or the damage of environmental buffer zones (German *et al.* 2013; Borras & Franco 2012; White *et al.* 2012; Vermeulen & Cotula 2010; White & Dasgupta 2010). At the same time, these demands often meet seemingly abundant resources in developing countries and governments who aim, for example, to promote rural development, create employment, or bring in tax income (Deininger & Byerlee 2012; Görgen *et al.* 2009). The increased demand for land has thereby raised hopes for a renewed interest in developing countries' chronically underinvested agricultural sectors (OECD & FAO 2013, UNCTAD 2013; World Bank 2008). These opposing views illustrate a vibrant and continuous debate on "land grab or development opportunity" as coined by Cotula *et al.* (2009).¹

Since 2009 a broad research community has focused on different aspects of large-scale land acquisitions.² Studies by Deininger *et al.* (2011), Cotula *et al.* (2011, 2009), Zoomers (2010), and von Braun and Meinzen-Dick (2009) have revealed several drivers of the phenomenon: rapid population growth, a strong trend towards urbanisation, changing dietary preferences, and environmental concerns such as severe land degradation, desertification, and water shortages. Added to these are the increasing global and local demands for food, raw materials, forest products, renewable energy sources, ecosystem services, eco-tourism, and investment.

In-depth case studies elucidate processes of land acquisition, in particular the role played by different actors at different stages in the acquisition process; e.g. Burnod *et*

al. (2013) and Wolford *et al.* (2013) on the role of the state; Nolte & Voget-Kleschin (2013), Wisborg (2012), Cotula & Vermeulen (2011) and Vermeulen & Cotula (2010) with a focus on local populations and consultation; Nolte (2013) on actors and institutions in Zambia and German *et al.* (2013) from a comparative perspective based on several cases in five African countries.

Evidence on impacts is still scarce. This is partly due to the temporal scope: while local populations are affected by land deals immediately, outcomes can only be judged in the long run. Nonetheless, evidence on impacts is growing. Civil society organisations have voiced cautions about possible negative impacts for host countries and the local population, such as displacements, destruction of livelihoods, tax evasion, or increasing dependency through labour contracts (for Ghana: FIAN International 2010b; for Kenya: FIAN International 2010a). Also, first academic studies on impacts are published. For instance, German *et al.* (2013) find one common feature in a great number of cases: customary rights to vast areas of land are lost for many generations or even permanently with limited or no compensation. Mujenja & Wonani (2012) find rather positive impacts for two Zambian investment cases dating back to the 1970s and 1980s: local land users benefit from job creation and indirect livelihood opportunities. This is in line with findings from Boamah (2011) for a more recent investment in Ghana. Whereas Văth and Kirk (2012) find positive impacts on contract farming in the sphere of an oil palm investment, Tsikata and Yaro (2013) point to the failure of a mango outgrower scheme where the project ignored the political ecology in Ghana. Văth (2013) and Cotula (2013: pp. 125) find evidence of both positive and negative effects. However, Cotula (2013) concludes that the negative aspects tend to outweigh positive ones.

Despite this growing evidence on impacts, there remains a lack of understanding on how these impacts are shaped by the institutional setting. To fill this gap, we emphasise the interplay of large-scale land acquisitions and the surrounding institutional environment. Our analysis focuses on the question ‘How are land deals implemented?’ To structure our study, we apply Williamson’s (1998) four levels of social analysis. We work our way from general to specific factors, analysing the implementation of a land transaction against the background of three aspects of the land governance system: the *land tenure system*, the *process of acquiring land*, and the *outcomes of this system*.

The remainder of the paper is organised as follows. We explain our methodology and present the data, introduce our conceptual framework, and analyse, for Ghana and Kenya, the evolution of the land tenure system, the process of acquiring land, and the outcomes. We base this on a comparative analysis that aligns our empirical findings with our conceptual framework. In concluding we offer some policy recommendations.

METHODOLOGY AND DATA

We use a comparative case study design (Dion 1998; Levy 2008; Gerring 2008; Gerring *et al.* 2011), with two African countries as the case studies.³ For each country we concentrate on one investment project initiated by a Western investor in a neglected rural area, which gives us an embedded case study, following Yin (2002: 42–43). Comparing the two projects in the context of their respective countries allows us to examine the mechanisms guiding acquisition processes more comprehensively than a single case would. According to Gerring (2004) and Seawright & Gerring (2008), an intensive study of a single unit (or a smaller class of

units) also provides better grounded insights into the functioning of the land governance systems in general and interactions between its stakeholders in particular. In this regard, we consider our study to be in line with Gerring's pathway case (2007), which studies a crucial case to clarify a hypothesis. Similarly, our study offers an elucidation of the causal mechanisms that underlie large-scale land acquisitions.

Our empirical analysis draws on legal documents and on primary data gathered during field research in Ghana and Kenya in 2010 and 2011. We cannot expect to understand the practices involved in land acquisitions just by looking at the *de jure* legal framework as laid out in formal documents; we also require an in-depth analysis of *de facto* processes. We therefore conducted semi-structured interviews with a wide range of stakeholders at the national and local level. In addition, we facilitated focus group discussions with farmers in the region directly affected by the particular investment project, and with employees of the investors.

CONCEPTUAL FRAMEWORK

Land deals are implemented within a complex land governance system. To explain the mechanisms that drive implementation of large-scale land acquisition, we apply Williamson's (1998) four levels of social analysis as a conceptual framework to structure our study.

The first level comprises norms, customs and traditions that can be summarised as informal institutions. These are persistent, so changes at the first level usually take the form of very slow stepwise modifications of values over time. At the second level, which consists of formal institutions (i.e. the *de jure* legislation), changes can

occur relatively fast: formal rules on paper can theoretically change overnight, though a far-reaching institutional reform process in a parliamentary system will be slower, requiring several rounds of technical and political validation. The informal and formal institutions are interconnected and they determine the ‘rules of the game’ – the governance system at the third level. We deviate from Williamson (1998) on the fourth level⁴ in that we concentrate on the outcomes of the ‘game’. Evaluating outcomes of land acquisitions requires some clarifications. First, on the scale of outcomes: are we interested in outcomes on the international, the national or the local level? Second, we need to specify the target group: outcomes for whom, for investors, government officials or local populations? And third, we have to distinguish immediate outcomes of the acquisition process, such as displacements, and medium and long-term outcomes that set in once the project is operational.

Our study focuses on the immediate effects of the acquisition process for the population on the local level, i.e. compensations. We further provide some insights into how the population perceives medium- to long-term impacts. We apply this analytical framework to the land governance systems of our case study countries and the respective investment cases.

While Williamson (1998) limits his analysis to feedback between two levels, we take into account feedback across all four levels. We thus assume – in line with Williamson – that first and second level institutions have reciprocal feedback and that they determine the third level, the governing institutions. Moreover, we believe that the third level lays the groundwork for outcomes at the fourth level. However, going beyond Williamson, we further assume that these outcomes in turn send feedback to the first and second levels about formal and informal rules or

institutions. As Figure 1 shows, our analysis is based on a conceptualisation of a system that encompasses these feedback mechanisms.

FIGURE 1
Conceptual Framework*



* Own display, based on Williamson, 1998.

To sum up, in order to examine how land deals are implemented, we first analyse the evolution of the land tenure system, looking at the first and the second levels of our proposed framework. We then analyse the land game on the third level, taking into account the general acquisition process and one example for each country. After this we analyse the socio-economic outcomes of this system on the fourth level. Finally, we synthesise the findings from these four levels by looking at changes in the land governance system induced by investment projects.

ANALYSIS

While the aim of our analysis was to compare the implementation of land deals in the two countries, our two case studies yielded different findings: the Ghanaian case was particularly revealing on aspects of compensation, whereas the Kenyan case produced more information on entrance of the investor.

The evolution of the land tenure system

Ghana

Given the clear north-south differentiation, and the differences between the matrilineal and patrilineal landholding systems, land tenure in Ghana is a highly emotive and sensitive issue (Ubink & Amanor 2008; Aryeetey *et al.* 2007a). The formation of the centralised Akan states in the 17th and 18th centuries laid the foundations for social differentiation and consequently different ‘interests in land’⁵ according to a person’s position in the hierarchy (Kwadwo 2004; Aryeetey *et al.* 2007a). Up to today, the allodial title is the strongest interest in land in Ghana. It is associated with ‘overall ownership’ and held by the chiefs in trust for their people as communal interest (Kasanga & Kotey 2001; Aryeetey *et al.* 2007b). The strongest individual interest in land is the customary freehold title. Its holders possess usufruct rights and are allowed to transfer and inherit the land, but the superior interest of the allodial right holder has to be recognised (Kasanga & Kotey 2001; Lund 2013). Hence, unlike present-day Western-style property rights systems, overlapping interests in land are common in the customary system.

Members of the clan have access to customary freehold because land as a source of livelihood traditionally belongs to the living, the dead, and the yet to be born (Osei 1998; Larbi *et al.* 1998; Mends 2006). This fact has been recognised by the 1992 Constitution, which prohibits the outright sale of what are called ‘stool’ (or ‘skin’) lands⁶ (Republic of Ghana 1992: Art. 267 (6)). Consequently, investors can only enter into lease arrangements.

Before the colonial days, customary law and Islamic Sharia law coexisted. The chieftaincy system was legally recognised by Britain as an instance of ‘native

administration' through which to implement 'indirect rule' (Kirk 1999) and at the same time additional interests in land were introduced under common law. Legal pluralism therefore expanded under colonial rule (Aryeetey *et al.* 2007a).

After independence, state land was maintained by post-independence rulers and governed by the State Lands Act (No. 125 of 1962) for public lands (Republic of Ghana 1962b) and the Administration of Lands Act (No. 123 of 1962) for vested lands (Republic of Ghana 1962a). Vested land is land where the state acquired the management functions by law, while the ownership emanating from custom, i.e. the allodial title, stays with the chief and entitles him to receive ground rents. In general, leaseholds under common law, of both state and customary land, can be granted for up to 99 years for Ghanaians and 50 years for foreigners (Republic of Ghana, 1992: Art. 266 (4)).

Currently, state land in Ghana accounts for roughly 20% of the land surface, while the remaining 80% falls under customary land held by stools (in southern Ghana), skins (in northern Ghana) or families (for instance in the Volta Region) (Kasanga & Kotey 2001; Aryeetey *et al.* 2007b).⁷ Although these figures are rough estimates, they underline the strong role of the customary system to date (Anyidoho *et al.* 2008; Ubink & Amanor 2008) and indicate that investors often have to negotiate with chiefs to acquire large land tracts. However, the fact that common law interests in land, like leasehold, can be allocated on a plot that falls under customary land points to the possible tensions arising from the dual system in modern times.

A multitude of 166 Acts and their ambiguity have been hampering an efficient formal land rights system and proper enforcement for decades (Quaye 2006), so people have become used to acting in legal grey areas (Interviews G15, G21). In

1999, these shortcomings were recognised by the National Land Policy (Republic of Ghana 1999) and led to the initiation of a Land Administration Project (LAP) with World Bank support in the year 2000 (Aryeetey *et al.* 2007a; Bugri 2012). A comprehensive legal framework is currently being developed. While the Office of the Administrator of Stool Lands Act (No. 481 of 1994) (Republic of Ghana 1994a) and the Lands Commission Act (No. 483 of 1994) (Republic of Ghana 2008a) have contributed to institutional clarity, the Land Use Planning Bill (Republic of Ghana 2011) is under review and the Land Bill is in a third draft stage (Republic of Ghana 2010). The Land Bill is expected to reconcile the customary and statutory systems and to improve land registration and the transparency of land transactions in order to reduce conflicts arising from overlapping claims, as well as fraud in the form of double registration and corruption (Interviews G15, G20, G21).

Given the population growth (from 20.6 million in 2003 to 25 million in 2011: World Bank 2013) and the growing number of land deals (Republic of Ghana 2012), the increasing demand for land is putting pressure on the present land governance system (Interviews G15, G21, G32; Berry 2009; Tsikata & Yaro 2011).

Kenya

Up to today, Kenya has a dual system of land tenure – consisting of statutory and customary tenure with a multitude of (sometimes contradictory) statutes (Republic of Kenya 2009a) – that evolved over history. Before colonialism, several systems of land tenure existed in Kenya, most importantly the communal system of the Masai, the combined individual and familial system of the Kikuyu, and the feudal system of the Mumia kingdom (Alila *et al.* 1993).⁸

During colonial rule, a dual system of land administration was introduced: Statutory tenure for the most fertile land (mainly in the Rift Valley) that became known as the ‘white highlands’, vested in the Crown and occupied by the British, and customary tenure for ‘native reserves’ occupied by local people. Africans, especially Kikuyus, soon began to migrate to the Rift Valley in search of wage labour. This migration was further increased by population pressure in the reserves. Unrest in the reserves, especially the Mau Mau rebellion from the 1940s onwards, forced colonial authorities to open up the highlands to a re-Africanisation. This led to severe ethnic tensions that persist until today as settlement schemes, such as the ‘million-acre’ settlement scheme (Leo 1978), and land purchase programmes gave preference to Kikuyus over other tribes (Kanyinga 2009).

After independence the dual system of land tenure was maintained. Land remained a source of conflict, particularly in the case of ‘elite land grabbing’; that is, fraudulent allocation of public land to economically or politically influential people (Republic of Kenya 2004; O’Brien 2011; Manji 2012), or the 2007/2008 post-election violence that is thought to have been fuelled by land issues (Kanyinga 2009).

Today, there are three categories of land: public land (about 13% of the total land surface), private land (about 18%), and community land (about 67%) (Republic of Kenya 2004b).⁹ There are approximately six million titles on private land (stemming from both public and community land) (Interview K15) and a great deal of fraud surrounding them: often, there are numerous titles for one piece of land.

At the time of writing, Kenya is in the middle of a land law reform process (Manji 2012b). The policy road map is outlined in the National Land Policy of 2009 (Republic of Kenya 2009a) and in the new Constitution of 2010 (Republic of Kenya

2010a: Art. 60 (2); Glinz 2011) – high hopes are placed on both. However, this only partly enacted constitution adds to the confusion about land management, as old and new constitutions coexist.

The land governance that is called for in the new constitution and the National Land Policy has not yet been fully implemented. So far, three Acts concerning land have been revised and adopted since the new constitution was approved: The Land Registration Act (No. 3 of 2012),¹⁰ the National Land Commission Act (No. 5 of 2012),¹¹ and the Land Act (No. 6 of 2012)¹² (Republic of Kenya 2012a,b,c). However, the process has been hasty, engagement of legislators and citizens has been lacking, and the content falls short of expectations (Manji 2012b).

Even though pressure on land in Kenya is enormous, for example through population growth (from 33.8 million in 2003 to 41.6 million in 2011) (World Bank 2013) and elite land grabbing, little land is accessible to investors and thus land acquisitions by foreign investors play only a minor role and are concentrated in specific areas, such as the Tana River Delta, the Yala Swamp (like our example, Dominion Farms), and traditionally the area around Naivasha (for flowers) and Kericho (for tea).

The process of acquiring large tracts of land

Ghana

The first step is to identify available land. For this task, it is usual to engage local professionals with a wide-ranging network (Interviews G17, G19). Another possibility for foreigners is to approach the Ghana Investment Promotion Centre, which is currently improving a database capturing stool land offered for investment projects (Interviews G17, G19, G20; GIPC 2013).

As the majority of land in Ghana is customary land, potential investors have to negotiate in most cases with chiefs and paramount chiefs (Interviews G15, G17, G19; for examples: Schoneveld *et al.* 2011; Amanor 2012; Wisborg 2012; Berry 2013). By custom, the traditional council and the elders need to agree to negotiations in order to guarantee checks and balances (Interviews G15, G29; Kasanga & Kotey 2001).

In the second step, the investor receives the site plan from the chief and must initiate a comprehensive search at the archives of the Lands Commission, to check that the negotiating party is the legal owner and that there are not multiple claims on the land (Interviews G20, G21, G27; Republic of Ghana 2008a). Further checks with the Town and Country Planning Department are necessary to ascertain whether the land is available for the intended economic activity (Interviews G20, G30; Republic of Ghana 1993). However, this is a rather fuzzy and not entirely clear procedure.

A licensed surveyor is then engaged to map the land (Interviews G16, G27; Republic of Ghana 1986). According to custom, negotiations are concluded with the payment of ‘drink money’ (Interviews G15, G20, G29; Ubink & Quan 2008). This term originally meant a physical drink but now is converted into financial terms and symbolises asking permission to approach the chief in good will (Interviews G3, G29; Amanor 2010). With growing pressure on land the amount of the ‘drink money’ is increasing and translates to a substantial part of the acquisition costs (Interviews G15, G20, G29; Ubink & Quan 2008).

Once details have been agreed upon, the documents have to be handed in to the Regional Lands Commission to process the registration. If the land is located around Accra or Kumasi a title can be issued; in other parts of Ghana only deed registration

is available (Interviews G16, G20; Kasanga & Kotey 2001). Title registration is therefore conditional on announcing the transaction details at the site itself, at the respective district assembly and at the Regional Lands Commission. When 21 days have passed without any objection being raised, the registration process can be completed (Interview G16; Republic of Ghana 1986).

The annual rent, which is confirmed by the Lands Commission in the leasehold, will be paid to the Office of the Administrator of Stool Lands (Interviews G12, G23; Republic of Ghana 1994a). This authority charges a 10% administrative fee. The rent is disbursed as follows: 55% to the district assembly, 25% to the chief and 20% to the traditional council (Interviews G12, G21, G23; Republic of Ghana 1994a).

After a land lease has finally been issued, an Environmental Impact Assessment (EIA) is mandatory. Actors such as the Environmental Protection Agency and the Water Resource Commission thus have a say in regulating future land use (Interviews G15, G31; Republic of Ghana 1994b, 1996).

This is the typical procedure for acquiring customary land. When it comes to state land, the Lands Commission takes the position of the chief as it is mandated to manage public and vested lands; it also collects the rents (Interviews G16, G20; Kasanga & Kotey 2001). Investors therefore often favour state land as fewer actors are involved in the process and as this land is thought to offer higher tenure security (Interviews G15, G20). However, apart from land belonging to some divested state-owned companies, there is usually no state land available for investors (Interviews G19, G28).

In principle, the acquisition process is straightforward but in practice there are several weaknesses. First and foremost, there is no guarantee that investors will

follow this procedure before they start operations. Schoneveld *et al.* (2011), for instance, find that most bio-fuel related investments in the Brong Ahafo Region started operations without having an issued lease. There are two reasons for this: on the one hand, land administration is slow and cumbersome (Interviews G13, G15, G18; Kasanga & Kotey 2001); on the other, if chiefs and investors agree on a deal they do not see the need to bring in state institutions and rather prefer to save costs (Interview G13). This is especially attractive for chiefs as they can collect the rents directly without sharing them.

Since transactions of customary land are private transactions under civil law, several problems arise (Interviews G15, G20; Republic of Ghana 1992; Ubink & Quan 2008). The state has (given the present legislation) no power to interfere and design contracts (Interviews G20, G21). It is up to the chiefs and the traditional councils (and the investors) to decide whether they will seek free, prior and informed consent, so the local population is at risk of hearing about a deal only after the negotiation has been concluded (Interviews G15, G21). In addition, information about sustainable land prices ('drink money'), land rents and other negotiable benefits, such as local employment quotas, contract farming schemes, equity shares, or corporate social responsibility, are usually not available to negotiating chiefs (Interview G15). Moreover, de facto accountability can be weak, so it is up to the chiefs whether they disclose the amount and the intended use of the 'drink money' (Interviews G15, G20; Berry 2013).

Regardless of whether customary or state land is in question, another weakness can be identified at the administrative level. Since computerisation is underdeveloped in Ghana, processing documents is time intensive (Interviews G16, G18, G21; World Bank 2003). In addition, monitoring and sanctioning of regulations remains a

challenge due to a lack of personal and financial resources (Interview G33; Environmental Protection Agency 2010; for the mining sector see Domfeh 2003). Therefore suitable grounds exist for offers of ‘speed money’, and rent-seeking exists at various levels, fostering fraud such as multiple sales of land or incomplete registration.

How these potential weaknesses translate into acquisition practice can be exemplified by the case of the Ghana Oil Palm Development Company (GOPDC). This leading palm oil producer is the biggest company in Kwaebibirem District, a remote area in the Eastern Region of Ghana. It was established as a state-owned company in 1976 on an area of 8,953 hectares, known as the Kwaie Concession (Registered Leasehold No. 1258/1976).¹³ In the wave of liberalisation, GOPDC was privatised in 1995 and the 50 years leasehold (Republic of Ghana 1976) was divested to the Belgian investor *Société d’Investissement pour l’Agriculture Tropicale*, which took over the majority of shares (SIAT 2013; GOPDC 2013).¹⁴ In 2000, GOPDC acquired a second concession, the Okumaning Concession, covering 5,205 hectares of vested land which were leased for 50 years. The original acquisition by the government (also in 1976) took place under the Administration of Lands Act (No. 123 of 1962) from Okumaning, Takworase, and Kusi stools (Registered Deed RE 2538/2008).

The difficulty with acquisitions of vested land under Act No. 123 of 1962 is the creation of overlapping interests in land, as mentioned earlier. The allodial titles remain in the hands of the chiefs, while management functions are acquired by the state and in this case were leased out to GOPDC. In this regard, GOPDC took over the assets and liabilities and thus the duty to compensate everybody who lived and farmed at the concession.

People living in this sparsely populated area were predominantly migrants. As they were not bound to the land by social ties, they rejected a resettlement plan suggested by GOPDC and favoured cash compensation (AY & A Consult 2007; Interview G3; FGD G4). Consequently, the Land Valuation Board surveyed crops and housing structures but not the land itself (Interviews G1–G3, G7, G14; FGDs G4–G10). This was because GOPDC already possessed a land lease contract and because the migrants had neither statutory nor ancestral rights to use the land (Kobo, 2010). The whole process, beginning with information and sensitisation, was characterised by an absence of transparency, and many irregularities and delays.

Our focus group discussions revealed a lack of free, prior, and informed consent. While some people had been informed in a meeting with GOPDC (FGD G1), others only became aware of the acquisition due to the valuation activities of the Land Valuation Board (FGD G9) or only heard about the investment project from their chiefs (FGD G8). Altogether, the role of chiefs is very complex: they negotiate corporate social responsibility activities with GOPDC (Interviews G1, G2, G14) and are highly appreciated (Interview G15). Nevertheless, considering that some chiefs have misused their position to bargain for personal benefits, and that they collect rents for the same land (the Okumaning Concession) from different actors (GOPDC and migrants), criticism has been widely expressed (Interview G7; FGDs G4, G5, G7, G9).

Other mandatory legal procedures were followed overall by GOPDC, although there may have been a few exceptions where they did not comply. For example, quarterly reports are sent to the Environmental Protection Agency on issues such as the treatment of the mill's effluent according to the Environmental Management Plan (Interviews G31, G33) and according to the Agency the Company was fined once,

several years ago (Interviews G31, G33). The Company acquires the necessary water permits on a regular basis, but the Water Resource Commission stated that there had once been a few months delay in the renewal of the permit (Interview G31).

Kenya

The ongoing land reform process in Kenya is expected to effect changes in the process of acquiring land. While it still follows the old legislation (prior to the new Constitution of 2010), major changes in this process will be effected once the new constitution is fully implemented. For instance, the following key issues are addressed in the new constitution (but at the time of writing had not been acted upon): (i) foreigners are no longer allowed to own land but can only take leases and the time period of a lease is limited to 99 years (Republic of Kenya 2010a: Art. 65 (1); Glinz 2011), and (ii) a ceiling for the amount of land one can hold is to be discussed (Republic of Kenya 2010a: Art. 68c). We concentrate on the old process, which was still in place at the time of writing, but give a foretaste of intended changes.

The government encourages investors in agriculture and facilitates the process through the Kenya Investment Authority (Interviews K8, K23). Investors usually take long-term leases to secure access to land for up to 99 years (Interview K3). Who the investor will negotiate with depends on the type of land targeted.

For public land, the government allocates land according to the Government Lands Act (Cap 280 of 2010) and the Trust Lands Act (Cap 288 of 2009). However, these procedures have been widely ignored in practice, thus irregular and illegal allocations of public land are common (Republic of Kenya 2004a, 2009a,b, 2010b; O'Brien 2011). Acquisitions of public land will change according to the National

Land Commission Act (Republic of Kenya 2012b), which stipulates the creation of a National Land Commission. This Commission will be in charge of administering public land. The former President Kibaki and Prime Minister Odinga have nominated members (Ndegwa 2012) and – under pressure – have officially announced the Commission (allAfrica.com 2013; Limo 2013).

For community land, the county council or another mandated institution negotiates with the investor. These local authorities are also entrusted with informing the involved local population. However, whether the population is informed about an investment largely depends on individuals in these institutions (Interview K23), as the National Land Policy states: ‘In addition, it [the institutional framework] does not adequately involve the public in decision making with respect to land administration and management, and is thus unaccountable’ (Republic of Kenya 2009a). Until 2015, the new constitution stipulates that the Community Land Bill – which is available in a zero draft version – must be enacted (Republic of Kenya 2011). Administration of community land is then to be handled by community land boards.

For private land the case is – in comparison – unproblematic, as negotiations are held with the former owner (Interview K3); leaving aside fraudulent land titles, the former ownership of private land is clear-cut. Investor and former owner (i.e. government, private owner, or communal authority) have to agree on a price, the ‘stand premium’, to be paid to the former owner. This price should reflect the value of the land but is negotiable. In addition, the investor has to pay an annual ground rent that is based on an official evaluation of the land, done by the Ministry of Lands. In the case of public land, an annual ground rent has to be paid to the government and in the case of community land to local authorities. On top of this, numerous statutory fees accrue in the process (Interviews K18, K19).

In all cases of investment in land – public, community, or private – the Ministry of Lands has to approve the transaction, register the land, and issue a lease certificate. Once the lease has been taken and before the project actually starts, the investor has to undertake an Environmental Impact Assessment (EIA) with the National Environment Management Authority (Interview K5). The EIA includes social aspects, and involves the adjacent population. It has to make a clear statement of expected impacts and mitigation measures. The Water Resources Management Authority handles water usage rights and water licenses (Interview K21).

This system has many caveats and loopholes: enforcement of formal registration and contract fixing procedures is poor and even official documents recognise corruption in land allocation (Republic of Kenya 2009a). In particular, acquisitions are prone to cause conflict if public or community land is targeted. Acquisitions of public land have a historical legacy in Kenya due to illegal allocations of such land (Interview K15; O'Brien 2011). Community land is handled by mandated institutions that have often neglected their duty of informing local land users about land acquisitions. In both cases problems have been identified and addressed by the National Land Commission Act (Republic of Kenya 2012b) and the – still to be enacted – Community Land Bill (Republic of Kenya 2011). Moreover, enforcement of control mechanisms, such as the EIA, is weak due to a lack of financial and personal resources (Interviews K13, K17, K19).

As a result of the tedious official process and a confusing legal situation, many investments skip official procedures and come into the country through high-level personal contacts (Interviews K15, K23). For instance, there is the case of a Qatari investment that was negotiated on the government level. Public pressure caused this deal to fail (Interviews K4, K15, K23).

Similarly, the large-scale rice farm Dominion Farms, is ‘an investor who came in through the back door’ (Interview K15) and exhibited a rather unusual way of entering the country. Dominion Farms is located in the area of Siaya and Bondo District in Nyanza Province. The community land is held in trust by the respective county councils. Formerly, seasonal flooding meant that the swampland adjacent to Lake Victoria could only be used seasonally and few people were living on the land. The community used the land for grazing animals, fishing, and agriculture in the dry season.

Local authorities have had plans to develop the swampland for agriculture for a long time; however, all former projects had failed (Interviews K11, K12, K14). Dominion Farms, a privately held US-investment, took over the land from the parastatal Lake Basin Development Authority in 2003 (Interview K12). Dominion holds a 25 year lease of 6,900 hectares that it has gradually been reclaiming, with about 1,500 hectares being in use in 2011 (Interview K9). The owner claims God sent him to Africa to help poor people (Interview K9). When Dominion first came to Kenya, the owner looked for support in the highest political ranks of the country and approached Oburo Odinga, Member of Parliament for the region at the time. Odinga approved the investment and linked Dominion up with the Investment Promotion Centre. This in turn facilitated contact with the county councils (Interviews K16, K25). In 2003, Dominion signed a Memorandum of Understanding with the County Council of Siaya and the County Council of Bondo (Dominion Farms, County Council of Bondo, & County Council of Siaya 2003).

The local community was informed through church channels – in the words of one interviewee, ‘they used religion to manifest the investment’ (Interview K16). The owner went into partnership with a local priest and held services in the area to inform

the population about the project (Interview K10; FGDs K3, K7). This priest later became MP in Kisumu Town – some claim through support and for the benefit of Dominion (Interview K15). In general, information on consultations and compensations is scarce.

Whether Dominion complied with the law when they negotiated the Memorandum of Understanding and whether they did their EIAs as required is impossible to reconstruct from hindsight. Dominion and the National Environment Management Authority claim that EIAs were conducted in an orderly manner (Interviews K9, K11–K13, K17, K24, K25). However, others argue that EIAs were not done properly. Accusations have been made that official documents on public consultation were prepared in retrospect (Interview K16) or that officials were bribed (Interview K15).

Selected outcomes of the game

GOPDC

In the case of GOPDC, resentment against the acquisition of the Okumaning Concession is widespread (FGDs G1–G12). In particular, participants of FGDs see the following negative immediate impacts: decreasing access to agricultural land (FGDs G1–G12), and low and late compensation (FGDs G1–G10). Moreover, as compensation was not paid for the land itself, the amounts calculated by the Land Valuation Board were inadequate to restore the migrants' livelihoods (FGDs G1–G8, G10). Furthermore, people who used to live or farm at Okumaning Concession reported that after they had left the land, five years went by before compensation was paid (FGDs G1, G4–G9).¹⁵ The fact that people only received a check with the

aggregated sum (FGDs G2–G7, G10) increased the suspicion that they were being tricked by their own government.

In terms of medium- to long-term impacts, participants criticise low wages (FGDs G1–G3, G11), casual labour contracts (FGDs G1–G3, G5, G7, G11), low corporate social responsibility (FGDs G1–G12), increased food prices in the area (FGDs G1–G12), and low retail prices for fresh oil palm fruit (Interview G5; FGDs G11, G12).

Nonetheless, in most of the focus group discussions participants did not deny they had received benefits like employment creation (FGDs G1–G4, G7–G12), better road infrastructure (FGDs G1–G4, G7, G8, G10–G12), electricity (FGDs G1–G4, G7, G8, G12), and improved health and schooling facilities (FGDs G1–G8, G10–G12).

Since GOPDC extended production, conflicts have accrued: in the beginning, the land of the Kwae Concession seemed ample, but as soon as areas closer to villages were affected by the investment, tensions arose with neighbouring communities (Interview G8; FGD G12). The Company responded by establishing a smallholder scheme for those who had lost their farms (Interviews G7, G8; FGD G12). In order to run the mill efficiently and foster economic integration, the Company also increased its access to fresh oil palm fruit (by contracting outgrower farmers¹⁶ who could prove that they would have secure land use rights for at least 25 years, the period of the contract) (Interviews G5, G6). The Company also made purchases from independent farmers. With its nucleus-estate system with more than 2,000 plantation workers, 200 smallholders, and more than 7,000 outgrowers, GOPDC is identified as a driver of development in the region (Interviews G1–G3, G10, G11, G13, G14; FGDs G1–G4, G7, G8, G10–G12).

However, criticism is not limited to GOPDC but includes the chiefs and the government. As a focus group participant said, ‘the chief has misled [us], the investor could not know. A portion of blame can be also given to the government’ (FGD G4). Given the important role of the chief, it is obvious that benefits for the local population are not institutionalised but rather depend on the chief’s goodwill and his capacity to negotiate.

Dominion Farms

In the Kenyan investment case, the most pertinent immediate impact is the loss of access to land. The land Dominion uses is no longer available for pastoral activities, fishing, and seasonal agriculture during the dry months. Furthermore, more and more people move into the now arable areas once the land has been cleared and drained by the company. When Dominion then starts claiming the land for its own use these people are driven out.

Adverse medium- to long-term impacts, such as food insecurity, and damage to health caused by chemicals and working in the rice fields, are mentioned by participants in all our FGDs. While statements like ‘Of course Dominion is very negative – that I have no doubt about – when they came they were good but they have kept on deteriorating year by year’ (FGD K5) were frequent in conversations with affected communities, positive impacts could not be denied at the same time. Long-term improvements in employment, and in infrastructure, such as roads, electricity, health centres, and schools, were named in particular (Interviews K10–K12; FGDs K1–K8). According to the season, between 200 and 1,600 casual, contract, and permanent employees are working for Dominion (Interviews K9, K14).

Heavy resistance from community members (see for example Ochieng 2011) has worsened over the last years. In the beginning, enthusiasm about Dominion Farms – clearly the most influential project in the region – was the dominant view. However, once the project moved from construction to actual farming activities, less employment than expected was generated and frustration set in. For instance, one participant in a focus group discussion claimed that ‘the negativity came in 2006 during the transition between construction and farming when most of the workers became redundant and they could not all continue working with Dominion’ (FGD K8). Many blame Dominion for this messy situation; others hold the government responsible, as a focus group discussion participant observed: ‘So it is worth saying that Dominion did not grab our land but the government, because the government took our land and gave it to foreigners’ (FGD K1).

COMPARATIVE ANALYSIS AND SYNTHESIS

To align our analysis with the conceptual framework, we start with a brief systematic comparison between Ghana and Kenya. The stepwise analysis shows that the land legislation in both countries is not clear-cut, and thus the implementation of formal land laws is very loose. Many actors who acquire land operate in the legal grey areas. This is a consequence of ambiguous land tenure systems with weak monitoring and sanctioning mechanisms. Hence, in both cases, official legal procedures are not necessarily followed. This is exemplified by the cases GOPDC and Dominion Farms, which produced outcomes perceived as ranging from very negative to positive. While we cannot describe the full impact of large-scale agricultural projects (with regard to social differentiation or different time horizons), we can elucidate

underlying causal mechanisms by looking at our findings in greater detail against the conceptual framework.

With respect to informal institutions, the Ghanaian system is backed by strong customary rules that are widely accepted by the society. Nevertheless, some traditional authorities' behaviour when it comes to leasing out large land tracts is heavily debated and criticised. This indicates that informal institutions are under pressure, which might lead to slow shifting of the rules. In Kenya, the customary system is much weaker. However, elite rule as an informal way of governing land is coming under increasing pressure.

In both case study countries, land is not solely a production factor but also connected with cultural identity and religious beliefs. Land issues are complex, and thus a consensus-based change in the formal institutions is also complex. However, both countries show signs of transition: the Lands Commission of Ghana is currently drafting a new land bill in order to coordinate its different and partly overlapping pieces of land legislation (Republic of Ghana 2010). The same holds for Kenya, which has enacted – and is currently implementing – a new constitution addressing important aspects of land (Republic of Kenya 2010a). The first steps towards reform have been taken, but it is not yet clear whether the reform will be implemented completely. In Kenya, for instance, the fear has been expressed that established elites will keep the old institutions alive despite the new constitution (Boone 2012; Interviews K15, K20). Similarly, the Ghanaian civil society fears that those in power have intentionally withheld the Draft Bill until 2013 in order to hold on to the power guaranteed by the present system (Interview G15).

As first and second level institutions are changing to different degrees, we analyse which set of rules investors follow when ‘playing the land game’ (third level). As there is no clear guidance by the governing institutions (first and second level) and as the correct procedure is time intensive, some investors bypass formal institutions. Foreign investors do not know how to move in the legal grey areas: they lack the tacit knowledge required to adhere to informal institutions or make strategic use of them (which might be an advantage enjoyed by domestic investors). Thus, they are tempted to engage with local professionals or to enter the ‘land game’ through unknown, dubious channels. This can provoke popular outrage if unveiled (as happened in the Qatari case mentioned above). Overall, the current ‘game’ of large-scale land acquisitions in Ghana and Kenya is played in a de facto ‘institutional self-service shop’: investors decide themselves how they will enter the country depending on the discretion for action allowed by the host country’s key actors, such as high-level politicians, civil servants in land- and environment-related agencies, businessmen, or traditional authorities.

Consequently, analysis on the fourth level reveals that outcomes are diverse and range from positive to very negative. We assume that they are arbitrary depending on the investor’s strategy as well as on the above-mentioned key actors. Accordingly, investors have substantial influence on crucial aspects, such as informing the local population, being environmentally accountable and distributing factor inputs including labour and produce. This can lead to insufficient consultation of the local communities. Those being worst affected by negative impacts are dissatisfied as they are often left out of the whole process. This discontent may in turn contribute to a shift in first and second level institutions (at least in countries with a democratic

orientation and an active civil society, such as Ghana and Kenya). We can thus assert that large-scale land acquisitions can fuel institutional change.

Hence we can say in summary that it is not only the land governance system that shapes land deals but also the reverse: high numbers of large-scale land acquisitions put the land governance system under pressure to change; or, put differently, they have a feedback effect on the system.

CONCLUSIONS

We can summarise four main findings of our comparative embedded case studies as follows:

Firstly, an examination of procedures followed in large-scale land acquisitions reveals the present land governance system as inadequate to cope with the increasing pressure on land resources. The present systems are a result of the recognition of pre-colonial customary land tenure systems and statutory laws introduced by colonial powers, which were partly amended and adjusted for by post-independence rulers. Notwithstanding the intense wave of reform since the 1990s, in both countries the system is still a collection of miscellaneous rules and regulations with overlaps and loopholes, rather than a consistent legal framework. Against the global trend of increasing pressure on land resources, the present systems seem to be poorly designed to cope with these challenges. To address this problem, continuous effort to pursue the institutional reform processes is therefore crucial.

Secondly, the procedure generally followed (de facto) does not conform to the procedure laid down by the legislation (de jure). This is partly because the legislation is confusing, and partly because the formal rules are poorly implemented

and enforced. Poor enforcement is a consequence of understaffed and underfinanced government institutions and low institutional capacity. In both countries, the lack of a computerised land registry is one of the main reasons for ‘skipping the queue’ and other illegal actions, which clearly contravene the legislation. We suggest not only technical reform, but also far-reaching capacity development at all levels to overcome these challenges.

Thirdly, investors determine to a large extent how their specific project affects the host country. This is because the land governance system is too weak to deal with the heavy pressure on land. Thus, the impacts of a project are arbitrary, as neither are the rules well-defined nor is their implementation guaranteed. Benefits for the host country and the local population therefore depend very largely on the behaviour of the particular investor – given that those in charge of enforcing regulations allow investors such liberty. Therefore, we recommend additionally supporting the implementation of international guidelines, as set out in the Voluntary Guidelines on Responsible Governance of Tenure, Land, Fisheries, and Forests (FAO 2012) or the AU Framework & Guidelines on Land Policy in Africa (AU 2010). This could be an important step towards fostering investors’ commitment to sustainable investment practices.

Finally, investors’ actions have repercussions for the land governance system in the host country. The weak governance system allows investors considerable leverage. Some may misuse the ‘institutional self-service shop’ to find loopholes to escape regulations. Such behaviour encourages rent-seeking and elite capture at all levels. Even though both phenomena are not new, they have become so widespread as to provoke resistance by the local population, civil society organisations, and the international community. In the recent past, projects first failed because of local

protest. In this regard, the pressure on the land governance system is increased not only by the rising demand for land, but also by the growing dissatisfaction of the excluded local population and investors who fear that conflicts will hinder operations. Hence, large-scale land acquisitions in agricultural land can trigger institutional reform of both the formal and the informal institutions that govern a land tenure system. Taking into account, that a shift in formal institutions improves ‘the rules of the game’ only if it is supported by informal institutions, we see awareness creation, including public education and open discourse, as important for changing mindsets.

Although we found variations in the way the large-scale agricultural projects in our case studies were implemented, we identified similar problems for both countries which we believe to be applicable for a larger set of land deals. Acknowledging that investors’ actions have repercussions for the land governance system, we suggest there may be a window of opportunity here for policy makers, investors, and the local population to discuss the land governance system and shift its parameters towards more efficiency, given the sub-optimal outcomes of many land deals. However, from a scientific point of view, more research is needed to fully understand how the recent investment boom in agricultural land shifts the future investment climate and the underlying regulatory framework.

NOTES

1. The term “land grab” is widely used in media and NGOs, development organizations prefer terms such as “land-based investment”, or “agricultural investment”. While every term implies a certain stance in the debate, we refrain from using them and settle on neutral terms like “large-scale land acquisition”, “land deal” or simply “project”.

2. The topic is now appearing in many academic journals like the *Journal of Peasant Studies*, including several special issues: e.g. *Development and Change* (2013, Vol. 44, 2), *Globalizations* (2013, Vol. 10, 1), *Development* (2011, Vol. 54, 1). An overview of growing evidence is provided by Cotula (2013).

3. In choosing these countries, we aimed for close similarity with regard to contextual factors that are expected to have an influence on the not yet well understood phenomenon of large-scale land acquisitions (Dion 1998). Ghana and Kenya largely satisfy this condition, as they are both important targets of land acquisitions in Africa (Anseeuw et al. 2012). They claim leadership in their respective regional economic communities and have a reasonable degree of macro-economic stability with access to the sea (Mehler et al. 2012). Both are former British colonies and have inherited comparable institutional settings (Republic of Ghana 1999; Republic of Kenya 2009a). In addition, the coexistence of statutory and customary laws marks their land governance systems, which are both undergoing institutional change (Republic of Ghana 2010; Republic of Kenya 2010a). However, there are a number of important differences. For instance, their customary systems differ: while land allocation via the chieftaincy system is still crucial for Ghana (Ray 1996; Kasanga & Kotey 2001), common property based systems play rather a minor role for Kenya. Also, our case studies within the countries are located in diverse environments: The Ghanaian case is situated in a tropical forest zone with comparatively high population densities, while the Kenyan case is located within a wetland with comparatively low population densities.

4. Williamson calls the fourth level the ‘resource allocation and employment’ level. Here, neoclassical analysis, in particular analysis of adjustments to prices and outputs and agency theory are typically employed in a marginal analysis.

5. The term ‘interest in land’ means a bundle of property rights associated with ownership which is in the Ghanaian land tenure system not necessarily clearly distinct and exclusive (cf. Kasanga & Kotey 2001).

6. A 'stool' is the seat of a chief (or head of a family) of an indigenous group. It represents a source of authority, a symbol of unity and its responsibilities devolve upon its living representatives. Land owned by such a group is referred to as 'stool land' (Republic of Ghana 1999). A 'skin' in northern Ghana is equivalent to a 'stool' in southern Ghana.

7. The present constitution also recognises private land under common law under the category of customary land because it originates from gift or sale by the allodial right holder before 1992. A freehold title under common law can be held only by Ghanaians (Republic of Ghana 1992: Art. 266 (2)).

8. For more detailed accounts of the Kenyan land tenure system and conflicts with regard to the 'land question' see Syagga (2006, 2011), Kanyinga (2009), and Berman & Lonsdale (1992a,b).

9. These categories emerged historically. In the colonial days, Kenya had only crown land and reserve land. The Swynnerton Plan of 1954 paved the way for a nation-wide land registration enacted under the Native Land Tenure Rules of 1956 and thus introduced private land (derived from both crown and reserve land and its successors) (Shipton 1988). Since then, Kenyans have been able to register land. At independence, crown and reserve land were renamed government and trust land. With the new constitution, government land became public land and trust land became community land.

10. The Land Registration Act revises, consolidates and rationalises the registration of land titles. It repeals the numerous Acts that have been created over the time: the Indian Transfer of Property Act 1882, the Government Lands Act, (Cap 280), the Registration of Titles Act, (Cap 281), the Land Titles Act, (Chapter 282), and the Registered Land Act, (Cap. 300) (Republic of Kenya, 2012a).

11. The National Land Commission Act stipulates the creation of the National Land Commission (NLC) in charge of administering public land (Republic of Kenya 2012b). See also chapter 4.2.2.

12. The Land Act revises, consolidates and rationalises land laws. It repeals the Wayleaves Act, Cap. 292 and the Land Acquisition Act, Cap. 295 (Republic of Kenya 2012c).

13. The land was expropriated from the stools of Kwae, Asuom, Anweam, and Mintah under the State Lands Act (No. 125 of 1962) by the Government of Ghana to develop the area (Interviews G7, G14). As land acquisitions under this Act are ultimate, the stool land was finally transformed into public land. Under the military rule of the late 1970s, compensation of the stools as allodial right holders and individual land users with lesser interests like customary freehold or sharecropping

arrangements (cf. Amanor 2001) was erratic (Interview G7). Officials dealt arbitrarily with compensations for farmland and cultivated crops. At the same time compensation for the use of communal forest resources was not paid at all (FGDs G11, G12). However, after more than three decades the acquisition process cannot be exactly reconstructed.

14. Even though GOPDC had the legal right to use the land for which it pays ground rent to the Lands Commission, it abstained from using 2,343 hectares of its 8,359 hectares concession because further expansion would have required the destruction of old-established villages and the Apam shrine, a cultural heritage (Interview G7).

15. According to the Lands Commission, inflationary adjustment took place for delayed payments, but we were unable to gain detailed information on this.

16. We define ‘outgrowers’ as farmers who enter into a contract with GOPDC for a period of 25 years. While the Company offers inputs, credit, and extension, the outgrower contributes labor and land. This land is either owned or leased for 25 years. In case of a lease, the landlord also has to sign the contract. In contrast, GOPDC also provides the land for participants in the smallholder schemes.

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Interviews[†]

- G1, traditional authority (m), Kwaebibirem District, 27.10.2011.
- G2, traditional authority (m), Kwaebibirem District, 04.11.2011.
- G3, traditional authority (m), Kwaebibirem District, 04.11.2011.
- G4, Manager a, GOPDC (m), Kwaebibirem District, 08.11.2011.
- G5, Executives outgrowers association (m), Kwaebibirem District, 09.11.2011.
- G6, Manager b, GOPDC (m), Kwaebibirem District, 09.11.2011.
- G7, Manager c, GOPDC (m), Kwaebibirem District, 09.11.2011.
- G8, Manager d, GOPDC (m), Kwaebibirem District, 09.11.2011.
- G9, Manager d, GOPDC (m), Kwaebibirem District, 09.11.2011.
- G10, Snr. Official, District Assembly (m), Kade, 10.11.2011.
- G11, Middle men (m), New Abirem, 10.11.2011.
- G12, Official, Office of the Administrator of Stool Lands (m), Kade, 11.11.2011.
- G13, Snr. official a, Ministry of Food and Agric. (m), Kade, 11.11.2011.
- G14, Traditional authority d (m), Kwaebibirem Dist., 12.11.2011.
- G15, Representative, civil society (f), Accra, 14.11.2011.
- G16, Snr. official a, Lands Commission (f), Accra, 15.11.2011.
- G17, Official, Ministry of Food and Agric. (m), Accra, 16.11.2011.
- G18, Snr. official a, Land Administration Project (m), Accra, 17.11.2011.
- G19, Official, Ghana Investment Promotion Centre (m), Accra, 17.11.2011.
- G20, Snr. official b, Lands Commission (m), Accra, 17.& 22.11.
- G21, Snr. official c, Lands Commission (m), Accra, 18.11.2011.
- G23, Snr. Official, Office of the Administrator of Stool Lands (f), Accra, 18.11.2011.
- G27, Snr. official d, Lands Commission (m), Accra, 22.11.2011.

[†] m = male; f = female.

G28, Snr. official b, Ministry of Food and Agric. (f), Accra, 23.11.2011.
 G29, Snr. Official, House of Chiefs (m), Accra, 24.11.2011.
 G30, Expert, Town and Country Planning Dep. (m), Accra, 24.11.2011.
 G31, Official, Water Resource Commission (f), Accra, 25.11.2011.
 G32, Professor, University of Ghana (m), Accra, 28.11.2011.
 G33, Snr. Official, Environmental Protection Agency (m), Accra, 29.11.2011.
 K3, Snr. official, Promotion of Private Sector Development in Agriculture (m), Nairobi, 14.09.2011.
 K4, Snr. official a, Kenya Investment Authority (m), Nairobi, 15.09.2011.
 K5, Snr. official b, Kenya Investment Authority (m), Nairobi, 15.09.2011.
 K8, Snr. official, Ministry of Lands (f), Nairobi, 16.09.2011.
 K9, General manager, Dominion Farms (m), Siaya, 20.09.2011.
 K10, Chief, Government of Kenya (m), Siaya, 27.09.2011.
 K11, Extension officer, Ministry of Agriculture (f), Siaya, 28.09.2011.
 K12, Snr. official, County Council Siaya (m), Siaya, 28.09.2011.
 K13, Fields officer, National Environment Management Authority (f), Siaya, 30.09.2011.
 K14, Human resources officer, Dominion Farms (f), Siaya, 30.09.2011.
 K15, Snr. official, Kenya Land Alliance (m), Nakuru, 03.10.2011.
 K16, Lawyer, Institute for Law and Environmental Governance (m), Nairobi, 07.10.2011.
 K17, Official, National Environment Management Authority (f), Nairobi, 10.10.2011.
 K18, Official, Evaluation Department Ministry of Lands (m), Nairobi, 10.10.2011.
 K19, Official, Registration Department Ministry of Lands (f), Nairobi, 11.10.2011.
 K20, Surveyor, Land Development & Governance Institute (m), Nairobi, 11.10.2011.
 K21, Snr. official, Water Conservation and Control, Water Resource Management Authority (m), Nairobi, 11.10.2011.
 K23, Snr. official b, Ministry of Agriculture (f), Nairobi, 13.10.2011.
 K24, Snr. official c, Ministry of Agriculture (m), Nairobi, 14.10.2011.
 K25, Former Snr. official, Investment Promotion Center (m), Nairobi, 15.10.2011.

Focus Group Discussions[‡]

G1, Group of casual workers (slashing), GOPDC, Okumaning, 26.09.2011.
 G2, Group of permanent employees, GOPDC, Okumaning, 27.09.2011.
 G3, Group of casual workers (harvesting), GOPDC, Okumaning, 27.09.2011.
 G4, Group of rich before they received compensation, Okumaning, 27.09.2011.

[‡] Each group set out to have between 7 and 15 participants. To reduce hierarchy within the groups, we divided the participants into groups according to their perceived wealth level, as well as their age (youth groups up to the age of 35). For employees of the investor, we used the employment position to form different groups among casual staff, contract workers, and permanent staff.

Vulnerable in Ghana: no house or only a small structure, none or few domestic animals, no bicycle, none or only a small piece of land.

Vulnerable in Kenya: no house or only a small house, no domestic animals, no bicycle, only a small piece of land, use of hoe to cultivate, children not going to school.

Average in Ghana: medium sized house, few animals, bicycle, school attendance at primary and at often junior secondary level, little land ownership, but cultivation of several plots under sharecropping.

Average in Kenya: semi-permanent house (mud and then plastered), few animals, bicycle, children go to a poor quality school, at least two acres of land, use of ox-plough.

Wealthier

Average in Ghana: big house, more animals, motorbike or car, often fewer children, more extensive land ownership, cultivation of more than five plots, often additional sources of income from non-farm activities.

Average in Kenya: brick house, many cattle, motorbike, one wife, few children, children go to a good school, five acres and above, use of tractor or ox-plough.

G5, Youth, Aboabo, 28.09.2011.
G6, Group of average, Aboabo, 28.09.2011.
G7, Group of vulnerable, Okumaning, 31.10.2011.
G8, Group of average, Okumaning, 31.10.2011.
G9, Group of those to be compensated, Congo, 01.11.2011.
G10, Mixed group: Average & wealthier, Okumaning, 01.11.2011.
G11, Group of outgrowers, Asuom, 01.11.2011.
G12, Group of smallholders, Kwae, 01.11.2011.
K1, Group of vulnerable, Kadenge, 22.09.2011.
K2, Mixed group: Vulnerable & average, Kadenge, 23.09.2011.
K3, Group of average, Kadenge, 23.09.2011.
K4, Group of wealthier, Kadenge, 27.09.2011.
K5, Youth group, Kadenge, 27.09.2011.
K6, Group of casual workers, Dominion Farms, Siaya, 29.09.2011.
K7, Group of contract workers, Dominion Farms, Siaya, 29.09.2011.
K8, Group of permanent employees, Dominion Farms, Siaya, 30.09.2011.