

## Interplay of land governance and large-scale agricultural investment: evidence from Ghana and Kenya

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# ***Interplay of land governance and large-scale agricultural investment: evidence from Ghana and Kenya\****

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## ABSTRACT

This comparative analysis examines how large-scale agricultural land acquisitions are implemented in Ghana and Kenya, using embedded case studies of two specific investment projects. We find that insufficiencies in these countries' land governance systems are partly caused by discrepancies between *de jure* and *de facto* procedures and that powerful actors tend to operate in the legal grey areas. These actors determine the implementation of projects to a large extent. Displacement and compensation are highly emotive issues that exacerbate tensions around the investment. 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. We suggest there may be a window of opportunity here to reform these land governance systems.

## INTRODUCTION

In recent years, an increased demand for agricultural land has fuelled fears of a neo-colonial land rush, in particular in African countries. At the same time, it has raised hopes for a renewed interest in developing countries' chronically under-invested agricultural sectors.

A broad research community has analysed the reasons for this increased demand. Studies by von Braun & Meinzen-Dick (2009), Cotula *et al.* (2009), Zoomers (2010), Cotula & Vermeulen (2011) and Deininger *et al.* (2011) 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. These demands often meet willing suppliers in developing countries who aim to commercialise under-financed agricultural sectors, promote rural development, create employment, build infrastructure, transfer technology and bring in tax income (Görge *et al.* 2009; Deininger & Byerlee 2012).

While we thus have some evidence about the drivers, evidence about the outcomes of land-based investments is scarce (exceptions are Schoneveld *et al.* 2011; Mujenja & Wonani 2012; FAO 2013). Some civil society organisations have voiced cautions about possible negative impacts for host countries and the local population, such as displacement, destruction of livelihoods, tax evasion or increasing dependency through labour contracts (for Ghana: FIAN International, 2010b; for Kenya: FIAN International, 2010a), but a balanced assessment of

positive and negative effects is missing. Additional rigorous analyses of the processes associated with large-scale land transactions are needed (building on work from German *et al.*, 2013 and Nolte, 2014). As the characteristics of such procedures are expected to be an important determinant of outcomes, a better understanding of the processes is a precondition for informed discussions and evaluation.

Thus, the question ‘How are land deals implemented?’ guides our analysis. We analyse the implementation of specific land acquisitions in Ghana and Kenya against the background of the respective national land governance system.

The rest of the paper is organised as follows: we explain our methodology and present the data. Then, we provide evidence on the underlying processes of individual investment cases in Ghana and Kenya and their implications. We conclude this paper with a comparative analysis.

#### METHODOLOGY AND DATA

We use a comparative case study design (Dion 1998; Levy 2008; Gerring *et al.* 2011) that is based on two investment cases in two African countries. In choosing the countries, we aimed for a close similarity with regard to the contextual factors we 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 also 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 2009). 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 2010). However, their customary systems differ: while land allocation via the chieftaincy system is still crucial to Ghana (Ray 1996; Kasanga & Kotey 2001), traditional land allocation only plays a minor role in Kenya.

For each country, we concentrate on one investment project initiated by a Western investor in a rural area, which gives us an embedded case study (see Yin 2002: 42–3). Comparing the two projects in the context of their respective countries allows us to examine the complex processes

involved in land transactions more comprehensively than a single case would; it also provides better grounded insights into the functioning of the land governance systems in general and interactions between stakeholders in particular. It also gives us better grounds for generalising about the mechanisms that guide acquisition processes in countries with comparable institutional characteristics. In this regard, we consider our study to be in line with Gerring's (2004) pathway case, in which he examines a crucial case to clarify a hypothesis. Similarly, our study elucidates the causal mechanisms that underlie processes of 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. To understand the de facto practices involved in land acquisitions, we conducted semi-structured interviews (in Ghana 33 and in Kenya 25) with a wide range of stakeholders at the national and local levels. In addition, we facilitated focus group discussions (in Ghana 12 and in Kenya 8) with farmers in the region directly affected by the particular investment project and with employees of the investors.<sup>1</sup>

Land deals are implemented within a complex land governance system. To explain the mechanisms that drive large-scale land acquisition, we provide very brief insights into land governance and land acquisitions in both countries. Next, we delve into the two cases, the Ghana Oil Palm Development Company (GOPDC) in Ghana and Dominion Farms in Kenya. For these case studies, we investigate the process of acquiring land. We then shed light on the immediate repercussions of the investment – displacement and compensation – and further discuss local people's perceptions of the welfare implications. These perceptions can hint at transmission channels of our specific investment projects. An analytical section compares these aspects in our two cases.

#### INSIGHTS FROM GHANA

##### *Land governance and land acquisitions in Ghana*

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, that is

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).<sup>2</sup> Although these figures are rough estimates, they underline the strong role of the customary system to date (Anyidoho *et al.* 2008; Ubink & Amanor 2008).

Over time, 166 pieces of land legislation were developed but, given the overlaps and loopholes, did not result in an efficient formal land rights system (Quaye 2006). This multitude of Acts and their ambiguity have been hampering proper enforcement of land laws and regulations for decades, so people have become used to acting in legal grey areas (Interviews G15, G21). In 1999, the Government of Ghana recognised shortcomings in its National Land Policy (Republic of Ghana 1999) and this 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.<sup>3</sup>

The first step for investors in quest of land 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 customary 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 and have to bargain over the amount of the ‘drink money’, which is necessary to seal a land deal according to customary rules (Interviews G15, G17, G19; for examples: Schoneveld *et al.* 2011; Amanor 2012; Wisborg 2012; Berry 2013). The term ‘drink money’ originally meant a physical drink but now symbolises asking permission to approach the chief in good will (Interviews G3, G29; Amanor 2010). Nowadays, the ‘drink’ is converted into financial terms. With growing pressure on land the amount is increasing and translates to a substantial part of the acquisition costs (Interviews G15, G20, G29; Ubink & Quan 2008).

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). However, *de facto* accountability

can be weak: For instance, it is up to the chiefs whether they disclose the amount and the intended use of the ‘drink money’ (Interviews G15, G20; Berry 2013). Moreover, 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, chiefs usually do not have access to information on the market value of land during their negotiations for sufficient ‘drink money’, land rents and other benefits (e.g. local employment quotas, contract farming schemes, equity shares and corporate social responsibility) (Interview G15).

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 2008). 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).

If everything is in order, a licensed surveyor is 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). 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 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).

Since electronic data management and transmission is still weak in Ghana, processing documents is time intensive (Interviews G16, G18, G21). 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.

### *Process of acquiring land in the case of GOPDC*

Ghana Oil Palm Development Company (GOPDC) is the leading palm oil producer and 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 Kwaebibirem Concession (Registered Leasehold No. 1258/1976).<sup>4</sup> 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 (GOPDC 2013; SIAT 2013).<sup>5</sup>

This analysis focuses on Okumaning Concession, which was GOPDC's second concession and acquired in 2000. It covers 5,205 hectares of vested land which were leased for 50 years from the government (Registered Deed RE 2538/2008). Originally, the land of Okumaning Concession was fully under the control of Okumaning, Takworase and Kusi stools, but the government acquired the land under the Administration of Lands Act (No. 123 of 1962) in 1976 and was thus entitled to lease the land to GOPDC.

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 come under the remit of the state (which in this case were leased out to GOPDC). Altogether, the role of the chiefs is very complex: they negotiate corporate social responsibility activities with GOPDC (Interviews G1, G2, G14) and are (according to custom) highly appreciated by the population (Interview G15). However, some chiefs have been criticised and had their legitimacy questioned by the people (Interview G7; FGDs G4, G5, G7, G9) due to misusing their positions for personal benefit. In one particular case, this malfeasance

included chiefs renting out to migrants portions of land GOPDC had not yet cultivated, despite receiving ground rent from GOPDC through state agencies.

With regard to GOPDC's acquisition of the Okumaning Concession, 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 G<sub>1</sub>), others had only heard about the investment project from their chiefs (FGD G<sub>8</sub>) or, even worse, had only become aware of the acquisition when the Land Valuation Board came in to estimate the worth of their land for compensation purposes (FGD G<sub>9</sub>). The whole process, beginning with information and sensitisation, was characterised by a lack of transparency and the presence of many irregularities and delays.

Although GOPDC appears to have adhered to all other mandatory legal procedures, there may have been a few instances where they did not comply. For example, the Environmental Management Plan requires that quarterly reports on, for example, effluent treatment are sent to the Environmental Protection Agency (Interviews G<sub>31</sub>, G<sub>33</sub>). According to the agency, these reports reveal that GOPDC was fined several years ago (Interviews G<sub>31</sub>, G<sub>33</sub>). GOPDC is also required to renew all necessary water permits on a regular basis. However, the Water Resource Commission stated that there had once been a delay of a few months (Interview G<sub>31</sub>).

### *Implications of the GOPDC investment*

Once GOPDC took over the assets and liabilities for the Okumaning Concession from the state, it had the duty to compensate everybody who lived and farmed on the concession. The people living in this sparsely populated area were predominantly migrants. As these migrants were not bound to the land by social ties, they favoured cash compensation over the resettlement plan suggested by GOPDC (A.Y. & A. Consult 2007; Interview G<sub>3</sub>; FGD G<sub>4</sub>). Consequently, the Land Valuation Board surveyed crops and housing structures but not the land itself (Interviews G<sub>1</sub>–G<sub>3</sub>, G<sub>7</sub>, G<sub>14</sub>; FGDs G<sub>4</sub>–G<sub>10</sub>). This was because GOPDC already possessed the leasehold for the land and the migrants had neither statutory nor ancestral rights to use the land (Kobo 2010). The amounts calculated by the Land Valuation Board were perceived to be inadequate to restore the migrants' livelihoods (FGDs G<sub>1</sub>–G<sub>8</sub>, G<sub>10</sub>). Furthermore, people who used to live or farm on Okumaning Concession reported that they did not receive

compensation until five years after they had left the land (FGDs G1, G4–G9).<sup>6</sup> The fact that people only received a cheque with the aggregated sum (FGDs G2–G7, G10) increased the suspicion that they were being tricked by their own government.

Nevertheless, GOPDC is perceived to be a driver of development in the region by the local population (Interviews G1–G3, G10, G11, G13, G14; FGDs G1–G4, G7, G8, G10–G12). It not only runs a nucleus estate system with more than 2,000 plantation workers, in order to run the mill efficiently and foster economic integration, GOPDC has also increased its access to fresh oil palm fruit by contracting more than 7,000 outgrower farmers<sup>7</sup> (Interviews G5, G6). Moreover, the company also makes purchases from independent oil palm farmers.

According to Vāth (2013), however, benefits from GOPDC are not equally distributed amongst the local population, which has led to widespread resentment against the investment (FGDs G1–G12). These issues range from decreasing access to agricultural land (FGDs G1–G12) to increased food prices in the area (FGDs G1–G12) to low prices for fresh oil palm fruit (Interview G5; FGDs G11, G12). Other sources of criticism are low wages (FGDs G1–G3, G11), casual labour contracts (FGDs G1–G3, G5, G7, G11), a lack of corporate social responsibility (FGDs G1–G12) and inadequate and late compensation (FGDs G1–G10). Nonetheless, in most of the focus group discussions participants did not deny the existence of 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).

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 crucial position of chiefs, benefits for the local population are not institutionalised but rather depend on chiefs’ goodwill and capacity to negotiate.

#### INSIGHTS FROM KENYA

##### *Land governance and land acquisitions in Kenya*

After independence the dual system of land tenure – consisting of statutory and customary tenure with a multitude of (sometimes contradictory) statutes (Republic of Kenya 2009) – 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 2004a; 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). 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 2014).<sup>8</sup> The policy road map is outlined in the National Land Policy of 2009 (Republic of Kenya 2009) and in the new Constitution of 2010 (Republic of Kenya 2010, 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.<sup>9</sup>

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. Since our case study targets community land, we concentrate on the latter in what follows.

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 2009). 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.

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 licences (Interview K21).

As a result of a tedious official process and a confusing legal situation in Kenya, 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).

### *Process of acquiring land in the case of Dominion Farms*

The large-scale rice producer, 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 Kg). The owner claims God sent him to Africa to help poor people (Interview Kg). 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. Oburo 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 (MoU) with the County Council of Siaya and the County Council of Bondo (Dominion Farms *et al.* 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).

Whether Dominion complied with the law when they negotiated the MoU 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).

### *Implications of Dominion Farms*

In the case of Dominion Farms, the information we have on displacement is somewhat contradictory: most focus group interviewees and participants stated that no one was living on the land and that only farming activities took place (Interviews K9, K10, K15; FGDs K2–K7). However, during a focus group discussion with permanent employees of Dominion, a participant claimed that people ‘next to the lake [...] were displaced but they agreed with Dominion and were paid’ (FGD K8). This was confirmed by one female participant during a focus group discussion who claims she was displaced from the area around Lake Kanyaboli (FGD K1). Hence, we can deduce from the information obtained in our focus group discussions that displacement occurred in only very few cases around the lake. Even if the number of people displaced was limited, the land used by Dominion blocks routes and is no longer available for communal use such as pastoral activities, fishing or seasonal agriculture during the dry months (Interviews K10, K11; FGDs K2, K8).

Although displacement was initially a minor problem, it continues to play a role due to the fact that Dominion’s clearing and draining of the land has rendered it arable, which has seen more and more people move into those areas (Interviews K9, K10, K11; FGD K1). This has led to Dominion calling on the police and local authorities to drive these settlers out (Interviews K1, K10). Many blame Dominion for this messy situation; others hold the government responsible (FGD K1).

Unlike in Ghana, compensation was a minor issue since displacement did not affect many families. Some have estimated that only a few people received compensation (FGD K8; Interviews K12, K15, K16).

Generally speaking, an obligation to provide compensation only emerges if the land in question is privately titled; this is not the case with community land where the county councils are responsible (Interview K7). In the MoU, the county councils oblige Dominion Farms 'to identify and set aside at least 150 acres for each of the Councils for the use of the local community' (Dominion Farms *et al.* 2003). Although a senior official in the County Council of Siaya has confirmed this (Interview K12), a lawyer familiar with Dominion Farms explained that 'the main problem is that Dominion wants to take back the 150 acres. Dominion is saying that this was the agreement. The problem is that the boundaries of the 150 acres are not clearly defined' (Interview K16). There was no obvious reference to these areas in any of the focus group discussions. However, conflicting land claims were raised numerous times and represent a major issue in the area (Interviews K1, K9-K12, K23; FGDs K1, K2, K5, K8). Besides this, the MoU requires Dominion Farms to rehabilitate 'at least one public primary school and at least one public health facility for each of the Councils to Government standards' (Dominion Farms *et al.* 2003). Both focus group discussions provided ample evidence of hospital and school improvement, which we discuss in more detail below.

During most focus group discussions and interviews, frustration about the lack of compensation was expressed (Interview K10; FGDs K4, K5). Even though Dominion Farms does not hold any official responsibility to compensate for community land, the community still has a sense of ownership and feels betrayed.

The local population's perception of Dominion Farms changed over time. In the beginning, there was largely a sense of enthusiasm with regard to Dominion Farms – clearly the most influential project in the region. However, there were fewer employment opportunities once the project moved from the construction phase to actual farming activities, which saw frustration set in amongst the community. As one focus group participant explained, '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). Strong resistance to the project amongst community members (see for example Ochieng 2011) has increased over the last few years (Interview K10).



Today mainly adverse impacts, such as the loss of access to land, food insecurity, and damage to health caused by chemicals and working in the rice fields, are at the centre of the debate. 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, access to electricity, health centres and schools, were named in particular (Interviews K10–K12; FGDs K1–K8). According to the season, between 200 and 1,600 permanent, contract and casual employees are working for Dominion (Interviews K9, K14).

#### ANALYSIS

To align our analysis, we start with a systematic comparison between our two cases from Ghana and Kenya and derive some recommendations.

In neither country was the land governance system prepared to handle large-scale land acquisitions. In fact, the increased demand for land exposed their institutional weaknesses. The evidence shows that in both Ghana and Kenya *de facto* procedures were generally followed, which did not conform to the *de jure* procedures laid down by legislation in each country. Many actors involved in land deals were therefore operating in legal grey areas. This was partly because the present land governance systems are not equipped to cope with the challenges of increasing pressure on land resources. The relevant legislation in both countries is confusing, and formal rules are poorly implemented and enforced. Thus investors, local authorities and national authorities all have an incentive to skip official procedure. In the case of Dominion Farms, for instance, the investor entered the country in a rather unusual way.

During the acquisition process, powerful actors, including local and national authorities and investors, determine to a large extent specific investment projects. They have substantial influence on crucial aspects, such as informing the local population and being environmentally accountable. Depending on the capabilities and preferences of respective actors and on their access to information, this can affect project implementation in terms of consultation of the local communities, compensation and displacement, welfare and environmental implications. For example, chiefs in Ghana and county councils in Kenya negotiated on behalf of their respective local communities. Whether the communities were informed and compensated was



decided on by these powerful actors and investors. Our case studies revealed that this is often not to the advantage of the local population. Although some local authorities and chiefs can be accused of negotiating for their personal benefit at the expense of the wider community, it is questionable to what extent they are able to fully grasp the implications of a particular land deal or possess the negotiation skills required to bargain accordingly.

In both cases displacement was kept to a minimum: in the case of GOPDC the land acquired was only sparsely populated by migrants; in the case of Dominion Farms, it was swampland that was only used for seasonal farming activities. Nonetheless, Dominion learned that conflicts over land can arise in the course of project implementation – in their case this consisted of people settling in the area once it had been reclaimed. GOPDC similarly witnessed a gradual increase in tensions during project implementation.

In comparing the two cases, we found that differences exist in the compensation schemes. GOPDC, for instance, was responsible for compensating all those who farmed and lived in the area. Migrants opted for compensation payments that were fixed by the Land Valuation Board, though they claimed that they were inadequate and late. Dominion Farms, on the other hand, was not officially responsible for compensation; rather county councils were since Dominion had acquired community land. Hence, Dominion Farms and the county councils agreed on compensation schemes in the MoU, including land for the local population and improvements in health and education. In both cases, the local population feels there should be more compensation.

We conclude that displacement and compensation are highly emotive issues that easily lead to discontent and conflict. In both cases, tensions over land exacerbated in the course of project implementation, while dissatisfaction with compensation levels persisted even though the companies had invested in local infrastructure. This highlights the importance of adequately consulting and including local populations in the process.

Based on local populations' perceptions of the welfare implications, we can conclude that both projects were initially welcomed with a degree of enthusiasm. However, some problems set in after only a few years. Moreover, we can identify the following channels through which communities are affected by investment projects: access to land, food and input prices, food security, employment opportunities and infrastructure improvements (roads, electricity, health and school facilities).

These insights suggest that perceptions of welfare implications change over time and are extremely subjective. Thus to better evaluate this area, more research on long-term impacts is needed.

In both countries and in both investment cases a lot of dissatisfaction was expressed with not only the investors but also with the traditional authorities and the governments. This discontent may be feeding back into the land governance system. Both countries show signs of transition: the Lands Commission of Ghana was, at the time of writing, drafting a new land bill in order to coordinate its various and occasionally overlapping pieces of land legislation (Republic of Ghana 2010). The same holds for Kenya, which has enacted – and is currently implementing – a new constitution that addresses important land issues (Republic of Kenya 2010). The first steps towards reform have been taken, but it is not yet clear whether such reform will be implemented completely. In Kenya, for instance, there is concern that established elites will keep the old institutions alive despite the new constitution (Boone 2012; Interviews K15, K20). Similarly, within Ghanaian civil society there is a fear that those in power have intentionally withheld the draft bill in order to hold on to the power guaranteed by the current system (Interview G15).

Traditional authorities, as alluded to above, are also under pressure. The Ghanaian system, for instance, is backed by strong customary rules that are widely accepted by the society due to a long tradition of chiefs who have used their influence to enhance the welfare of their subjects. Nevertheless, some traditional authorities' behaviour as regards the leasing of land to investors has seen trust in the customary institutions decrease. Thus, a large number of land disputes testify to the fact that the role of chief is nowadays heavily debated and criticised. This increased scrutiny could lead to a slow change in the rules.

We thus assert that large-scale land acquisitions can fuel institutional change by placing significant pressure on the land governance system, which subsequently seeks to adapt to cope with this pressure; or, put differently, investments have a feedback effect on the system. We suggest there may be a window of opportunity here for policymakers, investors, and the local population to discuss the land governance system and shift its parameters towards greater efficiency given the sub-optimal outcomes of many investments. From a scientific point of view, however, more research is needed to fully understand how the recent investment boom in agricultural land has affected the future investment climate and the underlying regulatory framework.

## NOTES

1. See the appendix for a full list of interviewees and focus group participants. In the Kenyan investment case, two districts were affected: Siaya and Bondo. However, we only conducted focus group discussions in Siaya District, hence our results are biased towards Siaya. Potential findings for Bondo may have revealed differences.

2. The present constitution also recognises private land under common law. Such land falls 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)).

3. 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 2008) 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).

4. 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.

5. 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).

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

7. 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 labour and land. This land is either owned or leased for 25 years. In the case of a lease, the landlord also has to sign the contract. In contrast, GOPDC also provides the land for participants in the small-holder schemes.

8. So far, three Acts concerning land have been revised and adopted since the new constitution was approved (almost adhering to the 18 months' timeframe specified in the new constitution): The Land Registration Act (No. 3 of 2012), the National Land Commission Act (No. 5 of 2012) and the Land Act (No. 6 of 2012) (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 2014).

9. 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 (but at the time of writing had not been acted upon) in the new constitution: (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 2010: Art. 65 (1); Glinz 2011), and (ii) a ceiling for the amount of land one can hold is to be discussed (Republic of Kenya 2010: Art. 68c).

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## APPENDIX: INTERVIEWS

To guarantee the anonymity of the interviewees and focus group participants, we reveal their (rough) position and organisation but not their names. All interviewees, in both countries, were informed about the purpose of the interviews and how the data were to be used. Due to interviewees' reservations and the sensitiveness of the topic, interviews were not recorded.

*Ghana*

Code	Position/ Institution	Gender	Place	Date
<b>G1</b>	Traditional authority a	M	Kwaebibirem Dist.	27.10.2011
<b>G2</b>	Traditional authority b	M	Kwaebibirem Dist.	4.11.2011
<b>G3</b>	Traditional authority c	M	Kwaebibirem Dist.	4.11.2011
<b>G4</b>	Manager a – GOPDC	M	Kwaebibirem Dist.	8.11.2011
<b>G5</b>	Executives outgrowers association	M, M	Kwaebibirem Dist.	9.11.2011
<b>G6</b>	Manager b – GOPDC	M	Kwaebibirem Dist.	9.11.2011
<b>G7</b>	Manager c – GOPDC	M	Kwaebibirem Dist.	9.11.2011
<b>G8</b>	Manager d – GOPDC	M	Kwaebibirem Dist.	9.11.2011
<b>G9</b>	Manager e – GOPDC	M	Kwaebibirem Dist.	9.11.2011
<b>G10</b>	Snr. official – District Assembly	M	Kwaebibirem Dist.	10.11.2011
<b>G11</b>	Middle men	M	Kwaebibirem Dist.	10.11.2011

<b>G12</b>	Official – OASL	M	Kwaebibirem Dist.	11.11.2011
<b>G13</b>	Snr. official a – Ministry of Food and Agric.	M	Kwaebibirem Dist.	11.11.2011
<b>G14</b>	Traditional authority d	M	Kwaebibirem Dist.	12.11.2011
<b>G15</b>	Representative – civil society	F	Accra	14 & 30.11.
<b>G16</b>	Snr. official a – Lands Commission	F	Accra	15.11.2011
<b>G17</b>	Official – Ministry of Food and Agric.	M	Accra	16.11.2011
<b>G18</b>	Snr. official a – Land Administration Project	M	Accra	17.11.2011
<b>G19</b>	Official – Ghana Investment Promotion Centre	M	Accra	17.11.2011
<b>G20</b>	Snr. official b – Lands Commission	M	Accra	17 & 22.11.
<b>G21</b>	Snr. official c – Lands Commission	M	Accra	18.11.2011
<b>G22</b>	Snr. official b – Land Administration Project	M	Accra	18.11.2011
<b>G23</b>	Snr. official – OASL	F	Accra	18.11.2011
<b>G24</b>	Snr. researcher – AGRA	M	Accra	21.11.2011
<b>G25</b>	Snr. official – IFPRI	M	Accra	21.11.2011
<b>G26</b>	Snr. official – Ghana Agric. Workers Union	M	Accra	21.11.2011
<b>G27</b>	Snr. official d – Lands Commission	M	Accra	22.11.2011
<b>G28</b>	Snr. official b – Ministry of Food and Agric.	F	Accra	23.11.2011
<b>G29</b>	Snr. official – House of Chiefs	M	Accra	24.11.2011
<b>G30</b>	Expert – Town and Country Planning Dep.	M	Accra	24.11.2011
<b>G31</b>	Official – Water Resource Commission	F	Accra	25.11.2011
<b>G32</b>	Professor – University of Ghana	M	Accra	28.11.2011
<b>G33</b>	Snr. official – Environmental Protection Agency	M	Accra	29.11.2011

*Note.* AGRA – Alliance for Green Revolution in Africa; IFPRI – International Food Policy Research Institute; OASL – Office of the Administrator of Stool Lands.

## Kenya

Code	Position/ Institution	Gender	Place	Date
<b>K1</b>	Agricultural manager – Dominion Farms	M	Siaya	15.11.2010
<b>K2</b>	Snr. official – AGRA	F	Nairobi	14.9.2011
<b>K3</b>	Snr. official – PSDA	M	Nairobi	14.9.2011
<b>K4</b>	Snr. official a – Kenya Investment Authority	M	Nairobi	15.9.2011
<b>K5</b>	Snr. official b – Kenya Investment Authority	M	Nairobi	15.9.2011
<b>K6</b>	Official – Kenya Investment Authority	F	Nairobi	15.9.2011
<b>K7</b>	Lawyer – Law Firm Nairobi	M	Nairobi	15.9.2011
<b>K8</b>	Snr. official – Ministry of Lands	F	Nairobi	16.9.2011
<b>K9</b>	General manager – Dominion Farms	M	Siaya	20.9.2011

(Cont.)

Code	Position/ Institution	Gender	Place	Date
<b>K10</b>	Chief – Government of Kenya	M	Siaya	27.9.2011
<b>K11</b>	Extension officer – Ministry of Agriculture	F	Siaya	28.9.2011
<b>K12</b>	Snr. official – County Council Siaya	M	Siaya	28.9.2011
<b>K13</b>	Fields officer – NEMA	F	Siaya	30.9.2011
<b>K14</b>	Human resources officer – Dominion Farms	F	Siaya	30.9.2011
<b>K15</b>	Snr. official – Kenya Land Alliance	M	Nakuru	03.10.2011
<b>K16</b>	Lawyer	M	Nairobi	07.10.2011
<b>K17</b>	Official – NEMA	F	Nairobi	10.10.2011
<b>K18</b>	Official – Evaluation Department Ministry of Lands	M	Nairobi	10.10.2011
<b>K19</b>	Official – Registration Department Ministry of Lands	F	Nairobi	11.10.2011
<b>K20</b>	Surveyor – Land Development & Governance Institute	M	Nairobi	11.10.2011
<b>K21</b>	Snr. official – Water Conservation and Control WRMA	M	Nairobi	11.10.2011
<b>K22</b>	Snr. official a – Ministry of Agriculture	M	Nairobi	12.10.2011
<b>K23</b>	Group Interview: 6 Snr. officials – Ministry of Agriculture	F, M, M, M, M	Nairobi	13.10.2011
<b>K24</b>	Snr. official c – Ministry of Agriculture	M	Nairobi	14.10.2011
<b>K25</b>	Former Snr. official – Investment Promotion Centre	M	Nairobi	15.10.2011

*Note.* AGRA – Alliance for Green Revolution in Africa; NEMA – National Environment Management Authority; PSDA – Promotion of Private Sector Development in Agriculture; WRMA – Water Resource Management Authority.

### *Focus group discussions*

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 amongst 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.
- 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.
- 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*

- 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.
- 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.

There are no gender-differentiated group discussions in our sample, since our resources were limited. To compensate for this weakness, facilitators of FGDs were specially trained to encourage women's participation. Moreover, male and female local experts denied that gender was a critical factor in discussions related to topics such as community history, the state of agriculture, and impacts of an investment (Interview G13, G15 & G17). Evidence from the FGDs did not support the common belief that the presence of men prevented women from voicing their concerns. Discussions were led in local languages (Twi, Fante, Luo or Kiswahili), recorded and then transcribed into English. All participants were informed about the purpose of the FGDs and how the data were to be processed. Before recording, we obtained the consent of the group.

*Ghana*

FGDs were conducted with farmers and with employees of the investor. In addition, we interviewed a group of smallholder farmers (contract farmers without own land), a group of outgrowers (contract farmers with own land) and a group of people awaiting compensation as their village lies within the concession belonging to GOPDC. Groups from Okumaning are located very close to the new GOPDC concession. Groups from Aboabo are a little further away. The groups from Asuom (outgrowers) and Kwae (smallholders) are in the neighbourhood of the old Kwae Concession, not in the neighbourhood of

Okumaning Concession, where neither of the contractual arrangements has yet been implemented.

Code	Date	Place	Category
<b>G1</b>	26.9.2011	Okumaning Plantation	Casual workers – slashing – GOPDC
<b>G2</b>	27.9.2011	Okumaning Plantation	Permanent employees – GOPDC
<b>G3</b>	27.9.2011	Okumaning Plantation	Casual workers – harvesting – GOPDC
<b>G4</b>	27.9.2011	Okumaning	Rich before they received compensation
<b>G5</b>	28.9.2011	Aboabo	Youth
<b>G6</b>	28.9.2011	Aboabo	Average
<b>G7</b>	31.10.2011	Okumaning	Vulnerable
<b>G8</b>	31.10.2011	Okumaning	Average
<b>G9</b>	1.11.2011	Congo	To be compensated
<b>G10</b>	1.11.2011	Okumaning	Mixed: Average & wealthier
<b>G11</b>	1.11.2011	Asuom	Outgrowers
<b>G12</b>	1.11.2011	Kwae	Smallholders

### *Kenya*

FGDs were conducted with farmers and with employees of Dominion Farms. For FGDs with farmers, two agricultural extension officers in Siaya District assembled farmers at Kadenge Chief's Court. For employees of Dominion Farms, the local farm manager assembled groups.

Code	Date	Place	Category
<b>K1</b>	22.9.2011	Kadenge	Vulnerable
<b>K2</b>	23.9.2011	Kadenge	Mixed: Vulnerable & average
<b>K3</b>	23.9.2011	Kadenge	Average
<b>K4</b>	27.9.2011	Kadenge	Wealthier
<b>K5</b>	27.9.2011	Kadenge	Youth
<b>K6</b>	29.9.2011	Siaya	Casual workers – Dominion Farms
<b>K7</b>	29.9.2011	Siaya	Contract workers – Dominion Farms
<b>K8</b>	30.9.2011	Siaya	Permanent employees – Dominion Farms