

# Governing commercial pressures on land in Africa:

## What is the role of local government?

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*Meeting between community members and company, Palma, Mozambique. Courtesy of Alda Salomão.*

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## 1 Introduction

What can local-level governments do to control and mitigate the commercial pressures placed on land? This is the question this working paper tries to answer. It is clear by now that the acquisition of land by foreign and domestic investors for commercial purposes may generate considerable pressures on the ground and – if unmitigated – may also involve high social and ecological risks. This is why the current debates on the “global land rush” insist on the need for increased local governance and regulation. Through this exploration on the role of local-level governments, we hope to contribute to this debate.

Next to forms of global private sector self-regulation, there is a growing consensus that governments in affected countries have key regulating and monitoring roles and responsibilities in relation to land acquisitions. Governments are expected to formulate and monitor the conditions for acquisition as well as to safeguard the rights and interests of affected populations, to uphold environmental regulations, and to balance development possibilities with local food security needs and smallholder production and livelihoods. At the same time, it is also recognized that the governance challenges are considerable and that governments may experience serious limitations in playing a regulating role. This certainly holds for Africa; with an estimated range of 51 to 63 million hectares acquired between 2008 and 2010 (Cotula, 2013: p. 38), the

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continent has been significantly affected by the global land rush. While the need to better regulate commercial pressures is evident, efforts in this direction are hampered by uneven and inadequate state capacity and, in some cases, political instability (Evers, Seagle, & Krijtenburg, 2013).

This working paper seeks to contribute to our knowledge on regulation and governance of commercial pressures on land by focusing on the role of local-level governments in rural areas in Africa. Recent processes of decentralization in many African countries suggest that – at least in theory – it is at this level where a growing capacity and interest to address commercial pressures on land might be found. Nonetheless, knowledge is lacking on the roles and responsibilities of local government actors. While formal capacities have been devolved to the local level through the decentralization of land governance in a range of countries, it remains unclear which capacities are these exactly. And how do these work out in practice? This paper explores the possibilities and limitations that local level government officials face in their attempts to direct or condition processes of land acquisition. How do local authorities employ new governance capacities and instruments? What manoeuvring space do they have and how do they use it? And finally, how do local officials balance commercial interests with other social interests?

The role of local governments is a challenging one. The stakes involved in land acquisition for commercial purposes tend to be very high and are shaped by higher-level political intervention. Moreover, commercial pressures on land add to other on-going pressures related to *inter alia* population growth, lack of livelihood sources outside of agriculture, as well as issues related to migration and (returning) refugees. In many regions, where land is targeted for acquisition, land conflicts already abound. The tenure situation is complex, with large portions of land under customary or communal tenure and without formal title, which makes safeguarding those rights particularly challenging. State agents at the local level operate in contexts of legal pluralism where – in different ways and to varying degrees – customary authorities also exercise land governance functions. Government actors operate amidst legal ambiguities and contradictions but also face potential rivalries with traditional power holders. Finally, notwithstanding the formal capacities in land governance awarded on paper, local actors often have to operate without the necessary human, financial and technical resources. Local officials' capacity, commitment and integrity may, in some cases, be an issue.

Local governments must confront differing and competing demands for land. As such, current commercial pressures on land raise urgent questions about the ways in which the rights of people, in relation to land and other means of subsistence, should be protected. In fact, this is – or should be – one of the first concerns of local land governance actors. But local land administrators also face the often equally-pressing need to attract and mobilize resources to enhance food security and

local development. In addition, they are supposed to advance national policies of agricultural modernization which favour the large-scale exploitation of land. How do local officials balance these competing and often contradictory demands? What is the vision that motivates their choices on the ground?

This paper builds on six field-based studies on the role of local government in rural areas affected by land acquisition, situated in five African countries, namely Uganda, Ghana, Mozambique, Burkina Faso, and Burundi. The studies were guided by the following research questions:

- In theory, what is the regulatory role of local government actors? What responsibilities are entailed, and how is this role exercised in practice?
- What obstacles and opportunities do local government actors experience in fulfilling their role? What manoeuvring space do they have and how do they use it? In what ways do they seek to strengthen their role?
- How do local government actors balance the demands of economic development, food security and the protection of land rights?

This research took place in the context of the LANDac programme which aims to inform knowledge and research agendas and to feed into policy debates and so contribute to equitable and sustainable land governance. This research allows LANDac to outline the role of *public* actors in relation to the global land rush, next to other key players that have been the subject of previous LANDac research including civil society (such as farmers' unions) and corporate actors (investors).

The remainder of the paper is organized as follows: This introduction is followed by a section that explains the methodology used in the study. Next, section 3 provides a background on the nature of commercial pressures on land and the governance challenges identified. This is followed by a number of sections that synthesize the findings from the country studies. Sections 4 and 5 discuss the formal mandates of local governments and their roles in practice respectively. The paper ends with a conclusion and discussion section, which places the findings from the study in relation to the broader challenges for land governance in Africa.

## 2 Methodology

Given the emergent nature of the processes under study, the research was exploratory in nature. We aimed to capture the diverse and still tentative ways in which local government actors address the new but pressing challenges of land acquisition for commercial purposes with recently acquired, partly unfamiliar and not yet well-exercised capacities and action repertoires.

The research consisted of a series of six short and focused case studies within five countries: Uganda (the north and central regions); Ghana; Mozambique; Burkina Faso; and Burundi. Each study included large-scale acquisitions by foreign and domestic investors and/or other local land transactions, large or small, that involved the selling or leasing of public, private and customary land for commercial purposes. The research focused, depending on the context, on the lowest effective level of government where decentralization reforms have placed the ultimate responsibility for land issues: districts, communes, or municipalities. The research interest is centred on the public governance system, which – depending on the context – may include state as well as customary authorities.

In each country, the researchers selected one or two rural districts or local government units (see Annex 1). In order to maximize the learning potential, it was important that selected districts/units featured local authorities who were taking an active role in the land acquisition process. In other words, cases were selected for instructive rather than representational potential. After the districts were identified, two weeks of focused, semi-structured interviews were conducted between March and May 2014 with local government actors as well as relevant stakeholders. The interviews were based on a research protocol drafted to guide the selection of interviewees and the topics to be addressed. The research protocol operationalized the main research questions into a number of sub-questions (see Interview protocol in Box 1); the format allowed the researchers to use their individual skills and expertise to adjust the protocol to the particular setting.

In all of the cases, the studies connected to on-going research on land governance. In fact, each researcher was engaged in longer-term fieldwork in the selected regions (many of them in the framework of PhD research), and thus familiar with the topic and able to draw on existing contacts. In this way, it was possible to collect high-quality and well-contextualized data in a relatively short time frame and with limited resources.

In addition, the research team brought together diverse disciplines and areas of expertise including rural development studies, natural resource management, environmental policy, law, governance, and political anthropology. Team members together had extensive academic expertise as well as experience in the policy and practice of development, and even activism. In order to respect the different profiles of the



*Interviewing district forest guards in Ghana.  
Courtesy: Richmond Antwi-Bediako.*

team members we decided to define a common empirical starting point rather than develop a unified theoretical framework. In this way, the analysis could benefit, in a flexible and pragmatic manner, from different theoretical notions on the nature of land tenure, governance, and politics.

At the end of each study, each researcher produced a detailed report for the districts they studied, including an explanation on the methodological choices made. These reports were discussed and revised during a three-day “writeshop” held in Entebbe, Uganda from 3 to 5 June 2014. The “writeshop” allowed for case comparison and contrast, as well as for shared, critical reflection on the implications of the findings. The results of that reflection process are presented in this working paper. The main findings, conclusions and recommendations were then offered for debate between a selected group of land governance stakeholders during a half-day workshop in Kampala, Uganda on June 6, 2014. Input from the debate is used in this working paper. Co-authored between six researchers and two project leaders, this working paper collects the most important findings from each study in order to connect them to current debates and governance responses in relation to commercial pressures on land.

### **Mandate, role and responsibilities of local government in governing commercial pressures on land**

- How is the regulatory role on land acquisition understood and exercised by local government actors? What municipal or district land-related mandates or services are stated in the national land law?
- What are the opportunities and obstacles experienced in this role and the related responsibilities?
- What kinds of land-related services are currently provided at the district or municipal level? How are land services organized (e.g., offices, human and financial resources, communication, etc.)? What hinders the provision of quality services?
- What are the accountability (e.g., supervisory, control, and support) relations with higher levels of government such as at the provincial and regional levels?
- Is the Municipal or District Land Office capable of addressing all of the land issues in the area? If so, how? If no, why not?
- How does the local government currently intervene in land acquisitions? Are there examples? Is the local government monitoring local land acquisitions? Is land tenure mapping, land use mapping or spatial planning used?
- What are the procedures, costs and durations of land administration services for smallholders and agribusiness investors (e.g., access to land titles)? Is the local government capable of providing timely and quality services?
- Which formal and informal customary rights exist? Are these stated in the national land law? How does the local government take into account or deal with these rights?
- Is the local government actively monitoring commercial land acquisitions before, during or after deals? Is the local government enforcing due compensation? In which way?
- Is the local government informed about national level guidelines (such as voluntary guidelines, etc.) on land governance? Are these implemented at the local level?
- Are land issues discussed in the municipal or district council? Are there examples of topics and decision making processes?
- Does local government intervention in land issues lead to more regulation and tenure security?
- How does the local government intervene in land conflicts?

### **Local land governance actors**

- What actors (e.g., customary leaders, civil society, and the private sector) does local government ally with in pursuing their actions? What is the outcome?
- What is the relationship between local government and customary actors in land-related issues?
- What kinds of requests for local government services are received from different stakeholders?
- At what point do investors contact local government officials during the process of obtaining land: before, afterwards, or never?
- How is the local government communicating with different stakeholders? Is it sensitizing the population to land issues? Are land deals published in public places and citizens given the opportunity to object? Do village land committees exist? How does local government work with these committees?

### **Balancing land governance and agricultural development**

- How do local government actors balance the objectives of agribusiness and agricultural development and the protection of rights? What is their vision of desirable futures as well as their actual role?
- Are land governance, food security and agricultural development addressed in local government planning?
- How does – or how can – the local government protect vulnerable populations against land acquisitions that negatively affect livelihoods and food security? in Uganda, Ghana and Ethiopia.

## **3 Commercial pressures on land in Africa**

In Africa, documented land transactions mostly include large-scale investments or officially registered acquisitions for agribusiness, tourism and mining. However, also many small-scale domestic land acquisitions occur for commercial and, to a lesser extent, for residential and subsistence agriculture purposes. Land transactions for commercial purposes are pervasive and, in many cases, problematic. Communities across Africa report reduced access to land and natural resources such as water, forests, and pasture lands and restricted movement. In many cases, there is a lack in transparency and accountability around land acquisitions.

While commercial investments in land promise to bring local development benefits such as new employment opportunities, improved incomes and much-needed physical and social infrastructure, benefits often do not meet expectations or simply do not materialize as promised. Instead, some of the incentives being offered to attract investors directly undermine the interests of local smallholder producers. Acquisitions tend to impact, directly and indirectly, on smallholder rights as well as their access to the productive resources necessary to sustain livelihoods. Much of the land being targeted for large-scale acquisitions is used by small-scale farmers under customary law, and the protection of their rights is not guaranteed.



The debate on large-scale commercial land acquisitions is generally situated within the context of the development of smallholder agriculture in Africa where two development paradigms are confronted. Some see the future of agriculture in smallholder production: smallholder access and control over land and resources are crucial, while they should be assisted to modernize and intensify production and link to local, regional and global value chains. Others hold that the focus on smallholder agriculture only is not viable and that large-scale investments are needed to propel African agriculture to the next level. Large-scale agribusiness investors could promote modern agriculture in Africa through the introduction of new knowledge and intensive technologies. There are political, social, cultural and economic factors at stake in this discussion which directly impact the push for both large- and small-scale land acquisitions. These contrasting views on development are reflected, in various ways, in each of the countries under study. The following section briefly outlines the agricultural and economic policies which set the context in which land acquisitions take place.

### 3.1 Agricultural and economic policies in the countries under study

Investment in commercial agriculture is a core concern in African policies for agricultural and economic development. One key reference at the Pan-African level is the African Union's Comprehensive Africa Agricultural Development Programme (CAADP), developed under the New Partnership for Africa's Development (NEPAD). CAADP addresses policy and capacity issues across the continent's agricultural sector. Entirely African-led and African-owned, CAADP represents African leaders' collective vision for agriculture in Africa. By 2015, African leaders hoped to see:

- Dynamic agricultural markets established within countries and between regions in Africa;
- Farmers enjoying good access to and taking part in the market economy so that Africa can capitalize on its comparative and competitive advantages to become a net exporter of agricultural products;
- A more equitable distribution of wealth for rural populations in terms of higher real incomes and relative wealth through equitable access to land, physical and financial resources as well as knowledge, information and technology for sustainable development;
- Africa become a strategic player in terms of agricultural science and technology in order to meet the growing needs and demands of African agriculture; and
- Environmentally sound agricultural production and a culture of sustainable management of natural resources as a result of better knowledge, more information and the application of technology.

The CAADP is translated into national level agricultural policies in most African countries. Here we briefly review the governance framework of each of the countries under study. In **Burkina Faso**, land competition has intensified since 2000

when agricultural policies were oriented towards private investments; this led to the emergence of new actors in agricultural production and increased pressure on arable land. One key policy, the national Strategy for Accelerated Growth and Sustainable Development, promotes economic liberalism with the private sector as a primary driver of growth (SCADD, 2011). Moreover, the development of the agricultural sector, which is part of the rural component of the SCADD, aims 'to sustainably contribute to food and nutritional security, economic growth and poverty alleviation' (ibid). In this context, agribusiness is promoted as the key to better productivity and employment generation in rural areas. The approach to the agricultural sector includes rural land reform in view of perceived risks of increasing social conflicts over land and increasing competition between communities and the new actors.

Between 2008 and 2012, in **Burundi** the massive return of Hutu refugees to their original lands created a critical situation of land tenure insecurity that became a political issue of national concern. To address growth and poverty alleviation, the central government designed the CSLP II in 2012, a strategic document that emphasized the fact that actual agricultural production would not create the conditions for increased food security or production surpluses. In response, the National Agricultural Strategy 2008-2015 was developed to rehabilitate the agricultural sector, to move away from subsistence farming, and to achieve an annual growth rate of at least 6 per cent. In addition, the national Agricultural Investment Plan (2012-2017) was designed as a framework for stimulating and coordinating investments in the agricultural sector with the hope of ensuring equitable food security, increasing household incomes and creating employment. Nonetheless, the political instability resulting from the 2015 presidential election temporarily suspended these plans.

In 2010, the Ministry of Agriculture, Animal Industry and Fisheries in **Uganda** designed the Development Strategy and Investment Plan (DSIP) in alignment with its National



*Land acquired by a 'new actor' in Neboun, Burkina Faso. Most trees were cut and sold by the new owner thus largely compensating the land acquirement costs. Courtesy of Gerard Baltissen*

Development Plan and CAADP goals. The 2010-2015 DSIP outlines the government's strategy to reinvigorate the agriculture sector, which comprises 20 per cent of the gross domestic product (GDP), 48 per cent of exports and the majority of employment. In implementing these programmes, the government is committed to pursuing a private sector led strategy by addressing key constraints that are known to hinder investments in agriculture. During DSIP implementation, the government commits to pursue and support public-private partnerships; this commitment applies especially in areas ripe for quick gains, but also where the private sector on its own lacks adequate capacity.

The Government of **Ghana** has developed the Medium Term Agriculture Sector Investment Plan 2011-2015 to implement the Food and Agriculture Sector Development Policy. It aims for greater involvement of the private sector to foster the growth and development of the agricultural sector and to transform service delivery, as well as investment in and management of the sector as a whole. To facilitate access to inputs, research, technology and product markets, as well as other essential services, various types of linkages are to be established between smallholders and agribusinesses. The plan also includes strategies to support the overarching vision for a modernized agricultural sector, a structurally-transformed economy, as well as increased food security, employment opportunities and poverty reduction, through improved agricultural performance and a focus on investments to address sector constraints on productivity, market access, sustainable production and institutional coordination.

In 2010, the Government of **Mozambique** approved its Strategic Plan for Agricultural Development 2010-2019 (Plano Estratégico para o Desenvolvimento do Sector Agrícola, or PEDSA) with the vision of 'an integrated, prosperous, competitive and sustainable agriculture sector'. With regard to rural communities and farmers, PEDSA recognizes the need to improve the utilization of land having potential for agriculture, forestry and pasture, to guarantee the legally-recognized rights of communities and beneficiaries to land and natural resources, and to increase the amount of land that has legally-recognized forms of ownership. However, PEDSA's strategic approach seems to be oriented to the reduction of subsistence farming and to a sector where commercial investments in agriculture have a major role.

### 3.2 Land acquisitions: Scope of the cases under study

The six research reports illustrate a variety of small- or large-scale land acquisition cases involving foreign or domestic actors for a variety of purposes: agribusiness, tourism, and natural gas exploitation. Since a range of acquiring actors is mentioned, a first distinction has to be made between foreign and domestic actors. Foreign actors are individuals or companies that buy land generally for the development of agribusiness activities. Domestic players also acquire land for these purposes, but may also do so for speculation purposes.



*Area affected by commercial pressures, Amuru District, Northern Uganda. Courtesy of Doreen Kobusingye.*

In **Burkina Faso**, new and mostly non-rural domestic actors acquire important tracts of arable land that vary in size from 20 to 100 hectares. Some of these new actors work in the public sector and are, for example, politicians, current or former ministers, chief officers, senior and customs officials; others, such as CEOs, traders, and bankers, derive from the private sector, among others. These actors either want to establish agri-businesses or simply aim to speculate. In many agribusiness cases, only a portion of the acquired land is used for agricultural production. Acquisitions range from 300 hectares to 800 hectares at the extreme end as illustrated in one case registered in Sapouy commune. While the size of these land acquisitions might look small in comparison to other countries, they are quite significant when compared to the average size of family farms in Burkina Faso. Although some households farm on more than 50 hectares, most farms range in size from 3 to 10 hectares. The research also revealed that local actors, both at the commune and village levels, perceive that land acquisition for commercial (or any other) purpose poses high risks for future generations.

In **Burundi**, commercial pressures on land take place in the context of an unprecedented demographic crisis as long-term refugees return to their communities of origin. Households who occupied the refugees' land are now forced to share their land with the returnees. Although the land areas involved are small in comparison to the other cases, in a setting of generalized land scarcity they have a strong impact. Many land transactions, ranging from 0.1 to 0.5 hectares, are completed informally and mainly for housing and small-scale agricultural purposes. Even though local state authorities are aware, and sometimes participate in the transactions as customary witnesses, these transactions are not reported and therefore remain undocumented. Additionally, larger scale land acquisitions (involving rural and urban land sizes ranging between 0.6 and 50 hectares, sometimes more) occur along the shores of Lake Tanganyika (especially for palm oil production) and in the main city centres for business purposes. These transactions are usually reported to municipal



authorities by acquirers in need of the official documentation required in the land titling process. In return, municipal authorities derive a significant portion of their national budget from such land transactions through taxation (3-10 per cent of the price of the plot).

In **Ghana**, land acquisition, ownership and management contribute to various kinds of conflicts. The two research districts of Nkoranza South Municipal Assembly and South Tongue District Assembly were chosen based on reported cases of commercial land projects. Both localities have been areas of relatively large biofuel and food crop plantations. In Ghana, 70 per cent of the land is under the control of traditional authorities, which makes the role of the local governments in regulating commercial pressures fall under the discretion of local chiefs.

In **Mozambique** the research deals with the allocation of land use rights for private, large-scale and land-based investments. Specifically, it focuses on the allocation of land use rights to the Liquefied Natural Gas (LNG) project in the northern province of Cabo Delgado in the District of Palma. In 2007 the American company Anadarko, under a prospecting license issued by the Government of Mozambique (GoM), discovered massive amounts of natural gas in the Rovuma river basin in the northern part of the country. Following the decision to export the gas in liquefied form, the process of identifying and securing land for the required infrastructure was initiated in 2010. According to the Ministry of Agriculture, while the company requested an area of 25,000 hectares for this purpose, the government decided to adopt a phased approach and issued an initial title over an area of 7,000 hectares for the project's on-shore infrastructure. This is located in the Afungi Peninsula, in the District of Palma.

The two case studies from **Uganda** deal with different types commercial pressures on land. Amuru District, located in the **northern region** of the country, is home to a prominent land dispute between the local community and the District Land Board over the allocation of 10,000 hectares of land to a sugar plantation and factory, owned by local investors of Asian origin. After the community took the land board to the high court in 2008, the court ruled that the Amuru District Land Board acted within its mandate of allocating land because the disputed land was public land. Further litigation and a court injunction on the disputed land have followed.

Nakaseke District in **central Uganda** is characterized by a surge of both local and foreign large-scale land acquisitions in a context of fragmented and diminishing smallholder landholdings. The District Land Board is under pressure from both foreign investors and local elites for land allocation requests that largely target public lands. The perception that there is relatively abundant and cheap land in the district due to its predominantly rural setting and its relative proximity to the capital makes it highly attractive. The majority of requests for allocation of public land come from politicians, senior civil servants and business people. Land tenure in central Uganda is characterized by both public land and freehold; however, a majority of land dwellers are tenants who acquire user rights from absentee landlords owning large tracts of land. Increased demand for commercially viable and arable land entices these landlords to lease or sell off their land to the highest bidder. This often leads to forceful displacement of tenants in violation of their rights as outlined in the country's land law. Influential politicians and senior military officers – including the president – have been accused of influencing commercial land allocations in the district as they pressure



Procedures for registering land, Uganda. Courtesy of Gemma Betsema.

local government officials not to 'frustrate investors'.

## 4 Land governance mandates: Situating local government

This section discusses the formal mandates and capacities of local governments in relation to land administration and investments. The mandates of all five countries are derived from their constitutions and related land laws. We have found that Mozambique and Burundi maintain centralized systems of land governance where Burkina Faso, Ghana and Uganda are formally more decentralized.

### 4.1 Mozambique

The main principles for democratic and participatory land governance have been enshrined in the constitutional texts. The 2004 Constitution reiterates state ownership over land and natural resources. After determining the right of all citizens to access and use land, and to enjoy legally protected land use rights, it also determines the types of land over which land use rights cannot be recognized and where activities are permitted only through issuance of special licenses (for example in totally and partially protected zones). Amended from the 1990 constitutional text, the 2004 constitution distinguishes between different land categories based on the entities that have the mandate to govern them. Thus, land falls either under the state public domain, the municipality public domain or the community public domain.

The autonomy of municipalities allows them to establish any services they deem necessary to perform their responsibilities, to prepare and approve work plans and budgets, to collect revenues, and to hold assets (land, buildings) from which they can also collect revenues. The Municipalities' Law however does not contain specific provisions regarding land administration and management. Provisions in this regard are scattered among different legal instruments, such as the Constitution, the Land Law, regulations on urban land, and the Territorial Zoning and Planning Law.

In terms of participatory decisions at the municipal level, a review of the first 10 years of municipalisation in the country showed that constraints remained in relation to insufficient territorial delimitation of some municipalities, inadequate citizen involvement in the management of public affairs, and insufficient land use plans and cadastral services or a failure to respect these land use plans where they existed (Guambe, J. 2007).

The Land Law, approved in 1997, reiterates state ownership over land and has distributed land allocation powers to a very limited circle of high-level entities within the public administration hierarchy. With regard to competences and responsibilities of local state entities, Article 23 of the Land Law determines that district administrators have the competence to authorize applications for land use rights in areas that are covered by urbanization plans, and provided

they have public cadastre services. The Land Law regulations give district administrators the responsibility to conduct community consultations and to issue an opinion about land rights applications and allocations.

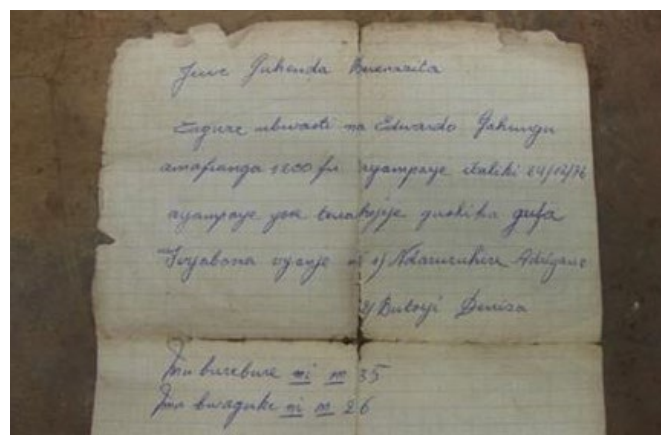
Local communities are expected to give their opinion on applications for land use rights and to confirm whether or not the land requested is free from occupants. The Land Law has also given communities the right to delimitate their areas and thus acquire a formal document (Certificate) formalizing their right to occupy and use land.

### 4.2 Burkina Faso

In Burkina Faso, the "*Commune*" (the district or municipality) is responsible for managing natural resources and land within its territory. It also ensures the governance of land owned by citizens and state-owned land. This responsibility fits within the mission of the state which characterizes rural land as a national heritage. According to the 2007 Land Policy and the 2009 Land Law, 'the state must ensure rational and sustainable rural land management taking into account future generations' interests, prevent rural land speculation, and arrange legal recognition of local land rights of rural populations'.

To ensure that the local public mandate is in accordance with national guidelines, the 2009 Rural Land Law provides for local land management structures. These structures include a rural land service (SFR) or a local public domains office (BD), a village land committee (CFV) and a village land conciliation committee (CCFV); the latter are committees of the village development council (CVD).

The SFR is a technical land service acting on behalf of the commune. It facilitates the elaboration of local instruments for land and natural resource governance namely local land use maps and rural cadastre services. The SFR is also responsible for the recognition of rural land ownership and for the establishment of rural land possession certificates (or APFR). Supervised by the mayor, the SFR must exercise its mission in collaboration with the CVD and CFV at the village level. The SFR in rural communes comprises two service centres: a



Parcel sales receipts in Burundi. Courtesy of Rosine Tchatchoua.



local land property office and a topography office. The SFR/BD of the Commune of Leo started in 2011 with three agents: a land officer, an officer in charge of communication, and a topographer. Recruited at high school graduate level, they are employed as communal staff, with less than 70,000 CFA Francs (roughly € 107) monthly salary.

The CFV implements village land services and thus contributes to the security and management of communal property and the protection of rural actors' land rights. The CFV provides information to the population on land matters, and is responsible for identifying local natural resources for common use. Finally, it participates in promoting local land rights and works towards the prevention of rural land disputes.

The village land conciliation committee (CCFV) intervenes in land conflicts, namely land disputes over possession, boundaries, and damages (e.g., caused by herds) through mediation and conciliation. Results of the mediation are sanctioned by records of conciliation or non-conciliation. Both the CCFV and CFV are presided over by the customary or traditional authority in charge of land issues.

#### 4.3 Burundi

Decentralization in Burundi is rooted in the Constitution and the Communal Act. The commune is defined as a decentralized administrative entity and 'a decentralized territorial community, with a legal personality as well as an organic and financial autonomy'. Communes are run by an elected Council and Administrator (or "Mayor"). Additionally, a commune constitutes the basis for the economic and social development of the population within its territory. The Commune Council is legally empowered to determine and collect communal resources, such as property and rental income taxes. The Commune Council collaborates with other public structures to deliver certificates of land ownership to land owners. Buyers and sellers are required to go to the Commune office to report their land transactions and pay the appropriate property tax.

At the hill (or '*colline*') level, there is a council composed of five elected Hill chiefs who participate in the signing of land sale contracts. Usually, the seller and the buyer, accompanied by their witnesses, prefer to sign the sales contract in the presence of the Hill chief. Such transactions remain largely unreported to the municipal authorities even though rural populations have been encouraged to make their transactions known and to pay the tax on their properties. Most often, the seller never shows up and the buyer only comes to the Communal bureau if he or she needs to register landownership under the Directorate of Land Titles. The Certificate of Land Sale must be signed by administrative authorities after the approval of the Provincial Governor. In general, only business people are interested in acquiring a certificate as they need it to access to credit from banking institutions.

This need to prove land ownership has led to a growing



*Bananas in Nakaseke District, Uganda. Courtesy of Joshua K. Mayo.*

demand for legal services at the local level. Therefore, the 2010 Law on the reorganization of the communal administration allows communes to create a communal land office (*Service Foncier Communal* in French, or SFC). Policy makers, donors and international organizations support communes to install such SFCs and strongly believe that the decentralization of land registration will foster land tenure security, reduce land conflicts and enhance investments in agriculture for enhanced food security. The Land Code states that the SFC is a communal structure in charge of: 1) identifying and securing the modes of land appropriation recognized and protected by law; 2) archiving and keeping documents and plans related to secure land rights; 3) ensuring the updates of communal lands inventory; and 4) participating in land survey operations. At the time of data collection, no SFCs were established in the areas of research. Nevertheless, the communal authorities were aware of the new laws and believed that, if such a decentralized service is put in place, it will certainly help in the monitoring of land transactions; it will also contribute to increased income generation as a result of the revenues collected the properties within their territories.

#### 4.4 Uganda

Uganda's decentralized government structure is comprised of five tiers of local government linked through a set of complex political and administrative arrangements. The districts are the highest tier of local government and enjoy legal autonomy. Districts are split into counties, sub-counties, parishes, and villages. Decentralized land administration and land management authority is vested in the district which,

according to Uganda's constitution, have legal personality and are corporate bodies with perpetual succession (GoU, 2006). The district's authority over land matters within its jurisdiction is outlined in the Constitution and the Land Law. They specify various roles and functions of decentralized land institutions charged with the provision of land-related services. These institutions include the District Land Board (DLB) and the District Land Office (DLO), Sub-county Court Committees and the Area Land Committees, which form the lowest level of government responsible for land issues. The DLB exercises the land governance authority on behalf of the district with technical assistance from the DLO. The 1998 Land Act gives the District Land Boards control over public land – including review of leases, allocation and collection of land rates. All local government land administration decisions are taken at the district level while lower level authorities (parishes, wards) are regarded as administrative units supporting their upper structures (Ahmad, Brosio, & de los Angeles Gonzalez, 2006).

The roles and responsibilities of the DLB and the DLO are stipulated in the Uganda Land Act of 1998. However, the roles and powers of the different land administration management units at the local and national levels are subject to Uganda's different land tenure types.

According to the Land Act, the formal mandates and responsibilities of the various land institutions are as follows:

- **Power of compulsory acquisition.** The LG has authority to 'acquire land in the public interest' such as for purposes of defence, public safety, public order, public morality or public health. Such acquisitions are subject to the prompt payment of fair and adequate compensation.
- **Public regulation of land use and development.** LG has the power to regulate the use of land and environmental protection within its jurisdiction. This entails limitation of "undesirable land use in the interest of public welfare and/or orderly development without revoking ownership interest or rights"
- **Protected areas.** The LG is prohibited from leasing out or alienating any land in protected areas such as fragile ecosystems. This may include natural lakes, rivers, wetlands, forest reserves, game reserves, and national parks.

The Land Act further specifies that, the DLB is responsible for the following functions:

- Holding and allocating land in the district which is not owned by any person or authority;
- Facilitating the registration and transfer of interests in land;
- Taking over the role and exercising the powers of the lessor in the case of leases that were granted by former controlling authority (ULC);
- Directing surveys, plans, maps, drawings and estimates to be made by or through its officers or agents.

The district land office provides technical services to the land board through its own staff or arranges for external consultants to facilitate the board in the performance of its functions. Lower



*Meeting with local government and chiefs, Ghana. Courtesy of Gemma Betsema.*

level units such as the sub-county Areal Land Committees (ALC) advise the DLB on matters such as ascertaining occupancy rights and land boundaries, mediating disputes as well as performing any other function conferred by the law.

In Uganda, customary land is defined as land owned according to peoples customs, norms and practices. The national Land Policy acknowledges the role of customary institutions in land dispute resolution, and especially in conflict mediation.

#### 4.5 Ghana

There are five main offices at the local government level in Ghana that are involved in land acquisition, administration and regulation. These include:

1. The Technical Committee on Land Acquisition (TCLA), now referred to as the Physical Mapping Department, facilitates land acquisition and land use in the district.
2. The Office of the Administrator of Stool Lands (OASL) mobilizes revenue from traditional stool lands in each district or municipality. They work closely with the traditional leaders and the District Assemblies.
3. The Survey and Mapping Division is responsible for district and municipal plans and maps.
4. The Town and Country Planning Department (TCPD) is a government deconcentrated institution responsible for putting district plans on cadastral maps.
5. The Forest Services Division (FSD) regulates Forest Resources in each local government's catchment area.

Apart from the TCPD which is a committee formed at the local government level, the other land-related offices are local representations of higher state agencies. For example, the OASL falls under the Ministry of Lands and Natural Resources, the Survey and Mapping Division falls under the Lands Commission while the FSD operates under the higher authority of the Forestry Commission of Ghana.

At the national level, a number of laws are in place for



land administration, including the State Lands Act, the Administration of Lands Act, the Land Title Law, the Statutory Way Leaves Act, and the Lands Commission Act (which backs the establishment of the Lands Commission). The land-related institutions in the statute books include the New Lands Commission, the Forestry Commission and the Office of the Administrator of Stool Lands. All of these institutions work as subsectors under the Ministry of Lands and Natural Resources.

All of the institutions outlined in the national land laws are provided for at the local level. The constitutional provision that defines the clear role of the local assemblies in land-related development can be found in the Local Government Act of 1993. The Metropolitan, Municipal and District Assemblies have their roles in terms of development regulation clearly stipulated therein.

The land governance roles of the District Assemblies include planning, permitting undertakings, issuing development charges (levies), regulating and monitoring development, and executing district plans. Though the Assemblies are decentralized, the Assembly Heads (the District or Municipal Chief Executives) are appointed by the central government. This ensures accountability to the citizens of the local government area.

## 5 Local land governance in practice

On paper, land governance is excellently provided for in most of the African countries under study. Laws to govern land administration are well elaborated and decentralization has awarded local governments with powers to administer land governance within their jurisdictions. In theory, this means local governments are well-positioned to exercise clear and decisive roles in relation to regulating commercial pressures on land. In practice, however, we found their roles to be much more limited. This chapter outlines the limitations and the ways in which they condition local governments.

### 5.1 Limited decentralization

Decentralization of land governance institutions in the countries studied was linked to overall governance reforms and wider decentralization processes. The decentralization of land administration entails processes of subsidiarity and the localization of service delivery to serve the desired goal of making land administration services appropriate, accessible and available on a massive scale (Hilhorst, 2010). However, as we found in the case studies, these reforms can sometimes lead to the substantial recentralization of power and do not necessarily result in stronger local control over land administration.



Meeting concerning land matters, Burundi. Courtesy of Rosine Tchatchoua.



While the statutory creation of local level land governance units is provided for, slow or non-existent implementation is a prominent feature of the majority of countries under review. In Burundi for example, the 2011 Land Law stipulates that the communes are free to decide on the creation of a communal land office. However, it is a very demanding process in terms of technical and financial resources which depends highly on donor aid and non-governmental organizations. At the time of the research, there were few operational SFCs within the country and none in the studied areas. In Burkina Faso, the Rural Land Law (2009) provides for the creation of local land management structures including a Rural Land Service (SFR) responsible for the implementation of the procedures for recognition of rural land ownership, and the establishment of certificates of rural land possessions. However, six years later, these structures do not yet exist in many communes across the country. In some cases, there is a reversal of the progressive statutory provisions for effective decentralization of land administration. For example, in Uganda, District Land Tribunals provided under the Land Act of 2007 were subsequently abolished by the 2010 Land Amendment Act.

These features of decentralized land governance could be understood as evidence of the prevalence of the de facto recentralization of power due to an unwillingness to yield power and to make decentralization effective. It is however important to interrogate whether this is an unintended consequence or the result of a deliberate state mechanism with the purpose of ensuring continued state control over land. In Uganda, decentralization has been criticized as a political instrument for electoral expediency without real dividends for the improvement of local service delivery. In Burundi, most land administration services are still under the jurisdiction of the Directorate of the National Cadastre (within the Ministry of Water, Environment, Land Development and Urban Planning), and the Directorate of Land Titles (within the Ministry of Justice), despite the legal provision guiding the creation of communal land offices.

We found several ways in which limited decentralization negatively conditions the role of local governments. These constraints, outlined below, are financial as well as political.

#### *Insufficiently funded institutions*

In the countries under review, decentralized land administration units depend on funding from the central government. However, these funds are insufficient to meet budgetary requirements necessary for delivering adequate land services. This limits the quality and effectiveness of services and fosters a retention of power held by national level authorities. In Uganda for instance, due to the rapid proliferation of the number of districts, the proportion of the national budget that is apportioned to districts has declined since the early 2000s, thus limiting the resources available to districts to execute their mandates.

Due to limited resource allocation, local government land institutions often fail to meet their statutory obligations. In Uganda, the District Land Board is mandated by law to meet once every two to three months or roughly six times per year. However, in Amuru District in Northern Uganda for example, the Land Board sat only three times per year. Consequently the quality of land services provided leaves much to be desired. In Burundi, local governments also face restricted resources. Still recovering from its history of violent conflict, the state lacks financial and technical resources to fulfil its social contract. As a result, the design and implementation of policies depend largely on donor agendas and international aid. Due to lack of funds, local authorities sometimes impose costs on citizens for requested services through informal taxation. This is sometimes interpreted by the central government as a form of oppression that revives grudges against “the State” or the ruling political party. Similarly in Uganda, local authorities impose fees for certain services to ensure that they can still carry out their functions. Such fees go towards costs such as payment of allowances for Area Land Committees. In this way, the burden of local land administration is often borne by ordinary citizens.

Lack of capacity within local government is one of the main reasons that central governments cite for limiting funds channelled to local land governance authorities. This might generate a vicious circle whereby a lack of resources perpetuates a lack of capacity and vice versa.

#### *Low local revenue base*

A second constraint, low local revenue bases, holds numerous implications. In many cases, local governments are not mandated to collect or retain revenues, including taxes; hence dependence on the central government is high. Where local governments can charge and retain land administration fees, these generally fail to meet the full costs of local land management. In Uganda, the District Land Board is by law directly funded by the central government. It does not receive funding for its activities from the local government. Uganda’s graduated tax – which was once the local government’s



*Assessing the situation on productive land in Nakaseke District. Courtesy of Joshua K. Mayo.*

primary source of local revenue – was abolished by the central government in 2005. This made the districts almost entirely dependent on the central government for budgetary support.

The lack of sufficient resources is thus a constant feature that limits local government land management institutions. This causes local authorities to make decisions that limit or withhold public services. The 1998 Land Act provides for Certificates of Customary Ownership (CCO) which are intended to increase tenure security under customary tenure. However, obstacles such as unclear sources of funding and poor remuneration for the Area Land Committees make implementation of CCOs or the process of land acquisition slow. While ALCs are supposed to assist in the processing of CCOs, they instead pass the costs of activities (such as transportation) to the applicants. In Northern Uganda, local authorities withhold the issuance of CCOs because – due to the many gaps concerning the CCO as a legal document – in its current form it is feared that it will generate more land conflicts. Similarly, in Burundi a commune refused a communal land service facilitated by an NGO because the commune knew it would not be valid after the NGO left. Another case study showed that some districts in Uganda deliberately failed to appoint Area Land Committees because they would be obliged to fund their services despite having no revenues for this.

District and local-level land institutions are mandated to facilitate the registration of interests in land for all citizens regardless of socio-economic differences. In reality, such services may only be offered to the rich who can afford to pay the formal and informal fees attached to land registration. In Burkina Faso for example, although area surface costs are affordable, the costs for delimitation (5000 CFA Francs or roughly € 7.60 per hectare) increase the total costs substantially. The poorest rural households are often unable to afford these costs. A consequence is that rural communities may resort to selling a part of their collective land in order to secure the rest.

Procedures for obtaining titles or certificates often take much longer than stipulated. In Burkina Faso, the recommended duration for the issuance of an APFR is 90 days. However, in practice there are many factors that contribute to the delay of the process. These include lengthy land disputes that must first be settled; in some cases, this results in the process taking years instead of months. Such delays also create opportunities for corruption. For instance, land acquisition applicants may pay informal fees in order to quicken the process. Such informal fees may also unduly influence local government institutions to allocate land wrongfully. These tendencies raise not just legal, but also serious moral questions about good or bad practice. Beyond doubts about the legality or illegality of a practice, moral judgments arise as to whether the end result determines the morality or legality of a practice. Even though it is against the law, corruption can be a good practice in the eyes of those who intend to acquire land as it quickens

the process. Moreover, if land administration institutions are not well funded and informal service fees are deemed illegal, where does the central government or the community expect such institutions to obtain the funds needed to carry out their mandate?

#### *Central government appointments of key positions at local level*

Despite the creation of local land governance units, it is still common practice for key local government positions, such as District Land Officer and other technical positions, to be appointed by the central government, usually through the relevant ministry. In Uganda, this goes further to include the powerful position of the Chief Administrative Officer (CAO); previously elected locally, this position is responsible for overseeing the entire technocratic arm of each district. In Uganda and Ghana, the influential Resident District Commissioner is directly appointed by, and is accountable only to, the president. Other office holders are appointed by local politicians and still have to be approved by the relevant central government ministry. As a result, instead of answering to local citizens, the entire technocratic arm of each district answers either to the central government or is accountable to higher-level political authorities.

Most of the decentralized land laws prescribe the composition of local government land structures. In Uganda, for example, the District Land Boards must be comprised of five members. At least one member is required to have the necessary qualifications and experience in matters relating to land and one-third of the Land Board members should be women (1998 Land Act). It is however doubtful that such stipulations are followed and whether compliance monitoring mechanisms exist, especially when such members are politically appointed. In addition, such political appointments pose challenges of accountability, as committee members are likely to be more accountable to the appointing authority than to the community that receives the land services. The same applies to higher-level institutions. While Uganda's Land Law stipulates that District Land Boards are independent bodies, it does not take into account the effect that the mode of member appointment is likely to have on their accountability and legitimacy at the local level.

The practice of political appointments constitutes a certain level of land governance recentralisation which affects the independence and effectiveness of local authorities to govern land. Despite legal provisions for the independence of local land governance institutions, the weakening of such institutions and actors and a heavy reliance on national-level institutions results in the predominance of vertical relationships of upward accountability. Over the last three decades in Burundi, this led to a series of illegal land appropriations under the control of appointed local authorities despite there being no institutional mandate to conduct such transactions. Taking advantage of their positions, state-appointed representatives at the local level could grab and re-allocate land and then deliver the necessary

“legal” documents. It remains difficult for the State to identify and retrieve these lands, leading a very sensitive and tense social and political situation.

#### *Political interference*

An additional limitation facing local governments is political interference. Although statutory mandates for local government land administration units are enshrined in the law, evidence from the cases shows a high prevalence of direct political interference from national-level elites in the alienation and allocation of land. Other forms of interference include mandatory acquisition and directives that contravene local officer’s attempts at enforcement of protective regulations, including environmental standards. In Uganda for instance, local authorities cite higher-level threats, such as receiving warnings that they should stop ‘frustrating investors’. Through political interference that bypasses official regulations, local level officers are effectively disempowered and lose legitimacy in the eyes of local residents.

#### *Investors bypass local officials*

Finally, local governments are often bypassed by investors. In many instances, investors do not follow the stipulated procedures to acquire land; they often first identify the land they want and deal directly with the community, often knowing that they will be supported by higher levels of the political system. It is only when they encounter problems with the customary owners that they go to the local government, often to seek help. In some cases, such informal procedures are efficient and effective and may be perceived as more legitimate in the eyes of community members than formal procedures. Such an example occurred in Nyamukino in Amuru District in Uganda where a Canadian national did not consult the local government but instead dealt directly with the customary owner of the land on which he is now carrying out commercial agriculture. These examples pose critical questions about the added value of existing legal provisions.

In a nutshell, African countries have fairly robust legal and institutional frameworks for governing and administering land. However, there is a significant divergence between formal structures and the practice of local land governance. Inadequate resources and political interference contribute to the slow and uneven implementation of land laws at the local level. At the same time, this in some cases provides space for local government institutions to implicitly protect the land rights of the vulnerable. It seems of key importance to understand informal procedures and practices that may not be captured in formal land laws.

## **5.2 Multiple institutions and linkages at the local level**

Regulating commercial pressures on land at the local level brings together a diversity of decentralized government institutions as well as customary institutions. In all case studies, local government service providers had to deal with a range of other actors involved in regulating land acquisitions, especially traditional authorities, local councils

and civil society organizations. In some national land laws, there is clear and formal acknowledgement of the roles of customary institutions and the protection of customary land rights. The main assumption guiding this legal provision is that customary authorities are viewed by local populations to be more legitimate, and therefore will think, speak and act on behalf of the people in local land governance matters. However, the studied countries differ in terms of the formal recognition of customary institutions. On one extreme of the spectrum, customary authorities in Ghana can lease land without accountability to government or local communities. In Uganda and Burkina Faso on the other hand, customary authorities are subject to communal negotiation and horizontal accountability.

In some of the countries studied, customary authorities are legally encouraged or appointed to participate in, or to chair, local land committees alongside local government representatives. In Burkina Faso, the Rural Land Law of 2009 clearly states that, in order to ensure participation of customary authorities in the implementation of the law, at least one village chief or representative from the chief’s family has to chair the Village Land Conciliation Committee (CCFV) and the Village Land Committee (CFV). In communes that have already established a Rural Land Service (SFR), this regulation is clearly translated into practice in the commune law where each village chief actively participates in the activities of the CCFV and CFV. To a lesser extent, local authorities in Uganda can invite or allow customary authorities to participate as observers or witnesses in the mediation of land disputes. For example, a traditional leader stated that during the Madhvani sugar cane dispute, he was invited as a cultural leader to represent the *Lamogi* clan after the land was allocated. In Burundi, even if the traditional elders (or *Bashingantahe*) have lost part of their traditional authority and legitimacy, they are invited by the Hill Administrative Councils to witness land transactions and to actively participate in land dispute mediation because they are believed to be very knowledgeable about the distribution of land ownership and local land boundaries. At the same time, *Bashingantahe* can also call upon local administrative authorities to assist them in land disputes brought before them.

Though the cited legal provisions facilitate the important role customary authorities may play in land governance, various examples show that their capacities to act in the interest of local communities may be variable and contested. Power struggles and political interference hinder the implementation of these rules at the local level. Some traditional societies only acknowledge specific powers to their traditional leaders. For example, the Nuni society in Bieha, Burkina Faso restrains the function of its village chief to that of a religious authority but not one of land management. Land ownership falls within lineages and is managed exclusively by family members. Even if there is no SFR, CCFV or CFV in this commune, land disputes occur between local populations, communal authorities and village authorities. For example, when the Mayor, through





Women in Neboun, Burkina Faso, harvesting maize for food and income. Courtesy of Gerard Baltissen

village authorities, has tried to discourage the sale of large areas, this was perceived as interference in family land transactions.

In cases where traditional authorities have more control over land in comparison to local government authorities, local populations are not necessarily better protected. In some cases, customary leaders reportedly engaged in land transactions with investors at the expense of local communities. This may erode the authority and credibility of customary authorities. In some of these cases, it is formal local government or other state institutions that aid local communities. In Northern Uganda, some customary leaders from the Acholi community lost their positions due to perceived alliances with commercial investors who were interested in acquiring customary land. As has occurred in Northern Uganda, where customary and local government authorities lose legitimacy and are perceived to have betrayed the interests of local communities, citizens have resorted to the courts to demand downward accountability. Usually, this occurs with the assistance of civil society organizations such as Uganda's Land and Equity Movement and the Uganda Land Alliance as well as politicians. In Ghana, where the power of customary chiefs is considerable, measures were put in place to protect smallholders from eviction. The Land Commission devised measures to assist community assemblies with regulating land acquisition for large-scale commercial agriculture that are transparent and fair to community members. However, some traditional chiefs continue to allocate land to local farmers only to then turn around and reallocate the same land to private investors without recourse.

The legitimacy and authority of statutory local government institutions in land administration may be bolstered through the collaboration and consultation with customary institutions. Although not mandated by law, customary leaders in Northern Uganda are almost always consulted on issues of land administration and dispute resolution. In Burundi, Burkina Faso and parts of Central Uganda, village

elders play a key role in the identification and demarcation of land boundaries as well as in the settlement of disputes. In Ghana, it is a statutory requirement that a customary leader take part in and chair local level land administration units.

Some local government actors violate the authority of customary institutions in customary land allocation and land registration. In Bieha (Burkina Faso), where there is no existing SFR, deconcentrated state service providers do not properly consult commune councils in land allocation or acquisitions processes. They rather simply compel the communal authorities to sign land use permits (or *permis d'exploitation agricole* in French) who in turn pressure village authorities to provide signatures in order to protect themselves against accusations in the future. Often no copy of the signed document is left in the communal archives. This results not only in conflicts; it erodes the authority and legitimacy of traditional authorities and community institutions. As a consequence, there are examples of community members challenging their traditional leaders.

Potential solutions for these issues involve the creation of a space for dialogue and information on the role of institutions in local land governance. In this regard, civil society organizations (CSOs) become important institutions for connecting state and customary institutions. In order to reconcile divergent interests and to find sustainable strategies that support rural livelihoods and protect customary rights, CSOs work alongside traditional authorities and local community structures, as well as with local land government services or councils. For example, international non-governmental organizations (INGOs) and CSOs work together in Burundi with central state institutions, decentralized government services and communes to establish communal land offices. CSOs provide financial, technical, and material resources to ensure that the Land Code as well as land conflict resolution are implemented to foster land tenure security, growth, food security, and social cohesion.

Stronger local linkages might, in theory, make it possible to protect local populations more effectively from dispossession. We found that this is limited in practice where ambiguity or rivalry occurs between formal local officials and customary leaders and where there is a lack of trust between the local population and the local government.

### 5.3 Balancing local economic development, food security and social protection

Local governments have an obligation to defend the land rights of local populations as well as those of future generations. Local governments link land rights to food security based on the assumption that if local land rights are protected, increased tenure security will result in higher productivity investment. In fact, some local actors explicitly relate the secure land rights of local populations and households to agricultural production as it is mainly family farms that make food available through agricultural

production, animal husbandry and fisheries. This perspective also implicitly refers to a key food security pillar in Burkina Faso, Ghana, Uganda, and Mozambique. In other words, to achieve or maintain sufficient food production it is necessary to assure and secure access to farmlands as well as to prevent speculative land acquisitions that freeze productive zones as evidenced in Burkina Faso. However, the assumption that land rights assure food security might be contested as tenure security may be used for other purposes. As evidenced in Ghana, tenure security could be a means to reserve land for future generations or to support local land banks.

Although much focus is placed on local population land rights, other local actors emphasize the role of investors in contributing to local economic growth. Examples include private investments in food processing infrastructure or equipment such as for paddy rice steaming or hulling, or the production of fruit juice (OXFAM, 2014). Nonetheless, local actors are to some extent generally reluctant to support private sector investment in food production through local land acquisitions. This is because previous acquisitions contributed more toward “freezing fertile lands” than toward improving local agricultural production. Several cases exemplify investors acquiring lands without contributing to local development through job creation or enhanced social infrastructure such as housing and education. In Ghana and Mozambique, large land acquisitions also negatively impacted local food security as food crops are replaced by export crops, less land area is available for local farmers with traditional (shifting cultivation) farming systems or through the forced eviction of land users for biofuel or gas production.

Additionally, the local economic base as well as the local agricultural sector remain weak partly because of donor influence and requirements. Indeed, in a context of decentralization and local governance, donor funding was and still is predominantly oriented to the provision of social infrastructure including education, health and water supply. This development agenda fits well with local government perspectives as it allows local officials to gain socio-political legitimacy from local populations through the provision of ‘concrete’ and observable development (namely basic services) that local populations expect; these competencies have also been legally transferred to local officials. However, agricultural development and food security are key planning priorities, especially in Uganda and Burkina Faso despite the fact that planning and implementation are not yet well-coordinated nor realistic because of lacking resources. For example, fragmentation is an issue as each department approaches its sector without having full knowledge of the activities in other departments. In addition, activities may address aspects of increased food security without consequent budget allocation. For example, in Burkina Faso, local plans recommended ‘improving the conditions of farming practices and access to water for agricultural production in order to increase production’. This illustrates the

continued focus on the role of production in access to food (a key food security pillar).

The balancing of local economic development, food security, and the protection of rights should be a priority of local governments; each can be achieved with support from the state, international and domestic non-governmental organizations, private sector, and donors.

#### *Public responsibility in land governance*

The protection of land rights for vulnerable groups and the monitoring of commercial land acquisitions may not be central to the formal roles of local government land institutions. Nonetheless, some local government actors do show a sense of public responsibility and seek to use the available room for manoeuvre toward this end. For instance, the Amuru District Land Board have refused to approve applications that requested the conversion of 1,000 acres or more of customary land to freehold. This is in spite of the fact that the law does not outline limits for customary to freehold conversion. By implicitly protecting customary land rights through informal means, vulnerable groups such as women, widows, orphans, and the youth are protected.

We found several instances of local governments using, or creating, room to exercise a constructive, regulatory role. For example, we found public land leases being regulated in Uganda, Ghana and Burkina Faso. More concrete examples include local governments taking action by:

- Reserving available land for lease to locals
- Limiting the size of land leased to applicants
- Monitoring the expiration of long term leases for allocation to locals
- Rejecting ‘unsatisfactory’ applications
- Publicizing available land to local residents and encouraging them to apply
- Ascertaining the capability of investors before approving allocation
- Challenging unlawful allocations in court
- Demanding Environmental Impact Assessments (EIA) and user certificates for certain investments
- Collaborating with customary and traditional authorities

## 6 Summing up: What is the role of local governments in regulating commercial pressures on land?

This working paper has built upon six field-based studies conducted in five African countries, namely Uganda, Ghana, Mozambique, Burkina Faso, and Burundi. The research focused on the role of local government and the diverse and still tentative ways in which local government actors address the new but pressing challenges of land acquisition for commercial purposes. The main aim of this paper is to answer the following question: What can local-level governments do to control and mitigate the commercial pressures currently being placed on land?

The research revealed a governance gap surrounding the regulation of commercial pressures that local governments so far cannot effectively fill. While processes of decentralization formally endow local governments with certain capacities to condition and control land acquisitions and mitigate their consequences, very large concessions or those related to subsoil resources may formally fall outside of the realm of local level governments. As a result, what local governments can do in practice remains rather limited. Additional limitations derive from what might be termed incomplete decentralization which leads to a lack of resources and capacity, political interference (where the autonomy of local governments is not respected by higher levels), and the predomination of upward accountability over downward accountability.

These limitations notwithstanding, we did see local governments asserting themselves in land governance. We found a sense of public responsibility and the ambition to fulfil formal mandates properly. Undue interference and the lack of resources were resented for that reason. Actions were taken within the realm of districts to safeguard land for smallholders and for future generations. Decentralization, while incomplete, does seem to have fostered this more active role.

The governance gap is not, or not primarily, a result of inadequate laws. In fact, the land laws in many of the countries under study include mechanisms to protect people who hold rights on customary lands. However, the laws are implemented to a very limited extent, and the weaknesses of local government as described above contribute to that. An issue of attention here is the ambiguities, and sometimes the legal contradictions, that exist in many places around the recognition of customary tenure and the mandates of customary or community based authorities. Where this results in miscommunication or rivalry between formal local officials and customary power holders, the effectiveness of the former in regulating commercial pressures is undermined. At the same time, we saw a growing citizen awareness of the risks of commercial pressures on land, but they remain, in most places, poorly organized. The research in some cases found tensions between local officials and other local actors (customary, civil

society) that affect their effectiveness. Alliances between actors at the local level might in some cases mitigate some of the weaknesses of formal local authorities in exercising their role.

The governance gap we signalled around commercial pressures worries us and this is the reason we insist on increasing efforts toward making local land governance work and strengthening the roles that local governments may play in that regard.

First, we expect the problems surrounding commercial pressures on land to grow further. As the pressure increases, the risks for local populations as well as the demands on local governments increase, both from above (in relation to facilitating private sector-led development and modernization) and from below (in relation to the protection of local rights and livelihoods and locally-relevant development). Despite some promising initiatives at the level of local government, we are not confident that local governments will be able to deal with increased pressure. This might lead to forms of institutional erosion or even breakdown as well as a growing lack of confidence of local citizens at moments when they need protection and support. Other consequences of this may be forms of dispossession, reduced access to land and other resources and means of subsistence, and possibly growing social unrest.

Given these pressures, we suggest that there is a need to rethink the goals and progress of land governance in Africa. We also suggest a certain urgency in harnessing the role of local governments and capacities in this field.

While the challenges that local governments face in regulating commercial pressures – derived from limited resources and a lack of autonomy – are not easily mitigated, we also see room for improvement as well as missed opportunities. The current issues related to decentralization will not be easily solved, as existing power holders will not be inclined to yield power to decentralized entities. Yet, there is room for building upon and strengthening the role of local government as well as strengthening the role of local communities who may be affected by land acquisition.

A first recommendation is to acknowledge, learn from, and harness the work of local government actors and how they give content to their responsibility in land governance. Second, we see a number of ways in which the regulating roles of local governance may be strengthened. These include:

- Providing technical and financial resources to allow local governments to conduct their work with professionalism and autonomy;
- Consolidating decentralization by reforming key posts from appointed positions into elected positions as well as making better use of local planning instruments, such as district or municipal development plans;
- Creating or strengthening mechanisms to allow local governments to play a monitoring role by issuing by-laws,



mobilizing local populations, and making better use of planning instruments;

- Incorporating effective collaborations with NGOs who could in some cases provide resources as well as help to create spaces of dialogue between potentially distrustful villagers and local authorities.

Third, we suggest strengthening both local populations and the linkages between local authorities and local populations.

As the governance gap around commercial pressures cannot (certainly not in the near future) be filled by the local government alone, local empowerment may become crucial. Through the establishment of land committees, local communities may outline conditions for land acquisition. Moreover, if the relations between the local government and other actors could be improved, a collective effort to govern and monitor commercial land pressures might materialize.

Finally, and adding to the last point, tenure security could be strengthened substantially through increased recognition and upholding of customary and community-based arrangements in practice. Without downplaying the considerable challenges involved, customary rights are a critical factor in curtailing the risks associated with commercial pressures on land as well as in affording more effective protection where needed. There is also a need for strong accountability mechanisms within customary systems, which are also changing and, in some places, eroding.

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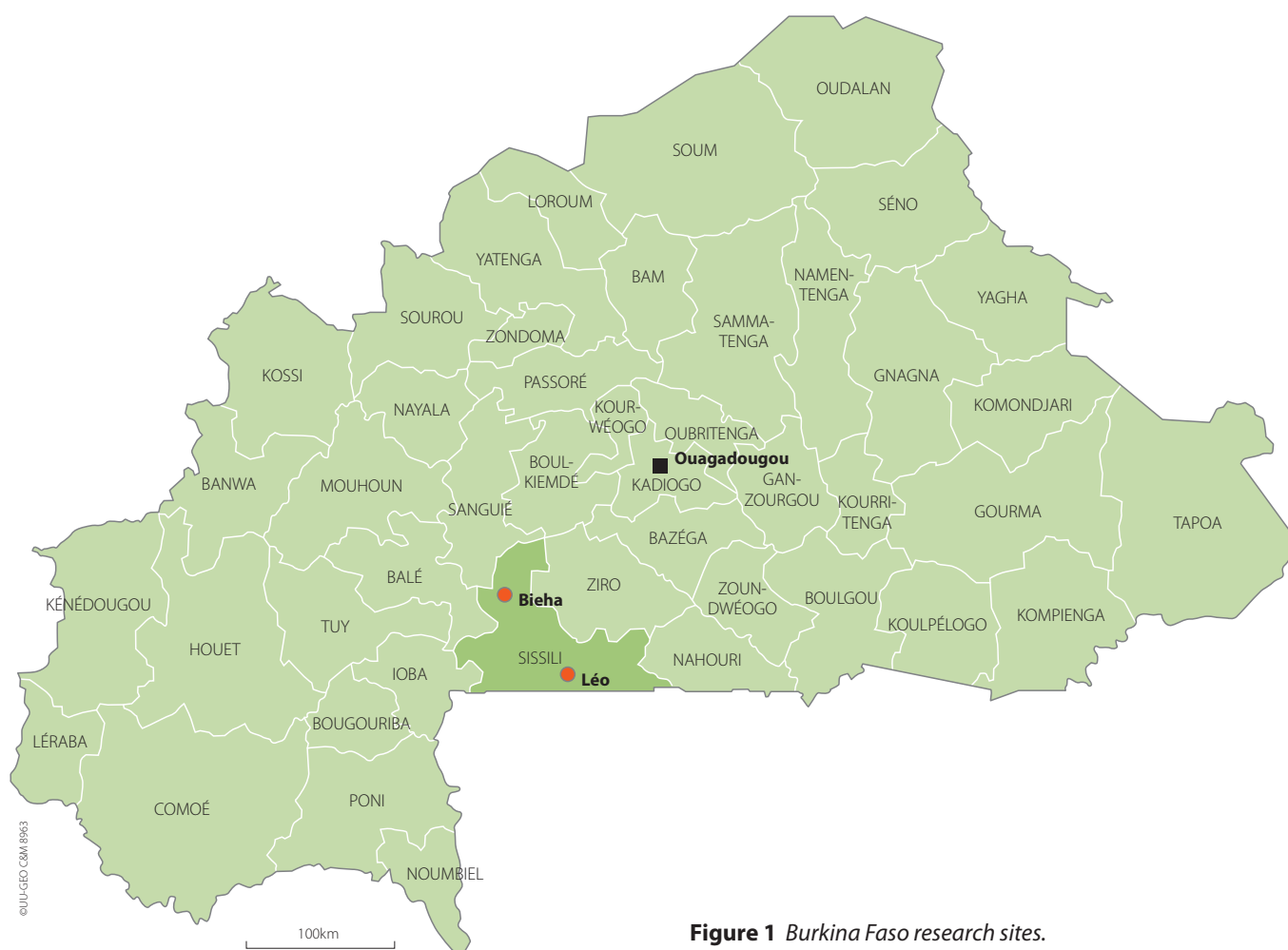
### Burkina Faso

Major land acquisitions occur in the Southern and Central-Southern regions of Burkina Faso where rural lands are still relatively available. The two research sites, each located in Sissili province are the rural commune of Bieha and the urban commune of Léo (Figure 1). This province, with Léo as the capital city, is easily accessible from Ouagadougou via paved roads. Land acquisitions in Sissili province started in the Northern part at the border within Ziro province with the commune of Bieha as the entry point.

Neboun, a village in Bieha commune, is well known for land transactions involving “new actors”. A previous research carried out in ten villages in five communes in the Sissili province (SNV Burkina, 2012) revealed that 78 “new actors” acquired parcels of land in Neboun ranging in size from 20 to 300 hectares; the total size of land acquired, solely within this one village, was estimated to total 3,900 hectares. The land owned by these “new actors” is equal to the amount of land held by 390 Neboun households. Moreover, the research also revealed that less than one-third of the acquired land was under cultivation. In addition, a new 130-hectare sesame farm in the village offered the opportunity for a specific case study as the land was acquired by a domestic private export enterprise called the Velegda Group with a capital of 16

billion CFA Francs (or roughly € 24.2 million). This enterprise implemented a public-private partnership with the support of GiZ to develop a win-win relationship with the local population in business development around the sesame value chain. Each of the above land acquisitions justified the choice of Neboun for inclusion in this research.

The rural commune of Bieha is the second research site in Burkina Faso. It is important to note that Bieha commune lacks the local land structures that are proposed in the rural land reform and that this limited the analysis. Nonetheless, as these are in place in Léo, this urban commune was added as a second site for the research. Previous research, carried out in Léo with KIT in 2013, focused on emerging local land management structures. For the research on village-level structures in Léo, the village of Sissili was selected; it is located 30 kilometres (km) from Neboun along the paved road to Ghana.



**Figure 1** Burkina Faso research sites.

## Mozambique

In Mozambique, of the research was centred on allocation of land use rights to the Liquefied Natural Gas (LNG) project in the northern province of Cabo Delgado, District of Palma (Figure 2). This project was jointly proposed by an American company called Anadarko and an Italian company called ENI (hereinafter referred to as the Palma case). The researcher has been following the project's land and environmental licensing processes closely since February 2013. Several field visits to the District of Palma were undertaken and interviews with different stakeholders at both the local and central government levels were conducted. The researcher has also attended most of the community consultations and public meetings that were organized in this context.

Like many districts in Mozambique, the District of Palma has been functioning without a strategic development plan, without a land use plan, and without cadastral services. Located in a remote area in the northern part of the country, bordering Tanzania through the Rovuma River, Palma is quite removed from the centre of government power and attention. However, it has recently been brought to the centre of the public's attention upon the discovery in 2010 of massive amounts of natural gas reserves by Anadarko. Since having been selected to house the onshore liquefied natural gas facilities, both for storage and export purposes, the issue

of land allocation and occupation assumed paramount importance which triggered the involvement of a myriad of actors and prompted the initiation of several formal and informal processes related to land. These processes in turn exposed the dilemmas and challenges of decentralization strategies and processes, showing, on one hand, the urgency in allocating more powers and better resources to the district level and, on the other hand, the dangers of gradualism in the democratization process.

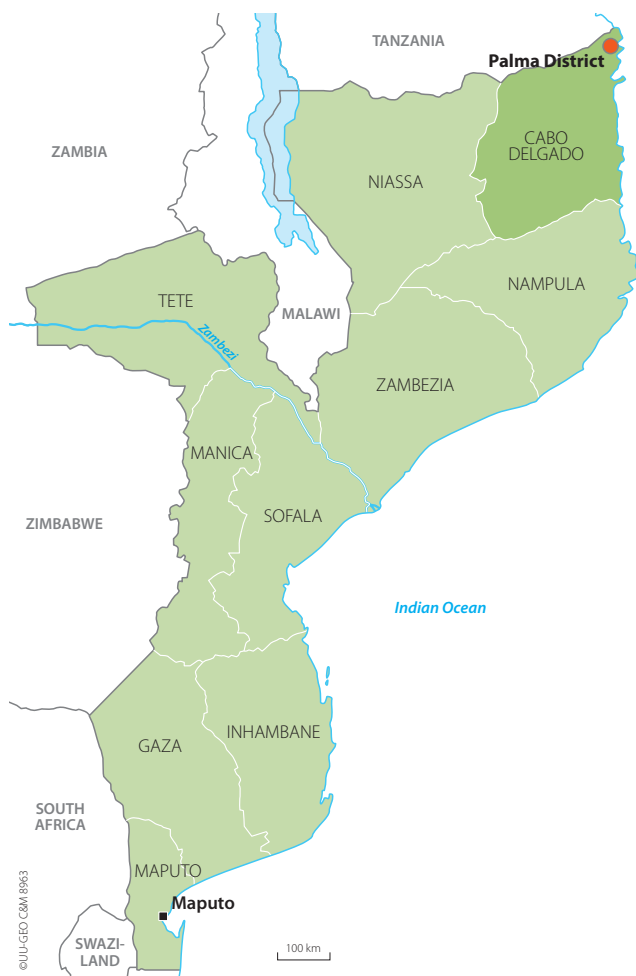
Following the decision to export the gas in a liquefied form, the process of identifying and securing land for the required infrastructure was initiated in 2010. According to the Ministry of Agriculture, the company requested a land area of about 25,730 hectares for this purpose. Nonetheless, the government decided to adopt a phased approach and so issued an initial land occupation license giving land use rights over an area of 7,000 hectares for the project's on-shore infrastructure in the Afungi Peninsula, District of Palma.

As part of the process Anadarko hired Impacto Lda, a Mozambican consultancy firm, to conduct an EIA. As indicated in the EIA report, out of eight areas considered in the Cabo Delgado province, the Afungi Peninsula was selected allegedly due to its low population density and low environmental risks. The Afungi Peninsula, integrated in the Palma-Sede administrative post, houses 11 villages, and the duration of the right to profit from the land (DUAT) issued covers land occupied by four villages, namely Quitupo, Maganja, Patacua, and Beriberani. One of the villages, Quitupo, with about 1,500 families, has been targeted for complete resettlement as the company's DUAT completely overlaps with the area occupied by this village.

## Ghana

To obtain information on the role of local governments in the large-scale acquisition of land in Ghana, two districts were purposively selected: Nkoranza South Municipal Assembly and South Tongu (Figure 3). The two districts were selected based on geographical location, current issues surrounding the large-scale acquisition of land for commercial projects as well as their municipal and district land governance structures. Both localities have been areas of relatively large biofuel and food crop plantations (Antwi-Bediako et al., 2011). Geographically, Nkoranza South is located at a transition zone between the middle belt and the northern zone of the country whereas South Tongu falls within the Middle and Southern zones of the country.

Nkoranza South Municipal Assembly is one of the 27 Administrative Districts of the Brong Ahafo Region. The district capital is Nkoranza. It lies within Longitudes 10°10'W and 10°55'W and Latitudes 7°20'N and 7°55'N with land size of 1,100km<sup>2</sup>. It has about 126 settlements and is traditionally headed by one paramount chief. The district shares boundaries with Techiman Municipal to the west, Kintampo South District to the north, and Atebubu Amantin District to

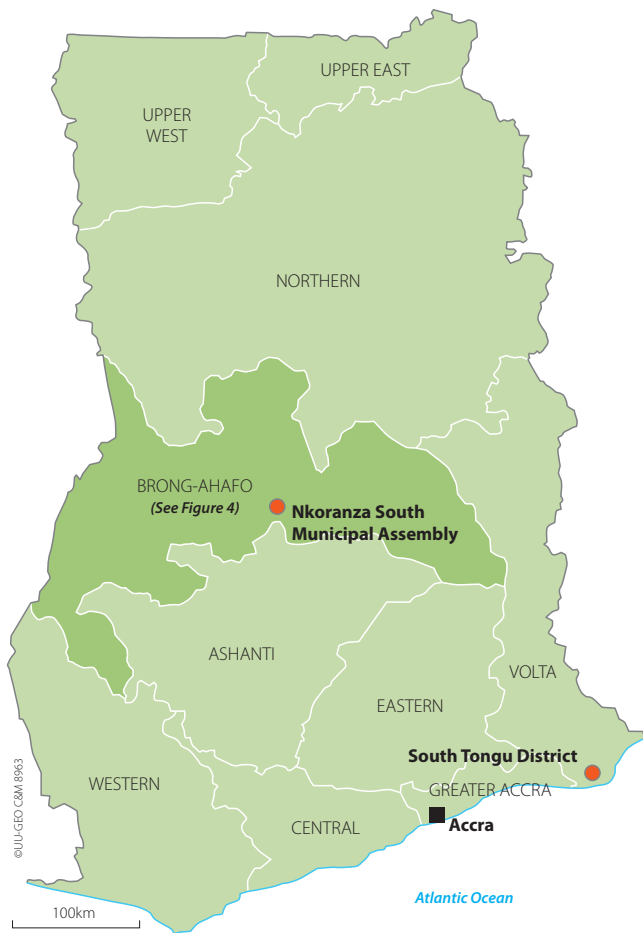


**Figure 2** Mozambique research site.



the east, all of which are within the Brong Ahafo Region. To the south, it is bordered by the Ejura-Sekyeredumase District in the neighbouring Ashanti Region.

South Tongu is one of the 25 municipalities and districts in the Volta Region of Ghana. The administrative capital of the district is Sogakofe. The district has a total land area of 594.75 km<sup>2</sup> and lies between latitudes 6°10'N, 5°45'N and longitudes 30°30'W, 0°45'W. The district shares boundaries with the Central Tongu District to the north and north-west, the Akatsi South District to the north-east, Keta Municipal to the south and the Dangbe-East District to the west and south-west. The main river draining the district is the Volta, which runs along its western border, but it is also drained by numerous streams, prominent among them being the Chinni and Todzi, with a large number of lagoons in the southern sector of the district. The district lies within the wet semi-equatorial and dry equatorial climatic zones, which are favourable for livestock production. The coastal strip is covered by swamp and mangrove vegetation. South Tongu had an estimated population of 87,766 in 1994 and this is growing by some 2.5 per cent per annum. This is faster than the regional growth rate of 2 percent but lower than the national at 3 percent.



**Figure 3** Ghana research sites.



**Figure 4** Districts and municipalities in the Brong Ahafo region of Ghana.

**Table 1** Study area characteristics. (Burundi, 2006a, 2006b, 2006c)

	Makamba	Nyanza-Lac	Rumonge
Province	Makamba	Makamba	Bururi
Population (year)	124,603 (2005)	384,514 (2013)	96,831 (2005)
Surface area (km <sup>2</sup> )	325.08	384.98	324.88
Number of zones and hills	5 zones, 32 hills	5 zones, 26 hills	6 zones, 23 hills
Average farm sizes	0.3-0.5 ha		
Main crops	Banana, bean, cassava, potatoes, sweet potatoes, maize, rice, soybean, sorghum, coffee, pineapple	Bean, maize, cassava, sweet potatoes, groundnut, banana, rice, cocoyam, palm oil tree, coffee, fruit trees	Bean, maize, cassava, sweet potatoes, groundnut, banana, rice, cocoyam, palm oil tree, fruit trees

**Figure 5** Burundi Research sites.

## Burundi

The information collected and used for this study was collected in three communes: Makamba, Nyanza-Lac, and Rumonge. These are respectively located in two southern provinces of Burundi (cf Table 1 and Figure 5).

The research communes were selected because of their increasing attractiveness to investors due to their specific agro-ecological and socio-economic characteristics. All are classified as urban centres by Decree No. 100/140 of 07 November 2000 that redefined the boundaries of urban centres. In addition, Nyanza-Lac and Rumonge are located at the edge of Lake Tanganyika in the Imbo plain. The Imbo plain is a region recognized for its favourable ecology. Soils are naturally fertile and conducive to the development of commercial or cash crop agriculture (including rice, palm oil, and cassava). The climatic features allow for two agricultural seasons, plus another in-between season in the marshes. Indeed, dense hydrographical attributes in the region promote the traditional exploitation of some marshes along the various rivers that flow directly or indirectly into Lake Tanganyika. Similarly, the Imbo plain is a rural area with a large population and many socio-economic activities.

Due to the geographical location, the communes under study have a diverse population of natives and foreigners. Migrants coming from other regions of Burundi and the returnees from Tanzania and the Democratic Republic of the Congo are settling freely. The above-mentioned provinces are comprised of a few urban centres classified as secondary cities and urban-oriented centres. Outside of the cities, the population is gathered in semi-urban centres, which are usually located around markets, parishes and churches, and major crossroads of the region. Much of the population lives in traditional houses spread over the hills. In this region, business development has been fostered by small-scale fisheries, trade, the proximity with national highways (RN3) and the extension of cash crops agriculture (including palm oil, rice, and cassava).

*The results presented in this working paper are based on ethnographic research conducted between October 2013 and March 2014. The research methodology utilized semi-structured interviews and observations as well as the qualitative analysis of various documentary sources including reports as well as the texts of laws and legislation.*

## Uganda (Amuru District case study)

The study focused on Amuru District in the Acholi sub-region of northern Uganda. Amuru District covers a total land area of about 4,851.68km<sup>2</sup> with a population of 242,300 people and a population density of 21 people per square kilometre (National Housing and Population Census, 2002). Amuru is one of the seven districts that make up the Acholi sub-region in northern Uganda. This region experienced one of Africa's longest and cruelest civil wars that lasted over 20 years and displaced much of the population. In 2006, after the signing of the Juba Peace Agreement between the National Resistance Movement

and the Lord's Resistance Army rebels, internally displaced people's camps were disbanded and people started returning to their homes. This displacement has contributed to the numerous land disputes that engross northern Uganda to date.

Amuru District was purposely selected for the following reasons. Amuru District is home to a land dispute between the community and the District Land Board over the 2008 allocation of 10,000 hectares to the Amuru Sugar Works Limited; the company is owned by the Madhvani group of companies and the owners are Ugandans of Indian descent. Under this project, land was allocated for the establishment of a large scale sugar plantation, a sugar factory as well as to create employment opportunities for over 8,000 workers. However, as the community of Amuru felt that it was insufficiently consulted over the land allocation, the community filed a complaint with the high court. The high court in turn ruled that the District Land Board acted within its mandate because the disputed land was designated as public land. Nonetheless the case is now before the court of appeals with an injunction on the disputed land<sup>1</sup>. This land dispute has dragged on for years. The sugar factory is not yet operational, but at the same time the customary land owners – the community – remain uncertain of their tenure security. Most of the analysis conducted in this study is based on the land dispute between the community and Amuru Sugar Works, however other land disputes were also included.

The district was also selected because it features functional land institutions that include the District Land Board, the District Land Office and Area Land Committees at the sub-county level. These land institutions have been at the forefront in the allocation of land for commercial purposes and specifically in the Amuru Sugar Works Limited case. In addition, Amuru District is one of the two districts in northern Uganda where certificates of customary ownership were first piloted and this provided good information about the procedure of land acquisition. Moreover, large-scale commercial farmers are interested in acquiring land in Amuru District because the land is considered to be vast, fertile, and unoccupied<sup>2</sup>. Finally, created by the Act of Parliament in 2006, Amuru District is relatively a new district. As a result, the district provides a good illustration of the role newly established local government land institutions play in regulating commercial land acquisitions.

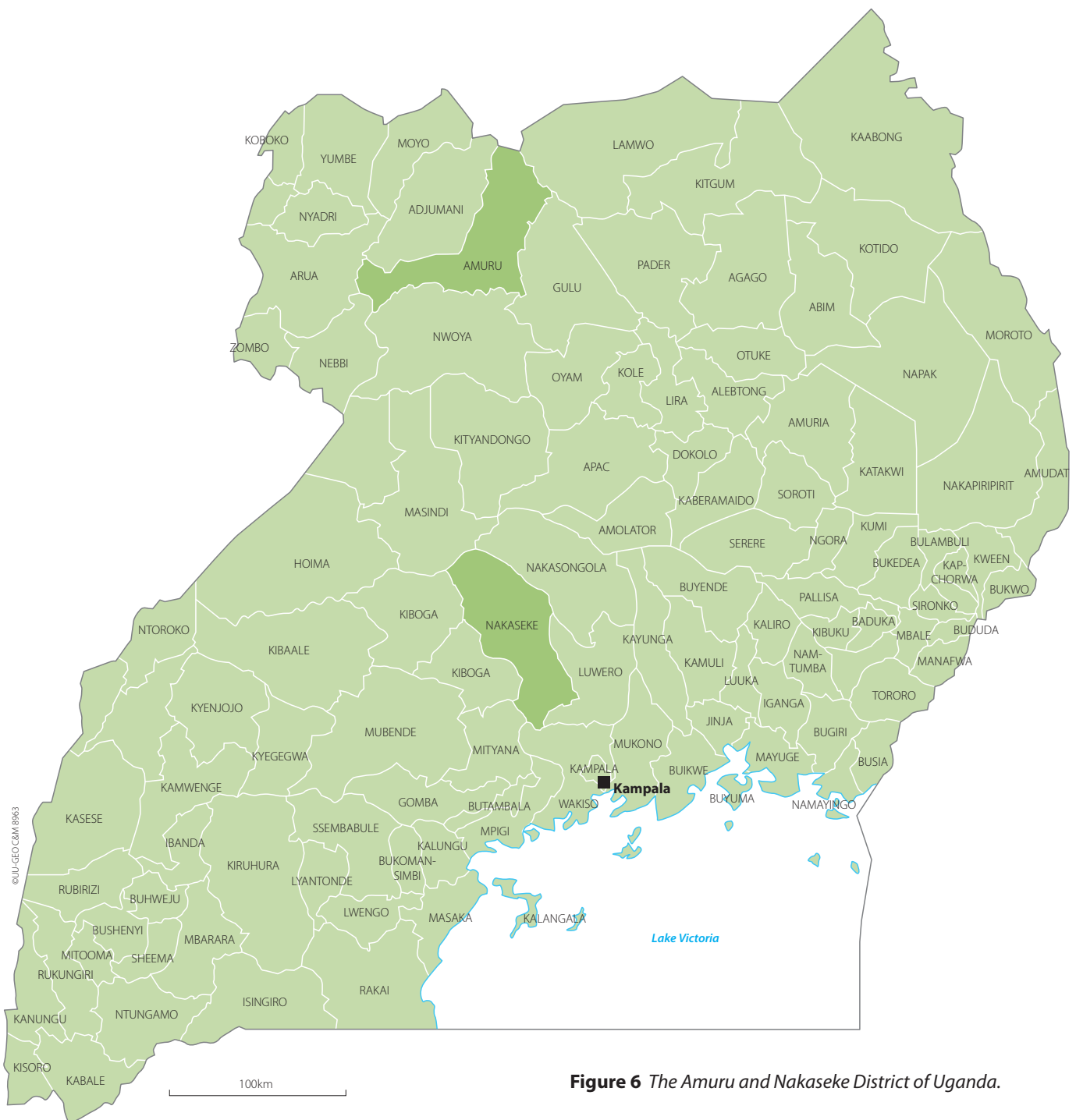
## Uganda (Nakaseke District case study)

Nakaseke District was created in July 2005 as part of the Ugandan government's strategy of decentralization aimed at 'taking services closer to the people' (Bashaasha et al., 2011;

1 Data collected 2011-2013 within the Grounding Land Governance programme.

2 Data collected 2011-2013 within the Grounding Land Governance programme.





**Figure 6** *The Amuru and Nakaseke District of Uganda.*

E. Green, 2008; Steiner, 2006). The creation of a myriad of new local administrative units, usually coinciding with electoral cycles, has however been criticized as an exercise in political patronage without significant democratic and developmental impacts to local communities (Golola, 2003; Green, 2010).

Ecologically, the district is made up of two zones: the northern semi-arid region is populated by pastoralists while the southern crop based zone is occupied by cultivators. The northern ecological zone covers more than three-quarters of the district and is popularly known as the cattle corridor. The southern ecological zone, where the research was conducted, is predominantly an agricultural zone and covers less than a quarter of the total land area (Nakaseke District, 2011).

According to local government statistics, 40 per cent of the land in Nakaseke District is arable land. About 7 per cent of the total land area is covered by forest reserves, wetlands, rivers and swamps (Nakaseke District, 2012). According to the district environment report (2012), the whole region was previously covered by more extensive forests but tree cover has diminished due to heavy encroachment of settlements, crop cultivation, charcoal production, and overgrazing. The main economic activities in the district include charcoal production and mixed farming methods of animal production and crop cultivation. However, rapid population growth has led to high rates of land fragmentation especially in the southern agro-ecological zone (Nakaseke District, 2012). Pressure on the environment is manifested through the



This research relates to the following research programmes:

- Grounding Land Governance: ASC/WUR, Doreen Kobusingye, Rosine Tchatchoua Djomo, Gemma van der Haar (<http://groundinglandgovernance.com/>)
- Jatropa project, COCOON, IDS/UU, Richmond Antwi-Bediako
- Development as a Trojan Horse? Large Scale Land Acquisitions in Uganda, VU University Amsterdam, Joshua K. Maiyo
- Strengthening Local Institutions in Land governance in Burkina Faso, KIT-SNV-Tree Aid-Oxfam, Bala Wenceslas Sanou, Gerard Baltissen
- Challenges of participatory land governance in Mozambique: Assessing community spaces, voices, powers and benefits in decisions on large-scale land-based investments, LANDac, UU/WUR, Alda Salomão

This working paper is based on the following country reports of the authors (available on request):

- Maiyo, J., 2014. The Role of Local Authorities In governing Commercial Pressures on Land: The Case of Nakaseke District, Uganda
- Kobusingye, D.N., 2014. Governing Commercial Pressure on Land: What is the Role of Local Government? A Case Study of Amuru Local Government, Northern Uganda
- Sanou, B.W., 2014. Towards Rural Land Regulation in Burkina Faso: How Local Governments are Dealing with Domestic Land Acquisitions. Case study in Sissili Province: Communes of Leo and Bieha
- Tchatchoua Djomo, R., 2014. Governing Commercial Pressure on Land and the Role of the Local Government: The Case Study of Burundi
- Antwi-Bediako, R., 2014. Governing Commercial Pressure on Land: The Role of Local Government in Ghana
- Salamao, A., 2015. Challenges in Participatory Land Governance: Decentralization and the Role of Local Governments in Decisions on Land-based Investments

## About LANDac

LANDac, the Netherlands Academy on Land Governance for Equitable and Sustainable Development, is a partnership between Dutch organizations working on land governance. The partners are the International Development Studies (IDS) group at Utrecht University (leading partner), African Studies Centre, Agriterria, the Sociology of Development and Change (SDC) group at Wageningen University, HIVOS, the Royal Tropical Institute (KIT), and the Netherlands Ministry of Foreign Affairs. The LANDac network conducts research, disseminates information, and organizes courses and training, focusing on new pressures and competing claims on land and natural resources. Guiding question is how to optimize the link between land governance, sustainable development and poverty alleviation.

[www.landgovernance.org](http://www.landgovernance.org)

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## LANDac

More information about LANDac and our activities is available on our website: [www.landgovernance.org](http://www.landgovernance.org).

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