Draft not to be cited without permission of the authors

Paper presented at the

2013 Law and Development Conference
"Legal and Development Implications of International Land Acquisitions"
Kyoto, Japan, 31 May 2013
Jointly organized by
Law and Development Institute, University of Manchester and Graduate School of Global Environmental Studies, Kyoto University

Looking at the broader picture: Instruments to tame large-scale land and water acquisitions for rural development

Michael Brüntrup, Waltina Scheumann, Axel Berger
German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)

Abstract

This paper argues that the current wave of large scale land acquisitions (LSLA) which is sweeping throughout the whole world is driven by a multitude of reasons and actors. The international debate, however, tends to narrow this phenomenon to simplistic narratives. Framing the phenomenon too narrowly risks losing important aspects thus unnecessarily, restricting policy options. More concretely, the paper argues that (i) focusing on land will miss implications on water issues; (ii) focusing on foreign investors misses the many national investors involved; (iii) focusing on grabbing (notion: illegal) neglects the instances where land is transferred legally; and (iv) banning LSLAs *a priori* misses the political and economic forces at work and their potential for rural development.

Against this background, approaches and instruments are reviewed that aim at regulating LSLAs considering their highly complex nature. The approaches and instruments are 1) human-rights rules, 2) guidelines for governing land tenure and principles for agricultural investments, 3) social and environmental impact assessments, 4) international investment treaties 5) global water governance regimes and bilateral treaties, and 6) private standards or responsibility codes. The paper concludes that no individual approach can deal with the multitude of actors, situations and impacts of LSLAs. However, the totality of regulations provides opportunities to tame them, but its effective use relies on political will and the empowerment of local population.

1 The phenomenon of LSLAs

The current wave of large-scale land acquisitions (LSLA) is driven by many factors, actors and structural features. There is no doubt, that LSLAs potentially have serious implications for the populations affected and for societies as a whole including migration, security, conflict and state integrity. Powerful but partly inadequate narratives have been formulated which are not completely wrong, but tend to focus on a few aspects thus denying the complexity and ambiguity of LSLAs.

Before looking at four narratives, a few words are to be said about the extent of the phenomenon, or better the lack of knowledge about their actual spread. Several thorough attempts have been made to assess the dimension of LSLAs (Deiniger / Byerlee 2010, Land Matrix 2013, GRAIN 2013, Oxfam 2011, Friis / Reenberg 2010). The figures differ widely, from about 30 million to over 200 million hectares, with a median of about 50-60 million hectares. The last calculations of the Land Matrix, which is the most systematic attempt to document LSLAs, are about 26 million hectares where contract have been signed, and 21 million hectares where production has started (Anseeuw et al. 2012: 5). However, a relaunch with a revised methodology and new data is announced for mid-May 2013.

The differences between different databases result from inconsistent methodologies, such as the definition of what large means; the period under consideration; whether only new acquisitions are covered; in which stage of transfers the deals are; whether deals acquire community and small farm land and/or also the transfer of large farms; whether documentation focuses on foreign and/or national investors, and the various types; and whether they consider acquisitions for farming only or also for e.g. mining, nature conservation, tourism and carbon sequestration. Most importantly, differences originate from the sources of information used and on their accuracy and quality. In most countries of Sub-Saharan Africa (SSA) reliable data are not available because governments are not able or not willing to record and report on LSLAs. Thus, assessments rely on media, crowd intelligence, sporadic statistics and one-of surveys. Because the lack of reliable information refers to many issues, the knowledge gaps make it relatively easy to shape the narratives on LSLAs in politically desired ways, by using anecdotal evidence, unbalanced selection of case studies, arbitrary interpretation of partial data etc.

In the following, we will discuss how this selectivity can mislead analyses and understanding related to both the threats LSLAs pose and the opportunities they provide.

2 Four misunderstandable narratives about LSLA

2.1 Focusing on land misses implications for water-rights issues

The UK-based Chayton Capital that acquired farmland in Zambia kept it to the point: "The value is not in the land…The real value is in water" (Chayton Capital 2013). The land investors are looking for is obviously either blessed with adequate rainfall (green water) or has access to a water source for irrigation (blue water). GRAIN (2012: xx) observed that

because “all of the land deals in Africa involve large-scale, industrial agriculture operations that will consume massive amounts of water (…) Nearly all of them are located in major river basins with access to irrigation“ such as in the transboundary rivers Nile and Niger.

This might not be surprising: Africa is the continent where a huge “untapped potential” for irrigated agriculture is estimated (Smaller and Mann 2009), and where the continent’s water resources can be tapped for export-oriented agricultural projects, ensuring high profit margins. Using only two percent of its water resources (FAO 2003, cited in Smaller and Mann 2009), Africa especially attracts investors willing to exploit this resource endowment among other advantages.

The intimate relation between the rush for land and water has only recently been acknowledged; it was NGO publications paved the way for a stronger focus on water rights in the LSLA discussion. Not surprisingly, the water community has termed it “water grabbing” which e.g. Mehta et al. define water grabbing as “*a situation where powerful actors are able to take control of, or reallocate to their own benefits, water resources already used by local communities or feeding aquatic ecosystems on which their livelihoods are based*” (Mehta et al. 2012: 197). A special issue of Water Alternatives was devoted to water grabbing; the 2012 Stockholm Water Week assigned a prominent place to the topic.

The debate has taken up similar arguments like those dominating the discourse on land grabbing, e.g. the notion of illegality and focus on FDI. However, this narrative addresses FDIs and countries of origin in a particular way: it reasons that countries go abroad because they either have depleted their own water resources (like China); they already use a large percentage of their renewable water resources for agricultural, industrial and domestic use; and they are water- but not land-scarce like the Gulf States which are among the most active investors in African agriculture. Saudi Arabia, having encouraged domestic wheat production for many years, has decided to drop its own wheat production by 2012 because of significantly depleted freshwater reserves (Smaller and Mann 2009).

The global agricultural trade and FDI in agricultural land have stimulated debates on the unequal endowments of countries with water and how to secure national water resources against the threat of being externally exploited. Since countries would increasingly “externalize their water footprints” to other parts of the world, a range of economic instruments have been suggested. These include, for instance, taxes on water-intensive products (Hoff 2009); an international water pricing protocol to be applied exclusively to cash crops produced in from large-scale irrigation schemes; and an upper limit (a water cap) to restrict and fairly distribute global fresh water use (Hoekstra 2010). It would be worth evaluating whether these proposed global instruments and standards are adequate and feasible, and how they fit within the ‘neighboring’ global trade and food security architectures.

No doubt, it is blue water that attracts particular attention because it can be subject to re-allocations if land is transferred to new investors because they may have the financial sources to tap water resources by means of infrastructure (e.g. irrigation) in contrast to most smallholders. In these instances water use-rights change with land rights. In the few contracts

to which the public have access water are not mentioned at all, not specified or only vaguely worded. Water requirements are not known during the negotiations, or they will be subject of later re-negotiations. Cotula (2011) found that in twelve African land deal contracts only a few have explicit water-related provisions. In some cases it is reported that investors have acquired water rights that put them in a more advantageous position than existing users: in Sudan, for instance, the new investors have the right to use the amount "needed for the project" without any restrictions on water use for companies. In Sierra Leone one contract grants "exclusive possession over villages, *rivers*, forests and other forms of the environment" (Abiwu / Anane 2011), and the Malian Office du Niger guarantees to supply "the suitable amount of water for irrigation on the basis of an irrigation schedule prepared by the company" (Hertzog et al. 2012). Land deals in e.g. Ghana made between foreign-owned companies and local chiefs do not mention water at all (Williams et al. 2012). If all planned investments are realized in the Blue Nile basin in Ethiopia, water use will significantly increase and a relevant portion of the nation's water resources will be used by foreign investors. According to a newspaper report, Saudi Star Agricultural Development Plc. was granted the right to cultivate rice on about 10,000 hectares in the Ethiopian Gambella Region; the water will be withdrawn from the Alwero River and affect the fishermen's and pastoralists' use-rights which are legally not protected (Oakland Institute 2011).

Impacts of new land investments on actual water users are usually not accounted for in land deals, neither of those users whose land is subject to transfer nor of those who use water untied to land such as stock farmers, fishermen, and pastoralists. It is, however, plausible to assume that the use of water for irrigated agriculture produces diverse impacts on water resources and its users. This can occur within (Bues / Theesfeld 2012) and downstream of irrigation systems in terms of reduced water availability. Commercial farm operations may also impair water quality, for instance, when drainage canals from irrigated fields transport effluents enriched with nutrients and other chemicals back to irrigation canals or to natural watercourses. And it can impair quantity and quality of groundwater resources and affect users thereof.

While actual water users might be deprived of their water-use rights, and investors are advantaged, investors nevertheless face the risk of not getting what they need. If for instance hydrological conditions in Mozambique are taken into account, it is estimated that only 60 percent of the planned investments in the Limpopo River basin can be realized. The Malian government too has leased out more water than being available (Hertzog et al. 2012). It seems that making investments operational – either domestic or foreign – are at risk if they do not ask for reliable site-specific hydrological data on which to realistically base their business plans. In addition, it may happen that governments or other land sellers cannot restrict existing users' consumption effectively, and the land deals induce a race for water. For these investments, water is a major risk factor (see Savills' Global Farmland Index of 2012).

It is due to these risks – both for actual and future water users – that domestic land and water tenure regulations and sustainable management and practices are crucial.

2.2 Focusing on foreign investors misses the nationals, and the challenges to control

In the international debate on LSLAs a strong focus on foreign investors is discernible (e.g. Cotula et al. 2009, Von Braun / Meinzen-Dick 2009, FAO 2009a, Burnod et al. 2013). In some publications particularly in those of the non-scientific community that strongly shaped the international discourse, land grabbing is attributed to, and identical with foreign investments (GRAIN 2008, Pearce 2012). This reflects *inter alia* a distinct politisation of the phenomenon by some groups, notably anti-globalization and anti-capitalist NGOs. Dwyer (2013: p. X) states that "the currency of the phrase 'the global land grab' already testifies of civil society's success in making transnational land access an explicitly political issue". It might not be a coincidence that the Land Matrix focuses on transnational deals only (Anseeuw et al. 2012).

The strong identification of LSLAs with Foreign Direct Investments (FDI) is, however, far from being evident. On the contrary, it is national investors who often dominate land markets. Evidence comes from studies which investigated all larger land acquisitions, and provide detailed data on local vs. foreign investors:

- Deinigner / Byerlee (2010) report that in several countries with high incidence ofland acquisitions the majority of recent investors are domestic; foreign investors dominate only one country, i.e. Liberia which has a tradition of FDI) (Table 1).
- For Ethiopia, Ghana, Madagascar and Mali, an analysis of official databases (Cotula et al. 2009) suggests that 78 percent of the area has been acquired with involvement of foreign investors, and only 22 percent by nationals. The share of nationals ranges from zero FDIs in Madagascar to 60 percent in Ethiopia. The authors concede that the low incidence of national land investment in Madagascar may be "partly caused by the lack of publicly available information on the significant agribusiness projects owned by domestic investors with political prominence". But in general, they note that "the extent to which national individuals and companies are also acquiring land in certain countries [is] – an aspect virtually absent in much media reporting." (Cotula et al. 2009: 49)
- In a survey of medium-sized LSLAs in Niger, Benin and Burkina Faso, "most agro-investors are individuals and domestic (>95 percent). … For the entire sample, 45 percent of the investors are based in the local government area or in the province, 37 percent live in the capital of the country and 10 percent are living abroad" (Hilhorst et al. 2011: 10).

Table 1: LSLAs and investor origin in selected countries

Country	Projects	Area (1,000 ha)	Median size (ha)	Domestic share[a]
Cambodia	61	958	8,985	70
Ethiopia	406	1,190	700	49
Liberia	17	1,602	59,374	7
Mozambique	405	2,670	2,225	53
Nigeria	115	793	1,500	97
Sudan	132	3,965	7,980	78

Source: Country project inventories collected for this study.
Note: Data are for the 2004–09 period except for Cambodia and Nigeria where they cover 1990–2006. Liberian figures refer to renegotiation of concessions that had been awarded much earlier.
a. Domestic share is the proportion of the total transferred area allocated to domestic investors (vs. foreign investors) rather than the share of the number of investments.

Source: Deiniger / Byerlee (2010: xxxiii).

The distinction between national and foreign investor may be less clear cut than statistics numbers suggest. National investors may build consortia with foreign investors, hold land in the name of foreigners, or speculate to resell it later. Such behavior can be fostered by local regulation. Sometimes, there are formal limitations to foreign land ownership (in SSA this has been introduced in 2011 in DR Congo, UNCTAD 2012: 79). National investors can more easily circumvent administrative procedures or reduce land prices. Often, foreign investors prefer to have local co-owners which have superior local knowledge and can protect against political and administrative risks in these often very investor-risk-prone countries.

To conclude, a considerable if not the dominant portion of LSLAs stems from national investors, though the linkages to the international capital may be higher than statistics suggest.

2.3 Focusing on the illegality of ('grabbing') LSLAs ignores that many are legal

There is a certain trend in (part of) the international debate to confound LSLAs with "land grabbing". Wikipedia (2013), for instance, stipulates that "land grabbing is the contentious issue of large-scale land acquisitions: the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments, and individuals." As indicated, participants in the international debate have strong stances on LSLAs, and polarize the debate in a certain way, often with a clear anti-international investor statement – thus emphasizing the illegality of large land acquisitions and the loss of national control over land. This culminates in the accusation of "neocolonialism" (Blas 2008), and includes arguments which point to "legal manipulations which continue to make [land] rushes possible" (Wily 2012: 751). The rules which would allow legal transfers of large tracks of land are seen as unethical (i.e. manipulative) intervention in land governance, while "good" regulation would inhibit it altogether.

Without denying the strong (political) power play behind LSLAs, including the shaping of law in the interest of powerful groups who want to create a possibility to acquire land or to otherwise profit from these transactions, the perspective falls short in reality:

Many land deals are in fact legal and follow constitutional rules and formal regulations. In many African countries, land is owned by "the people", "the state" or their representative such as the president or decentralized state entities, depending on how the constitution and laws define land rights. These actors can make

> "use of perfectly legal means of dispossession or reallocation of lands involving significant loss of access for rural poor and not a little physical displacement in practice. In this context, the 'land grabbers' are not the beneficiary investors but governments of the people affected, and for as yet uncertain public good. Land transfers are undertaken strictly within the terms of domestic property laws: laws made by host governments and their predecessors. Broadly, these laws are designed to render untitled (but traditionally occupied and used) lands as unowned, and the state, by default, their legal owner." (Wily 2012: 752).

German et al. (2011: abstract) summarize a multi-country analysis in SSA:

> "…results suggest that in many cases it is not a global "land grab" driven by the private sector, but a supply-driven process in which governments are playing an active role - often bolstered by an unwavering faith in the role of foreign investment in national economic development".

There can be, of course, good reasons for selling state land or even for the expropriation of customary land for public goods and interests (e.g. flood control in riverine areas, roads or public infrastructure). But it is also obvious that in most LSLA cases there are no public but private goods involved. There is also a considerable number of cases where (defunct) state farms are sold to investors on which poor squatters illegally had settled (e.g. Väth 2012, Purdon 2013, FAO 2013).

Plenty of land sales or leases for LSLAs are made under customary rulings by the acknowledged owners or users – traditional chiefs, village organizations, clan chiefs or (extended) household heads, depending on how the customary law assigns ownership and negotiation power (e.g. Väth 2012, Healy 2013, Purdon 2013, Berry 2013, Nolte 2013). Although there are many reports that pressure has been exercised by superior powers (politicians, chiefs), this is certainly not always the case - many lands are given away voluntarily by owners who assume that in sum it is a good deal for them. This assumption often will not hold, particularly when one-off payments do not create stable new livelihoods. More generally, not only new livelihoods but also most investments are risky, and thus, the results in the longer term cannot be predicted with certainty. Under such circumstances, any principle of Free, Prior and Informed Consultation or Consent (FPIC, the C is used in both meanings while the implications are very different) has its limitations – there is no perfect knowledge to base land sale decisions upon. This of course also holds for and when keeping the land. This is not to excuse bad and erroneous information provision, and in many cases of LSLA the information basis was certainly much lower than possible. Yet, even the best

informed actors involved in a LSLA – the investors – seem to have insufficient information on the deal, this must be concluded from the large amount of failed or not implemented projects.

As a partial conclusion, many deals are made legally, but with imperfect information. Yet, there are inherent limitations of information availability and quality in such deals. A legal definition, and thus a requirement for a sufficient amount of information to make a deal legitimate and acceptable is hardly possible. A basic set of questions to be answered can be defined in ex-ante assessment frameworks (see below), but risks always will remain without making deals "illegal".

In any case, it must be noted that there is an intrinsic rivalry between customary and modern land rights and governance systems. For the communities, "territory is 'made' through everyday use, memorialization of past generations of use and the collectivization of histories and practices on the land" (Wolford et al. 2013: 199). On the other hand, territory is a (though contested by some) key for the modern nation state (Flint / Taylor 2007). Thus, a 'natural' conflict of authority over the rules by which land is governed is almost unavoidable, all the more since customary land rights in traditional societies are closely linked to and partially rely upon other customary rules and powers. This legal pluralism with separate governance institutions is prone to create conflicts, gaps of legitimacy, abuse of power and corruption. How far both are reconciled and whether the modern state accepts customary rights (and vice-versa), depends on interests and power, but to a certain extent also on the effectiveness the two systems to provide desired results such as poverty alleviation, food security, conflict prevention or ecological goods. LSLAs can challenge legitimacy of both customary and formal land systems. The example of Madagascar (see above) shows that the state loses legitimacy when exaggerating it legal power to hand out land. In Ghana, on the other hand, where most of the land leased is from customary (stool) land which is under the control of traditional chiefs with varying but often low levels of accountability towards their constituencies, deals non-beneficial for constituencies undermine credibility and authority of chiefs and of the customary land – and if applicable water – system (Schonefeld et al. 2010, German et al. 2011).

2.4 A refusal of LSLAs misses their positive potential for rural development

The phenomenon of voluntary and development-oriented LSLAs brings us to the last mis-judgment related to LSLAs: that is that they are automatically detrimental to many, most or all local people. Whether this is actually the case is not easy to assess because most LSLAs are very young and have not yet reach operational level. The very few systematic analyses are based on case studies, the selection of which is often unclear and methodology dubious. Most likely, they are biased, giving prominence to deals with conflicts, with high international visibility and prominence of actors involved. The negative general opinion of many of those who work on the issue (see above) also risks to bias the hypothesis, methodology, interviewee selection, and interpretation of information towards more critical results. Thus, a certain bias towards negative research results is likely.

However, evidence of negative impacts of LSLAs on rural populations, at least in developing countries, is overwhelming.[1] In fact, the reported evidence on LSLAs in poor countries is widely devastating. Not only media and NGO reports (GRAIN, Oxfam, Oakland Institute, International Land Coalition, FIAN, and many others), but also prominent scientific conferences on LSLAs (e.g. Futures Agriculture 2011 and 2012 conferences in Sussex and Cornell, World Bank land and poverty conferences in Washington since a decade) have assembled a flood of negative cases and consequences of the observed acquisition practices. Even authors and organizations who defend the potential positive effects of large-scale agro-investments (Deiniger / Byerlee 2010, Schaffnit-Chatterjee 2012 for Deutsche Bank Research, FAO 2013) do not find much positive evidence; they too find that the current situation is anything else but alarming. That is:

People are evicted from their lands, experience pressure and violence, lose their agriculture-based livelihoods, lose access to water, pastures and forests. They do not find alternatives at least in the short run because most investments are slowly (if at all) materialize, and often do not create the kind of jobs that the ceding families could fulfill. Promised social investments such as schools, health stations or infrastructure are not realized due to lack of advancement and profitability. Compensations are not paid at all, often they are very low and do not allow for establishing adequate alternatives; rent and purchase prices of land do not reflect access to water resources which must be higher if compared with land without water endowments (Richards 2013). People affected have to find new jobs, must possibly return to agriculture, new investors take over, with considerable delays possible. Social projects are not established or run down for lack of finance. Land redistribution may take place but opens up new opportunities for corruption and rent seeking. In some cases, former customary land leased out to large investors does not fall back to the communities but to central government (Zambia, Tanzania).

The overall negative findings are typically based on assessing recent LSLAs. For this reason, the following paras briefly review some of the older still operating large-scale agro-investments in poor, badly or weekly governed countries.

- Sugar production in SSA is possibly the best candidate to show that large-scale investments can benefit rural areas. There are several studies which show the overall positive economic effects on local populations (both outgrowers and plantation workers) (Kennedy 1989, Oxfam 2004, Herrmann et al 2013). This can be explained by the high labour intensity of production, large investments in infrastructure, proven production models. Estates often care for housing, water supply, electricity, schools, hospitals and social security of their workers. Some of these services are also offered to local communities. In fact, when plantation workers are recruited long queues build up. Most jobs are for young men as cane cutters, but there are also industrial jobs. In addition, around sugar estates, usually vibrant rural hubs emerge (Oxfam 2004). During the mid 2000s, many NGOs lobbied for maintaining the high-price sugar and trade regime of the European Union (EU) that allowed for preferential-market-access of African, Caribbean and Pacific sugar producing countries to the EU market, arguing

[1] Transitional and high-income countries also experience a rush for land. However, their case is not investigated.

exactly with these positive social impacts.
Another, although less pertinent candidate for more or less "proven" development-friendly large agro-investments is the export-oriented cut flower and vegetables industry. In Kenya, this sub-sector has created several hundred thousand jobs, both on-farm and off-farm, many of them for women (McCulloch / Ota 2002, Minot / Ngigi 2003). Some of the workers produce under organic and fair trade labels, but most are conventional with high levels of external inputs. In Ethiopia and in various other countries there are replications of the model. In Senegal, it has been shown that large-scale vegetable farms reduce poverty more than small to medium-sized farms (Maertens / Swinnen 2009). They have better market access and more chances of complying with high environmental standards and certification requirements while they can employ the poorer parts of the population at better conditions than family farms. Problems arise with environmental impacts.
Palm oil and rubber plantations are also said to have strongly contributed to positive socio-economic development, in particular in Malaysia and Indonesia. Private large scale plantations created local industry and jobs, while state plantations, in addition, were used to train workers who later established their own farms (Wakker et al. 2004, Deininger / Byerlee 2012). The key problems have been land disputes with indigenous people, clearing of virgin tropical forests and draining of peat land. Chances for a better environmental balance are high on degraded non-peat land. In SSA, successful large scale palm oil plantations can be found in Ghana and Cameroon. There, impacts across different groups of local people involved are mixed with advantages for outgrowers but problems for plantation workers (Carrere 2010, Väth 2012).

- Some classical export crops are widespread in Africa and have experienced large scale production. Tea and coffee plantations exist particularly in Eastern Africa, coffee also in West and Central Africa as well as cocoa, rubber and coco nut (Ivory Coast, Cameroon, Liberia, Sierra Leone), tobacco in Southern and Eastern Africa. Where plantations survived the decade long struggles of indendence, statal or parastatal nationalization, post-independence management and policy problems and periods of deteriorating and volatile prices, they presently constitute relatively stable units of production with labor intensive production processes (Dinham / Hines 1984, Eastwood et al. 2010).
- Even in environmental terms, positive examples can be found: LSLAs can increase crop production substantially, overcome soil mining and stabilize shifting cultivation. If they are realized on degraded land, they also can prevent/reduce soil erosion and accumulate soil carbon (one example is a forestry project in Tanzania (Purdon 2013). However, large farms have features that are challenging for the environment compared to smallholder farming (e.g. intensive use of agro-inputs, large plots, and high mechanization).

However, these older plantations in SSA are not directly comparable with present day LSLAs. They were established at a time when land was less scarce, but on the other hand respect for human rights, fair negotiation conditions, rule of law etc. much weaker than today. Yet these cases show that LSLAs do not automatically lead to overall negative impacts, and it is worth

studying the conditions that make present large-scale land deals development friendly (compare FAO 2009a).

Acknowledging this, risks of LSLAs are nevertheless high, and there is urgent need for regulating LSLAs to reduce them and support opportunities.

3 Approaches and instruments to regulate LSLAs – scope, challenges and limits

During the last decade approaches and instruments have been developed to regulate LSLAs which are briefly assessed in order to identify their possibilities and limitations and whether they address the complexity of LSLAs as described in the previous chapter. The focus is not on specific countries, but on general instruments such as human rights treaties, international guidelines for the governance of land tenure and principles for agricultural investments, international investment treaties, trade agreements, private voluntary standards, water governance, and social and environmental impact assessment procedures.

3.1 Human rights

The United Nation's International Covenant on Economic, Social and Cultural Rights (ICESCR) covers human rights which might be violated by LSLA and which can therefore provide a leverage to regulate them: the right to development, to self-determination, to food, to water, to housing, the special rights of Indigenous and Tribal Peoples, and labor rights, to name the most relevant ones (de Schutter 2009, Valente / Franco 2010). In principle, these rights binds all 160 signatory state parties to the ICESCR which was adopted by the UN general assembly in 1966 and entered into force in 1976. To a lesser degree, it also obliges companies (see below). The right to food is probably the most fundamental of these rights, and has received prominent place in the Universal Declaration of Human Rights (Article 25.1). The United Nations Special Rapporteur on the right to food, De Schutter, has resumed the consequences of human-rights framework for LSLAs: "Under Article 11 of the ICESCR, every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. The obligations of the State are threefold: to respect, protect and fulfill the human right to food. The State is obliged to refrain from infringing on individuals' and groups' ability to feed themselves where such an ability exists (respect), and to prevent others - in particular private actors such as firms - from encroaching on that ability (protect). Finally, the state is called upon to actively strengthen individuals' ability to feed themselves (fulfill)" (de Schutter 2009: 1). De Schutter (2009) derives eleven principles from these obligations (see Box 1).

Box 1: Principles derived from human rights for the regulation of LSLAs in poor countries

1. Land negotiations should be conducted in full transparency, and with the participation of the affected local communities.
2. Shifts in land use should have the free, prior and informed consent (FPIC) of the local

Formatiert: Schriftart: 11 pt, Englisch (USA), Rechtschreibung und Grammatik nicht prüfen

communities concerned. Evictions should be a allowed to occur only in the most exceptional circumstances and for a public welfare reason.

3. States should adopt legislation protecting local communities and specifying in detail the conditions according to which shifts in land use, or evictions, may take place, as well as the procedures to be followed, and assist communities in obtaining collective land rights.
4. Investment agreement revenues should be used for the benefit of the local population, and contract farming arrangements may be preferable to long-term leases of land or land purchases.
5. Preference should be given to labor intensive farming systems and production technologies, and labor contracts should provide access to a living wage.
6. The modes of agricultural production shall respect the environment, and shall not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves, with a preference for low external input farming practices.
7. The obligations of the investor such as for land rents, labor creation and wages, contract farming arrangements and local value addition should be defined in clear terms, should be made enforceable with inclusion of pre-defined sanctions in cases of non-compliance and should be monitored.
8. Measures should be contractually fixed to prevent an increase of food insecurity for the local population, including through food production and local marketing.
9. Detailed impact assessments in accordance with the specified requirements should be conducted prior to the completion of the negotiations.
10. The special rights of indigenous peoples have to be respected.
11. Agricultural waged workers should be provided with adequate protection and their fundamental human and labor rights should be stipulated in legislation and enforced in practice, consistent with the applicable ILO instruments.

Source: De Schutter 2009: 13ff

The human right to water is another source of regulation. It dates back to the 1970s and gained momentum in the advent of the Dublin Conference in 1992 (Kirschner 2011). The decisive landmark was set by the General Comment No.15 of the UNCESCR in 2002:

> "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses". It concludes that state parties "have immediate obligations, and to take deliberate, concrete and targeted steps towards the full realization of the right to water" (UNCESCR 2002: 2).

Formatiert: Abstand Nach: 0,6 Zeile

From then onwards, international organizations (e.g. the World Health Organization, UNICEF, and UNEP) and an international network of civil society and non-governmental organizations (i.e. the Friends of the Right to Water) supported and boosted the human right to water. They did not recognize its economic good character, arguing that this equals privatization and would deprive the most marginalized and poorest people in societies from reliable and affordable water services. Instead, these different organizations emphasized governments' obligation if not to provide, then to protect public goods.

In May 2010, the UN General Assembly finally declared access to clean water and sanitation a human right. Neither at the Johannesburg Summit (2002) nor at the World Water Forums in Kyoto (2003) and Mexico City (2006) had the states committed to a human right to water. Only a few countries explicitly incorporated a human right to water in their constitutions and

respective implementing legislations.[2] Related to LSLAs, the commitment to the human right to water demands that investments made do not affect it. The report of a lawyer from Freetown, Sierra Leone, who reviewed the land contract concluded between ADDAX Bioenergy and the government of Sierra Leone, resumed that the contract may conflict with Sierra Leone's Water Control and Supply Act of1963: the water rights granted to ADDAX may violate the right of the population living within the project area or in its vicinity to access water (Sierra Leone Network on the Right to Food 2011).

Not only host states in which LSLAs take place, also the responsibilities of private enterprises with regard to human rights have been clarified in recent years by the UN Human Rights Council (United Nations 2011, UN-Global Compact SABPs 2013). In addition to (i) the states' duty to protect human rights, which include obligations or expectations towards the extraterritorial activities of companies under their jurisdictions, (ii) the "Corporate Responsibility to Respect" principles provide requirements for companies to respect human rights, and (iii) the „Access to Remedy" principles provide recommendations for appropriate and effective remedies when human rights are breached. These principles are increasingly being taken up by country legislation and in fora such as the OECD or other voluntary standards (see below). It can be expected that they will increasingly make international enterprises responsible for their activities in third countries, and also for their suppliers.

Yet, it is also obvious that there is a host of challenges linked to the implementation of human rights principles (see e.g. Donnelly 2003, Hafner-Burton / Tsutsui 2005). Their signed human rights obligations have obviously not prevented many states from breaching them in severe and many ways – there is hardly any enforcement except in extreme cases, and even in these there is still a strong political space whether the international community of individual countries feel entitled, dare and/or endeavor to interfere into other countries' internal human rights breaches. Possibly the most striking example in the area of the right to food is the finding that hunger and starvation have often happened in a situation of food abundance, and that many food crises are policy-made (Sen 1981).

The more recent duties to observe extraterritorial activities of companies will find many contradictory situations where assessments, laws and socio-economic situations make it difficult to make clear judgments shared by both state parties, not at least because these judgments will not be without considerations for own advantages such as protectionism and opportunistic strategies. However, human rights are one means to raise attention to the concerns of the poor and underprivileged against the vagaries of the powerful and their use of laws and institutions in their own interests.

In relation to the four narratives, human rights offer opportunities of regulation because

- they are ratified by almost all states and therefore apply to all signatories,
- they have high general acceptance, an
- they have an established monitoring and reporting system within the UN system.

[2] Realizing the human right to water is very much promoted and related to the fulfillment of the Millennium Development Goals (MDG) which aims to reduce the number of people who have no access to safe drinking water by 2015. At Rio+20, the states re-affirmed their commitments to the MDGs, supported by financial commitments of the international community.

Their limitations are that

- they are weak with regards to environmental standards,
- they can be politicized within the UN system in conjunction with more disputed human rights, and
- they are hardly sanctioned.

3.2 Voluntary multilaterally agreed guidelines and principles

There are two sets of voluntary guidelines developed with the United Nations, the Voluntary Guidelines on the right to food (VG Food), and the VG on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (further called VG Land). A third set of voluntary Principles for Responsible Agricultural Investments (RAI) is in preparation. All spell out more in detail the consequences of a respect for the human rights in rural areas for (large scale) land acquisitions and land governance.

The Voluntary Guidelines on the right to food (VG Food) "represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization." (FAO 2005: III). The objective is to provide practical guidance to implement the right to food, and the VG come along with a guide on legislating it (FAO 2009b). While the VG Food take a broad view on food security in line with the contemporary understanding that access to, stability and use of food is as (or more) important as availability of food, and deals with issues such as food safety, social security, education, markets, food aid and many more, there are passages (notable paragraph 8) which clearly emphasize that access to land and other natural resources is a key ingredient of food security particularly of rural populations. It stipulates that "states should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination." (FAO 2005: 16). Examples of good land tenure regulations are the Tanzania Village Land Act of 1999 and the Mozambique Land Law of 1997 (FAO 2009b: 208).

The VG on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (further called VG Land) take up the issue of land governance for food security, but go further. Although only one paragraph is explicitly devoted to investments in land (para 20), and not specifically to LSLA, much of provisions concern LSLAs indirectly. Politically, it was the land grab wave that motivated the VG Land process with early regional consultations in 2009. The VG Land was officially led and approved by the Committee on World Food Security (CFS), an international body existing since 1974 (after a previous oil price and food shock) with a secretariat under the FAO. It has about 165 member countries. The 2009 reform of the CFS gives much more room to civil society and also to the private sector and other organizations dealing with food security, notably the Rome-based organizations IFAD and WFP.

The VG Land are substantially based on the human-rights agenda, with its "emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development." (FAO 2012: 1). The VG Land are applied upon and grafted with more technical issues such as land transfer rules (markets, investments, consolidation, restitution, re-distributional reforms) and land administration (record keeping, valuation, taxation, special planning, resolution and transboundary matters), most of which matter for LSLA. In its paragraph on investments, the VG Land stipulate most of the issues already listed by de Schutter (2009) (see Box 1), notably the respect of informal land and other rights, food security primacy, free prior and informed consultation (and consent for indigenous people), thorough impact assessments including evaluation of alternatives, minimization of displacements, transparency, gender balance, a certain priority for smallholders, respect of ILO norms and national labor laws etc., thus issues going beyond mere land acquisition conditions but touching on the later agro-investments (compare Box 2).

The VG Land also recognise land taxation as a legitimate revenue-generating tool for governments, and as a means against mere land speculators. In order to prevent a "race to the bottom" investment and land acquisition laws should regionally be harmonized.

However, the VG Land remain vague regarding water tenure, and mention *water* only in the preface without further specifications:

> *"It is important to note that responsible governance of tenure of land, fisheries and forests is inextricably linked with access to and management of other natural resources, such as water and mineral resources. While recognizing the existence of different models and systems of governance of these natural resources under national contexts, States may wish to take the governance of these associated natural resources into account in their implementation of these Guidelines, as appropriate."* (FAO 2012, 4)

Water had been proposed by the FAO in the original title and was still included in earlier versions of the VG Land, but this brief reference in the preface of the final version was the only compromise that could be reached.[3] Although civil society organizations and other actors such as the European Union were strongly in favor of including water in the guidelines, it was ultimately excluded. According to Michael Windfuhr, chair of the language harmonization group, water was excluded from the discussion because the first draft made only poor reference to water and did not provide a suitable basis for discussion. The first draft which had been prepared by the Land Tenure Unit, a FAO working group, still needed considerable revision by the language harmonization group before being discussed. Taking water into consideration would have exceeded the scheduled time frame of the whole process, as including water would have required to including another set of terminology of international law. In addition, participants in the negotiation process stated that including water would have required a whole new negotiation process as it is a sensitive issue and countries, such as Canada, firmly opposed the inclusion of water.

[3] According to interviews made with experts that were involved in the negotiation process of the VG, including members from BMZ, BMELV, GIZ, EED and the German Institute for Human Rights.

Nevertheless, the VG Land provide a suitable basis also for some water rights' considerations because in most African countries water rights are a subsidiary component of land rights, and the right to use water is tied to land (Hodgson 2004). In case access to water is dependent on access to land, water rights are silently transferred with land deals, and guidelines for land tenure may also apply to water rights. Water-use rights in Ghana are, for instance, under customary law and as such vested in stools, communities and families (Ramazzotti 2008). In Kenya and Tanzania water tenure is also vested in the local communities. As Huggins mentions:

> "Water was rarely 'owned' exclusively…: access by others was often allowed, subject to permissions being sought and reciprocal arrangements sometimes being made…Often a distinction was being made between different water uses….as regards cattle, permission had to be sought and it was possible to charge people for use of a private watering-hole…Pastoral societies have developed wide-ranging kinship networks that allow negotiated access to water and grazing rights among the territories of their clan, tribe, and sometimes amongst other tribal groups" (Huggins 2000: 5)

In countries with a modern water rights-system where water rights are fully divorced from land rights, and where the state maintains control with complex regulatory administrative systems such as licenses, permissions, and concessions, the protection of water rights are vested in public administrations mandated. However, in Ghana which enacted a modern water-rights system, modern and customary rules exist in parallel with customary land and water tenure prevailing in the country side.

The all-encompassing concept of Integrated Water Resources Management which is the dominant global water management paradigm applies to all water users be they domestic or foreign. However, water rights issues, including their transfer and re-allocation, are a complicated phenomenon, and difficult to administer in mixed – modern and customary – water rights systems.

Taking the intertwined nature of customary land and water tenure into consideration, key persons representing traditional (e.g. chiefs, elders, clan leaders, household heads) and modern institutions (ministries), who regulate and control access to land and water must have the right to participate in negotiations and to decide. Moreover, stakeholders (e.g. stock farmers, fishermen, and pastoralists) who were granted water use-rights under customary arrangements must have a voice.

A new set of voluntary guidelines is in the making under the CFS on the Principles for Responsible Agricultural Investments (RAI). They are a follow-up to the VG Land to take into account other than land issues of LSLAs, and they are also a follow-up to a previous attempt by four large international organizations to establish such principles unilaterally as a kind of private (international) standard or code of conduct (PRAI, see Chapter 3.7). The preliminary draft was issued in April 2013 and comprises twelve overall principles (see Box 2). Common language for the various issues is used from at least two dozen of international treaties, which is expected to make them easier to negotiate and accept. The RAI-Principles are expected to be finalized in early 2014.

Box 2: Preliminary principles of responsible agricultural investments

1. Responsible agricultural investment enhances food security and nutrition for all.
2. Responsible agricultural investment is environmentally sustainable.
3. Responsible agricultural investment sustains or improves livelihoods and sets in motion inclusive growth.
4. Responsible agricultural investment respects cultural norms, is compatible with universal human rights and is considered legitimate by relevant stakeholders.
5. Responsible agricultural investment is supported by enabling, facilitating, and regulatory structures based on internationally-recognized good governance principles.
6. Responsible agricultural investment is supported by policies and legislations consistent with each other, and addressing all aspects of responsible investment as described in this document.
7. Responsible agricultural investment that affects local communities requires active, free, informed, and effective participation of stakeholders.
8. Responsible agricultural investment is accompanied by mechanisms for regular review and improvement of agricultural investment-related governance instruments and policies.
9. Responsible agricultural investment is accompanied by non-discriminatory access to justice grievance procedures and fair and effective remedy mechanisms.
10. Responsible agricultural investment is facilitated by clear mechanisms and institutions promoting coordination, cooperation, and partnership among the actors involved.
11. Responsible agricultural investment is supported by multilateral international and regional organizations that comply with these principles and primarily support small-scale food producers and processors in a perspective of local and national FSN.
12. All actors involved in agricultural investment are accountable for their decisions, actions and the impacts thereof

Source: CFS (2013)

The biggest advantage of both, the VG Land and the PRAI, is their transparent, participatory and consent-based process of making and their human-rights based approach which makes them acceptable by all stakeholders involved (e.g. ActionAid 2012). One often elicited disadvantage are their voluntary character. However, Von Bernstorff (2013) assures that the voluntary nature does not preclude their effectiveness which can be compared with binding international conventions. Ways to overcome this gap are voluntary observatories and "name and shame" activities among other means. The VG Land seem to become the universal point of reference, and a particularly powerful instrument for civil society groups, NGOs and populace affected even though the VG Land as they finally were concluded did not satisfy all opinions and stakes.

In relation to the four narratives, the mentioned VGs and principles offer opportunities of regulation because

- they are consensual and accepted by governments and for civil society,
- they apply potentially to all (large) producers in the signatory countries, whether foreign or national, whether acquired land legally or illegally, are independent of goods produced or traded, and
- they create an ideal of a development-enhancing large agro-investment with a wide notion of responsibility.

Their limitations are that

- they depend on the (voluntary) legal implementation in each country,
- they neglect to some extent water issues (in particular the VG Land),
- they have so far no formal enforcement mechanisms.

3.3 Social and environmental impact assessments

Social and environmental impact assessment (SEIA or EIA) procedures are one instrument to pre-ante assess environmental and social impacts deriving from land deals, land use changes and farm operations (Richards 2013). Both, the VG Land and the RAI refer to this globally accepted assessment tool; the majority of the countries (>130) has legally approved EIA directives.

Country case studies on large-scale land acquisitions have raised complaints on how this instrument of environmental/social impact assessment is applied prior to land deals and contracts made. SEIAs, so their reasoning, are a forceful tool in assessing environmental as well as social and cultural impacts and would thus help mitigating negative effects. There is no doubt that SEIA can be an essential instrument for identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of land projects prior to decisions being taken and commitments made.

Ideally, land projects should only start after getting environmental clearance. But a common observation is that SEIAs are issued in a rather late stage of projects; that the EIA process starts after contracts are signed, thus leaving little room for project modification, and after operations started (in e.g. Cameroon, forest was cleared before obtaining an environmental clearance certificate). SEIA studies are of inferior quality, and enforcing and monitoring the implementation of mitigation means are poor or completely absent due to administrative capacity constraints among other reasons. In some cases, SEIA studies are not issued despite of being a legal requirement; the studies are not available to local communities or in foreign language only.

However, it is argued here that SEIAs are not the ultimate means to protect actual land and water rights. SEIAs are an assessment tool which relies on and refers to national law which determines the environmental and social goods to be protected and the degree and the stage where stakeholders are to be involved. In this respect, SEIAs are deficient because of a number of legal shortcomings for which SEIAs cannot compensate for, one of them being national land and water tenure arrangements and regulations concerning compensations.

3.4 International investment treaties

There is a growing international consensus that LSLA need to be embedded in a sound regulatory framework at the national level in order to increase their contribution to development processes. The VG Land issued by the FAO in 2012 and developed in consultations with a broad spectrum of stakeholders are testimony for this need of increased

regulation. The VG Land call for strengthening the role of the host state – at the national as well as the sub-national level – in regulating FDI in land in order to enhance the contribution of these investments to poverty reduction, food security, the realization of human rights and sustainable development.

Notwithstanding the emerging consensus, documented in the VG Land, with regard to the need for more regulation of FDI in land two aspects are often neglected in the international debate: Firstly, host countries need political will and administrative capacity to implement such complex regulations as proposed by the VG Land. Secondly, host governments' policy space to regulate FDI in land is often restricted by their international commitments. In contrast to the voluntary character of the Guidelines, Bilateral Investment Treaties (BITs) establish far-reaching and binding rules on the legal protection of foreign investors by the host states. As these rules usually apply to "all kinds of investments",[4] FDI in land (and water for that matter) is thus also covered by these treaties.

In contrast to the world trading system which is governed by a core set of multilateral rules embodied in the sectoral agreements establishing the World Trade Organization (WTO), no such multilateral rules exist for the governance of FDI. Instead, FDI flows are protected by a broad network of 2,833 BITs (UNCTAD 2012: 84). BITs have a common origin in the "Draft Convention on Investments Abroad" that was proposed in 1959 by Hartley Shawcross, an English lawyer and a director of Shell Petroleum, and the Chairman of the Deutsche Bank, Herman Abs. The Abs-Shawcross Convention was a reaction to the widespread expropriation, nationalization and bad treatment of foreign investors by developing countries in the post-colonial era (see e.g. Newcombe and Paradell 2009). Accordingly, the Abs-Shawcross Convention and capital-exporting countries' model texts that are largely based on the Convention establish far-reaching and one-sided rules for the protection of foreign investors. Interestingly, the system has developed largely in line with the basic structure of the Abs-Shawcross Convention for more than five decades. It is only since recently, that public as well as civil-society actors are questioning the purpose and function of BITs as tools that are primarily designed to provide foreign investors with an additional layer of legal protection.

In contrast to the world trading system, BITs where originally not pursued as instruments to enhance market access for foreign investors (i.e. to provide foreign investors with protection in the pre-establishment phase). This novel feature was introduced first in US American BITs in the 1980s and is usually applied in Preferential Trade and Investment Agreements (PTIAs) which are gradually replacing BITs as the main instruments to govern FDI flows (Hofmann, Schill and Tams 2013). Notwithstanding this trend, the majority of BITs in force today provides investment protection once the investment is admitted by the host state (post-establishment investment protection). BITs oblige the host state to treat foreign investors in a non-discriminative way (national treatment and most-favored nation treatment), expropriate only against just and effective compensation and grant fair and equitable treatment. So called umbrella clauses that are an integral part of a majority of BITs protect individual investment contracts between foreign investors and host states. Due to the umbrella clause a breach of the

[4] See e.g. Art. 1 of the German Model Bilateral Investment Treaty (2005), reprinted in Dolzer and Schreuer 2008, pp. 368-375.

investment contract by the host state is equivalent to a breach of the BIT. The distinctive characteristic of the international investment regime is that foreign investors, as private legal persons, are enabled to bring claims against alleged violations by the host states to transnational tribunals. The investor-state dispute settlement (ISDS) mechanism is a powerful tool for the investor to enforce the substantive BIT provisions. Except for more recent treaties, BITs do not include binding language on the right of the host state to regulate or particular references to sustainable development.

The substantive provisions of BITs, enforceable through the ISDS mechanism, have a potentially severely constraining impact on national law. Dolzer (2006) argues that three provisions in particular have a deep impact on national law making: fair and equitable treatment, indirect expropriation and umbrella clauses. These provisions create far-reaching rights for foreign investors because they extent to a broad range of public policies (also environment and health policies) and are vaguely drafted. In particular this latter aspect provides transnational arbitration tribunals with a lot of freedom to interpret these rules in an investor-friendly way thus restricting host countries' policy space to regulate foreign investment.

A number of capital-exporting countries have reformed their BIT and PTIA model texts and are negotiating treaties that are aimed at enhancing host countries' policy space. This trend started as a result of the first investor-state arbitration proceedings against the US, Canada and Mexico on the basis of the North American Free-Trade Agreement (NAFTA). The NAFTA countries have subsequently adapted their treaty-making practice and are now negotiating BITs and PTIAs that increase the policy space of the host country to regulate FDI for public purposes. The EU will most likely follow this model of the NAFTA countries. Due to the Lisbon Treaty the competency for FDI shifted from the member states to the EU level and future EU investment treaties will be negotiated by the European Commission and ratified by the Council and the European Parliament. This new political economy of investment treaty-making in the EU, in addition to the normative obligation to comply with Art. 21 of the Treaty of the Union,[5] suggests that future EU investment treaties will deviate from the traditional BIT approach of the member states including more development-friendly rules that enhance the policy space of host countries.[6] The noteworthy feature of future EU investment agreements is that they will replace the old member state BIT.[7]

Despite these recent changes in investment treaty-making and the widespread criticism of civil society actors against the one-sidedness of BITs, there is at least in the short to medium term not much that can be done to refocus the international investment regime towards the principles that are at the core of the VG Land. As long as old, one-sided BITs have been replaced by new and more balanced BITs or PTIAs foreign investors are able to bypass these "weaker" treaties through most-favoured nation treatment provisions and complex corporate

[5] Art. 21 of the Treaty of the Union requires that the external actions of the EU should inter alia encourage sustainable development in developing countries with the aim of reducing poverty.
[6] See Berger / Harten (2012)
[7] See Art. 3 of the Regulation No 1219/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on the establishing transitional arrangements for bilateral investment agreements between Member States and third countries.

structuring arrangements importing the "stronger" rules from older treaties. Policy makers in host and home countries that aim to implement some of the principles of the VG Land, thus, have to be aware of this systemic inertia of the international investment regime which will hamper effective regulations of FDI in land for quite some time.

In relation to the four narratives, investment treaties hamper regulation of LSLA because

- they reduce the policy space of host countries to effectively regulating LSLA,
- they lack a strong development or sustainable development dimension,
- they offer foreign investors more generous rights than domestic investors,
- they do not permit domestic actors to sue foreign investors in cases of misconduct.

3.5 Global water overnance regimes and bilateral treaties

Water consumption of LSLAs can have transboundary downstream effects if rivers are shared like the Nile or the Niger. The global water governance architecture related to transboundary freshwater bodies[8] shares the common feature that states are the principal actors not only to negotiate but also to implement, monitor and enforce rules. In this respect they are to assess whether water demand from new large-scale investments in irrigated agriculture can be satisfied without violating bi-/multilateral river treaties.

However, these affects have not been studied in detail yet. Jägerskog et al. (2012) wrote an awareness-raising report on the topics that could emerge. They assume that upstream countries (e.g. Ethiopia on the River Nile) could use LSLAs as a power resource in multilateral water negotiations which ultimately could change the power balance between up- and downstream countries. Individual treaties with private land investors could weaken existing bi-/multilateral river-related agreements such as the Egypt-Sudan Treaty of 1959 where Ethiopia is not party but will consume large amounts of water following LSLA deals.

3.6 Private standards or responsibility codes

Private standards have come up as a megatrend in recent years, particularly in developed countries (Falkner 2011). They have emerged in order to assure consumers of certain characteristics of goods and services as well as of the production for their creation. These are in particular food safety concerns, but increasingly also social and environmental concerns have been requested and taken up in private standards. In contrast to government regulations, they are not uniform to all goods, but open to competition among the standards and the (groups of) enterprises adhering to them. Thereby, they allow creation of fragmented markets which industries and consumers can use to find their optimal portfolio of production and consumption patterns. According to the level of standards, the costs of adherence and certification, the reputation attached, and also the visibility to the consumer (hence different for end products and industrial input), they also allow price differentiation. Different types of

[8] The global water governance architecture is diverse and fragmented; it comprises the UN Convention on the Law of Non-navigational Uses of International, 1997; the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992; the SADC Revised Protocol on Shared Watercourse Systems in the Southern African Development Community, 2000; and the European Water Framework Directive (2000) and the associated Groundwater Directive (2006) which are a specific case of a supra-national law within a politically integrated region.

private standards are distinguished, for instance those of individual companies and of groups, involving more or less stakeholders in the elaboration of the codes, going through some or all steps from production to consumption, applying one or many commodities and products, valid at the national, regional or global level, inclusion of social and/or environmental issues (including green house gas emissions), and with tailor-made issues, indicators and monitoring systems. Private standards partially live from their differentiation.

A first small wave of private standards started in the 1970s, led by international organizations such as ILO and OECD. In the 1990s, a further, much larger wave emerged, this time by governments, NGOs, and companies, particularly multinationals. According to Cuffaro / Hallam, the chances of being effectively implemented depend on three main variables: "integration along value chains; effectiveness of civil society pressure; vulnerability of key actors to such pressure"(Cuffaro / Hallam 2011: 8). What also helps is strong participation of local stakeholders; public transparency of methods and findings; and simultaneously support processes of multi-stakeholder problem solving within factories and global supply chains (O'Rourke 2005).

Also a third wave of international standards can be subsumed under this topic, they all stipulate a set of social and ecological, generally applicable rules for large investments[9]: these the Global Compact's Ten Principles for private companies (UN),[10] the Santiago Principles for Sovereign Wealth Funds (GAPP); the World Bank Groups's Safeguards, and the Equator Principles for project financing of private banks.

In the biofuels sector in particular, another set of standards has emerged which bridges to some extent the gap between voluntary standards and compulsory regulation. They restricts the acknowledgment of agro-fuels to national targets (quotas) and instruments (subsidies, levy exemption, support, etc.) to only such products which satisfy certain levels of green house gas reductions (sometimes including Indirect Land Use Changes), plus a number of other environmental conditions such as biodiversity protection. In several of the acknowledged certification systems, also social standards are enshrined. Land transaction issues are hardly included, but many set labor and other social standards. Certification standards are very heterogeneous, and harmonization is recommended (IEA 2013). Yet, some authors and organizations claim that these standards should or even are already the fore-runners of (an attempt to develop) global standards for the entire agricultural production (i.e. Schlegel et al. 2008). This would indeed be a revolutionary step, but is yet far from realization, given the resistance of many developing countries and industries to accept common standards (see above).

Land rights have so far not featured high on the agenda, only issues of workers and/or of associated smallholders. However, the wave of LSLA has also raised the attention towards this topic, and in a recent concerted effort four international development agencies (FAO, IFAD, UNCTAD, World Bank) have set up an international code for large land acquisitions

[9] These and other finance standards are discussed in another context in Baietti et al. (2012).

[10] Presently, also a Global Compact on Sustainable Agriculture Business Principles is developed in the UN framework (UN -Global Compact SABPs 2013).

(principles for responsible agricultural investment, PRAI) (RAI 2010). The PRAI have been grouped under seven topics, land being the priority one (Box 3). These PRAI are being tested in several countries. However, the PRAI have been rejected as a substitute for a participatorily, internationally negotiated framework for investments. This is now being tackled by the CFS (see Chapter 3.2)

Box 3: Principles of responsible agricultural investments of international organizations
1. Respect rights to land & natural resources
2. Do not jeopardize food security, rather strengthen it
3. Policy framework ensures transparency & accountability
4. Consult & involve stakeholders
5. Investors must respect laws, ensure benefits for host
6. Generate positive social impacts
7. Ensure environmental sustainability

Source: RAI (2010).

A particular importance is put in these, but also in similar frameworks and debates on transparency. It is seen as serving better negotiations, early possibility to cancel or refrain from deals or to negotiate better contracts, to monitor and evaluate progress, impacts and transactions. Transparency in transactions is the point where PRAI directly link with the Extractive Industry Transparency Initiative (EITI), which recently is also progressing towards enhancing transparency in alternatives to a given investment proposition, contractual terms, and project implementation. Several other initiatives match in some aspects: The open contracting initiative, established by actors of society, government, multilateral agencies and the private sector, supports transparency in public contracting which encompasses contracts funded by combinations of public, private and donor sources (Open Contracting 2013). The global reporting initiative, a now independent organization initiated in 1997 by international environmental organizations, has developed voluntary standardized reporting of information on environmental, labor rights, and human rights performance (Global Reporting Initiative 2013).

It is important to note that the effects of standards on development and the overall achievement of social and environmental goals are complex and disputed. They may have important side effects which can be detrimental to the pursued goals, in particular for developing countries and smallholders (Henson / Humphrey 2010). They may not be able to comply, or have high costs for complying and certification, often higher than developed countries and formal actors. Thus, as discussed for government regulation, there is strong resistance to adopt such standards in developing countries, and it is at least recommended to collectively develop them.

In relation to the four narratives, voluntary standards offer opportunities because

- they are more flexible than government regulation,

- they can be specific to certain speculations, food or other agricultural value chains, local conditions (e.g. water conditions) and markets, and thus, potentially more realistic and adjusted to the needs and possibilities of the actors,
- they sometimes allow price premia, thus creating more incentives to comply, or at least permits / maintains access to high-value market,
- they can relatively easily be linked to specific training and mobilize funding for support.

Their weaknesses are that

- they only apply to those willing and leave it up to those unwilling not to comply, who then can offer goods at lower prices due to lower costs,
- they tend to disadvantage small units, in particular smallholders, due to high fixed costs of certification,
- they are typically oriented towards the interests of the consumers (in high-end markets) and not to the producers, thus neglecting the latter's specific needs and possibilities.

4 Summary, conclusions and recommendations

Land deals are usually (if they are not for mere speculative purposes) part of complex investment projects which have many individual components and cannot easily be standardised. They reflect on the one hand the experiences, financial possibilities, market connections, skills, preferences, ambitions and other characteristics of the investors, on the other hand they have to and should consider site characteristics as well as the needs and possibilities of the local population. National and local elites and administrations, acting on behalf of assumed public or merely private interests strongly interfere in the deals. Inexisting, unclear, overlapping, incompatible and conflicting institutions around land governance, in particular the duality of customary and formal land rights, as well as strong power and information asymmetries of the involved stakeholders, ease abuse of power. Together, these constellations determine the combinations of profitability, risks, distribution patterns and side effects of each deal, often leading to unbalanced outcomes which disfavour the weakest parts of the local population.

The article has argued that over-simplifications of these complex constellations into one-dimensional narratives as frequently found in the political and media debate do not help to find solutions to this globally important phenomenon. Notably, the paper has shown that

- reducing the land deals to land issues while neglecting water risks to neglect a locally extremely important and often limiting factor not only for agricultural production, but also for other vital concerns of the affected population, and this affected population may be quite different from the one involved inthe land transfer. Also, governing institutions and administrations can be rather different from the ones dealing with land;

- over-emphasising foreign investors while forgetting national ones ignores the majority of investments in many countries, and helps that the local deals go unscrutinised or are even fostered for over-attention to international ones;
- pronouncing illegal grabbing while ignoring legal acquisitions and the many underlying motivations and expectations of the sellers, means that while scandalising the phenomenon and hindering certain deals, others will go unattended and legislation may be adjusted without tackling the non-legal causes of the problematic outcomes of many deals and try to alleviate them;
- Only pointing at the problematic (sides of) deals drops the fact that there are potentials for pro-development outcomes in some of them, and that by fighting them altogether means that these opportunities are missed, possibly without having good alternatives for all potentially affected since the prospects of a smallholder-only agricultural development path may not be sufficient for end rural poverty and hunger and leaves some (lucrative) market segments unattended by the refusing regions or countries.

Having said that, it is unquestionable that more and better regulation is needed for the current wave of LSLAs in sight of many negative impacts they presently generate, yet without having achieved the productive investment phase. Local and national institutions and actors are obviously at present not capable of handling this sufficiently, or are even part of the problem.

The text next scrutinises a couple of international frameworks that may help to improve the deals and their outcomes in a development-friendly (social and environmental) way. The approaches and instruments are 1) human-rights rules, 2) guidelines for governing land tenure and principles for agricultural investments, 3) social and environmental impact assessments, 4) international investment treaties 5) global water governance regimes and bilateral treaties, and 6) private standards or responsibility codes. The paper concludes that no individual approach can deal with the multitude of actors, situations and impacts of LSLAs. However, the totality of regulations provides opportunities to tame them, but its effective use relies on political will to implement them.

However, with all guidelines in place to steer a LSLA from a regulatory side, it is ultimately the individual contract which will have the largest influence on the impact for all stakeholders, in particularly for rural development of a heterogeneous local population affected by the deal. Contracts have to be negotiated at the local level. In order to negotiate a good deal, in addition to the more generic issues discussed so far some more guidelines should be considered.

The territorial value addition of a LSLA must be substantially larger than the present one. With territorial value addition is meant that the typical situation prior to a LSLA is incomplete use of land for cropping. However, a considerable part is used as fallows, with additional uses for animal husbandry of both sedentary farmers and migrant pastoralists, and for hunting and gathering. Some parts may be disputed, or left idle for cases of emergency such as droughts and floods. More uses may be considered, in particular non-monetary values of land. If a LSLA does not create considerable more value addition than the sum of all present values, it will not be able to compensate for the losses of the old users. A business plan should clearly show the expected profits and margins as well as a risk analysis. This calculus including

compensations should be open to all negotiating stakeholders in order to assess the risks and opportunities of the deal for all groups and stakeholders.

The selection of the investor in terms of skills, sincerity, endowment and other characteristics is one key for success of a LSLI. Without undermining the free right to conclude contracts, both governments and local communities are well advised to take much care in screening investors, in addition to the investment plan. This may require commercial intelligence. Careful land taxation, possibly for large farms only, can reduce unproductive land speculation.

Typically, in a poorer country there is a long interval until a typical LSLA is converted into a full-fledged agricultural investment. During this time, costs for local population are very likely to outstrip benefits. This gap must be bridged in planning of land withdrawal, production increase and compensatory components. An investor should show to have sufficient financial capacity to sustain this bridge. Leasing is better than sale for communities and individuals, since it is reversible. It should be legally and institutionally fostered and promoted. In addition, leasing (but also sales) contracts should be conditioned on the fulfilment of certain steps such as land preparation and cultivation, job creation, CSR realisations, tax and duty payments, ecological standards, etc. Some forms of provision against LSLAs failure should be required (insurance, capital guarantee fund, security, diversification of investors and products, minimum reserves of independent activities).

More strategic considerations go beyond individual contract and must serve for planning LSLAs at the regional level. Several smaller investors are usually better than one large one, since this reduces dependency on and risk of investors, markets, power and other factors. Often, it will be better to start slow and small, particularly if unproven/still unknown technologies or business models are applied. Knowledge of pilots and results of research on key elements of the investment also provide "insurance" against wrong decisions. Contracts could stipulate rights of pre-emption instead of attributing straight land rights (while this possibility has to be carefully weighed against risks for investors under the typical fragile conditions of such locations). Local conflict resolution rules and mediators will be needed.

Targeting water issues in LSLA obviously calls for specific policy interventions beyond land regulation related to the following: (1) rent and purchase prices of land need to reflect access to water resources which must be higher if compared with land without water endowments; (2) the need for pre-assessing potential effects which might derive from farm operations; (3) a reliable data base and water resources management plans on which to decide on expanding water use in agriculture; and (4) taking due consideration of actual versus new water users. Above all, actual water-use rights holders and agencies concerned with water planning must be involved in land deal negotiations.

Apart from formal rules and institutions, several conditions are badly needed for such projects: continuous creation of trust, regular consultations, high communication skills, broad information flows in all directions, informal complaint mechanisms, and in-build long-term flexibility for instance for crops, pricing and fees, organizational and institutional

arrangements. For local populations under patrimonial traditions, it is important that time exists to listen to complaints.

Possibly most importantly, the negotiation of a good deal can only be made by the affected people themselves, provided they are (reasonably) well informed on the deal, its risks, and the various (partial) institutional frameworks, have capacities to exchange ideas, to negotiate, have transparent and accountable decision making procedures, are supported in monitoring and evaluating outcomes. In addition, they should be aware of alternatives. All this can be summed up as being empowered. Especially weaker groups such as women, youngsters, ethnic or other minorities have to be supported unilaterally and cautiously to acquire this empowerment. Governments, and donors alike, must carefully choose their role between impartial broker and advocate of the underprivileged who are typically the target group.

Literature

Abiwu, C.Y. / M. Anane (2011): Independent study report of the Addax bioenergy sugarcane-to-ethanol project in the Makeni region in Sierra Leone. Study carried out on behalf of Sierra Leone Network on the Right to Food (SiLNoRF), Bread for All, Switzerland, Bread for the World and Evangelischer Entwicklungsdienst, Germany.

ActionAid (2012):A Brief Introduction to the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" http://landportal.info/sites/default/files/actionaid_voluntaryguidelines_guide.pdf (access 9.2.2013).

Anseeuw, W. / M. Boche / T. Breu / M. Giger / J. Lay / P. Messerli / K. Nolte (2012): Transnational Land Deals for Agriculture in the Global South Analytical Report based on the Land Matrix Database, CDE/CIRAD/GIGA, Bern/Montpellier/Hamburg.

Baietti, A. / A. Shlyakhtenko / R. La Rocca / U. D. Patel (2012): Green Infrastructure Finance : Leading Initiatives and Research. World Bank: Washington, DC.

Bernstorff, J v. (2012): Land Grabbing und Menschenrechte: die FAO Voluntary Guidelines on the Responsible Governance of Tenure, Institut für Entwicklung und Frieden (INEF) 11 Forschungsreihe, INEF: Duisburg.

Berry, S. (2013): Questions of Ownership: Proprietorship and Control in a Changing Rural Terrain – A Case Study from Ghana. Africa. Vol. 83 (1): 36-56.

Blas, J. (2008): UN warns of food 'neo-colonialism', in: Financial Times, August 19.

Bues, A. / I. Theesfeld (2012): Water Grabbing and the Role of Power: Shifting Water Governance in the Light of Agricultural Foreign Direct Investment, Water Alternatives 5 (2): 266-283.

Burnod, P. / M. Gingembre / R. Andrianirina (2013): Competition over Authority and Access: International Land Deals in Madagascar, in: Development and Change 44(2): 357-379.

Carrere, R. (2010): Oil palm in Africa: Past, present and future scenarios, World Rainforest Movement, http://www.wrm.org.uy/countries/Africa/Oil_Palm_in_Africa.pdf (access 9.2.2013).

CFS (Committee on World Food Security) (2013): http://www.fao.org/cfs/cfs-home/resaginv/en/ (access 6.5.2013).

Chayton Capital (2013): http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=15416:africa-squeezing-africa-dry-behind-every-land-grab-is-a-water-grab&catid=25&Itemid=58, 21 April 2013.

Cotula, L. (2011): Land deals in Africa: What is in the contracts? IIED, London.

Cotula, L. / S. Vermeulen / R. Leonard / J. Keeley (2009): Land grab or development opportunity? Agricultural investment and international land deals in Africa. IIED/FAO/IFAD, London/Rome.

Cuffaro, N. / D. Hallam (2011): "Land Grabbing" in Developing Countries: Foreign Investors, Regulation and Codes of Conduct, http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1750047_code904191.pdf?abstractid=1744204&mirid=1 (access 12.5.2013).

De Schutter, O. (2009): Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge, http://www.srfood.org/images/stories/pdf/otherdocuments/20090611_large-scale-land-acquisitions_en.pdf (access 9.2.2013).

Deininger, K. / D. Byerlee (2010): Rising global interest in farmland: can it yield sustainable and equitable benefits?, The World Bank: Washington, D.C.

Deininger, K. / D. Byerlee (2012): The rise of large farms in land abundant countries: Do they have a future?, in: World Development 40 (4): 701-714.

Dinham, B. / C. Hines (1984): Agribusiness in Africa. Africa World Press.

Dolzer, R. (2006): The Impact of International Investment Treaties on Domestic Administrative Law in: International Law and Politics 37 (4), 935-953.

Donnelly, J. (2003): Universal human rights in theory and practice. Cornell University Press.

Formatiert: Deutsch (Deutschland)

Dwyer, M. B. (2013): Building the Politics Machine: Tools for 'Resolving'the Global Land Grab, in: Development and Change 44(2): 309-333.

Eastwood, R. / M. Lipton / A. Newell (2010): Farm size. In: Pingali, P. L. and R. E. Evenson (eds.), Handbook of agricultural economics, North Holland: Elsevier: 3323-3397.

Falkner R. (2011): Global governance - the rise of non-state actors, EAA technical report, 4/2011. European Environment Agency: Copenhagen.

FAO (2005): Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, FAO: Rome.

FAO (2009a): "From Land Grab to Win-Win. Seizing the Opportunities of International Investments in Agriculture". FAO: Rome.

FAO (2009b): Guide on legislating for the right to food, FAO: Rome.

FAO (2012): Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, FAO: Rome.

FAO (2013): Trends and impacts of foreign investment in developing country agriculture - evidence from case studies FAO: Rome.

Flint, C. / P.J. Taylor (2007): Political geography: World-economy, nation-state and locality. Prentice Hall.

Friis, C. / A. Reenberg (2010): Land grab in Africa: emerging land system drivers in a teleconnected world. University of Copenhagen, GLP-IPO, GLP Report No. 1.

German, L. / G. Schoneveld / E. Mwangi (2011): Contemporary processes of large-scale land acquisition by investors: case studies from sub-Saharan Africa. Occasional Paper 68. CIFOR, Bogor, Indonesia.

Global Reporting Initiative (2013): https://www.globalreporting.org/Pages/default.aspx (access 12.5.2013).

GRAIN (2008): Seized: The 2008 landgrab for food and financial security, http://www.grain.org/article/entries/93-seized-the-2008-landgrab-for-food-and-financial-security (access 6.5.2013).

GRAIN (2012): Squeezing Africa dry: behind every land grab is a water grab, June (http://www.grain.org/article/entries/4516-squeezing-africa-dry-behind-every-land-grab-is-a-water-grab, 21 August 2012).

Grain (2013): http://farmlandgrab.org/ (access 6.5.2013).

Hafner-Burton, E. / K. Tsutsui (2005): Human Rights in a Globalizing World: The Paradox of Empty Promises. American Journal of Sociology, 110(5), 1373-1411.

Healy, H. (2013): The smallholders' last stand, in: the New Internationalist,May 2013, Issue 462, http://newint.org/features/2013/05/01/smallholders-last-land-keynote/ (access 9.2.2013).

Henson, S. / J. Humphrey (2010): Understanding the complexities of private standards in global agri-food chains as they impact developing countries, in: The journal of development studies 46(9): 1628-1646.

Herrmann, R. / U. Grote / M. Brüntrup (2013): Household welfare outcomes of large-scale agricultural investments: insights from sugarcane outgrower schemes and estate employment in Malawi, Paper presented at the "Annual World Bank conference on land and poverty", April 8-11, 201, The World Bank: Washington DC, http://www.conftool.com/landandpoverty2013/index.php/Herrmann-368_paper.pdf?page=downloadPaper&filename=Herrmann-368_paper.pdf&form_id=368&form_version=final (access 6.5.2013).

Hertzog, T. et al. (2012): Ostrich-like strategies in sahelian sands? Land and water grabbing in the Office du Niger, Mali. Water Alternatives 5(2): 304-321.

Hilhorst, T. / J. Nelen / N.Traoré (2011): Agrarian change below the radar screen: Rising farmland acquisitions by domestic investors in West Africa. Results from a survey in Benin, Burkina Faso and Niger. Unpublished paper by the Royal Tropical Institute and SNV. http://m.snvworld.org/sites/www.snvworld.org/files/publications/agrarian_change_under_radar_screen_kit_snv.pdf (access 6.5.2013).

Hodgson, S. (2004): Land and water – the rights interface, LSP Working paper 10, FAO, Rome.

Hofmann, R. / C.Tams / S.Schill (eds.) (2013): Preferential Trade and Investment Agreements: Towards a New Ordering Paradigm in International Investment Law?, Baden-Baden: Nomos, forthcoming.

Huggins, C. (2000): Rural Water Tenure in east Africa. A comparative study of legal regimes and community responses to changing tenure patterns in Tanzania and Kenya, May.

IEA (2013): Recommendations for improvement of sustainability certified markets, Strategic Inter-Task Study: Monitoring Sustainability Certification of Bioenergy http://www.bioenergytrade.org/downloads/iea-sust-cert-task-4-final2013.pdf (access 12.5.2013).

Kennedy, E. T. (1989): The effects of sugarcane production on food security, health, and nutrition in Kenya: A longitudinal analysis. Washington, DC: International Food Policy Research Institute.

Land Matrix (2013): http://landportal.info/landmatrix (access 6.5.2013).

Maertens, M. / J.F. Swinnen (2009): Trade, standards, and poverty: Evidence from Senegal, in: World Development, 37(1): 161-178.

McCulloch, N. / M. Ota (2002): Export horticulture and poverty in Kenya (Vol. 174). Institute of Development Studies: Sussex.

Minot, N. / M. Ngigi (2003): Are horticultural exports a replicable success story? Evidence from Kenya and Côte d'Ivoire, Conferences Paper No.7, presented at the InWEnt, IFPRI, NEPAD, CTA conference "Successes in African Agriculture", Pretoria.

Newcombe, A. / L. Paradell (2009): Law and Practice of Investment Treaties: Standards of Treatment, Alphen aan den Rijn: Kluwer Law International.

Nolte, K. (2013): Large-scale agricultural investments under poor land governance systems: Actors and Institutions in the case of Zambia, GIGA Working Papers No. 221, GIGA: Hamburg.

O'Rourke, D. (2006): Multi-stakeholder regulation: privatizing or socializing global labor standards?. In: World Development 34(5): 899-918.

Oakland Institute (2011): Understanding Land Investment Deals in Africa. Saudi Star in Ethiopia, Land Deal Brief, June (http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_SaudiStar_Brief.pdf, 21 April 2013).

Open Contracting (2013): http://www.open-contracting.org/ (access 12.5.2013).

Global Reporting Initiative (2013): https://www.globalreporting.org/Pages/default.aspx (access 12.5.2013).

Oxfam (2004): A Sweeter Future? The potential for EU sugar reform to contribute to poverty reduction in southern Africa, Oxfam: London.

Oxfam (2011): Land and power: the growing scandal surrounding the new wave of investments in land. Oxford: Oxfam.

Pearce, F. (2012): The Landgrabbers: The New Fight Over who Owns the Earth. Transworld Digital.

Purdon, M. (2013): Land Acquisitions in Tanzania: Strong Sustainability, Weak Sustainability and the Importance of Comparative Methods. Journal of Agricultural and Environmental Ethics, 1-30.

RAI (2010): http://www.responsibleagroinvestment.org/rai/ (access 12.5.2013).

Ramazzotti, M. (2008): Customary Water Rights and Contemporary Water Legislation, FAO Legal Papers Online 76, December, FAO: Rome.

Richards, M. (2013): Social and Environmental Impacts of Agricultural Large-Scale Land Acquisitions in Africa—With a Focus on West and Central Africa, Rights and Resources Initiative: Washington, DC

Savills'Global Farmland Index of 2012: (http://www.savills.co.uk/_news/newsitem.aspx?intSitePageId=72418&intNewsSitePageId=141585-0&intNewsMonth=8&intNewsYear=2012, 21 April 2013).

Schaffnit-Chatterjee, C. (2012): Foreign investment in farmland. No low-hanging fruit, Deutsche Bank research, http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000296807/Foreign+investment+in+farmland%3A+No+low-hanging+fruit.PDF (access 9.2.2013).

Schlegel, S. / T. Kaphengst / S. Cavallieri (2008): Options to develop a Global Standard-Setting Scheme for products derived from Natural Resources (NRS), WWF Germany and Ecologic: Frankfurt and Berlin.

Schoneveld, G.C. / L.A. German / E. Nukator (2010): Towards sustainable biofuel Development: Assessing the Local Impacts of Large-Scale Foreign Land Acquisitions in Ghana. Paper prepared for World Bank

Annual Conference on Land Policy and Administration. Washington, DC, 26–27 April.

Sen, A. (1981): Poverty and famines: an essay on entitlement and deprivation. Oxford University Press, USA.

Sierra Leone Network on the Right to Food, SiLNoRF (2011): Study reveals alarming facts about plantation of Addax Bioenergy in Sierra Leone, June (http://farmlandgrab.org/post/view/18809, 21 April 2013).

UNCTAD (2012): World Investment Report 2012. Towards a new generation of investment policies, New York and Geneva: United Nations.

UN-Global Compact SABPs (Sustainable Agriculture Business Principles) (2013): http://www.fairlabor.org/blog/entry/developing-sustainable-agriculture-business-principles-un-global-compact (access 6.5.2013).

United Nations (2011): Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Document A/HRC/17/31.

Valente, F. L. S., / A.M.S. Franco (2010): Human Rights and the Struggle Against Hunger: Laws, Institutions, and Instruments in the Fight to Realize the Right to Adequate Food, in: Yale Human Rights and Development Law J. 13: 435-461.

Väth, S. (2012): Gaining neighbours or disruptive factors – what happened when large scale land-based investment in the Ghanaian oil palm sector met the local population on the ground? Paper presented at the International Conference on Global Land Grabbing II, October 17-19, Cornell University, http://www.cornell-landproject.org/download/landgrab2012papers/Vath.pdf (access 9.2.2013).

Von Bernstorff, J. (2012): 'Land Grabbing' und Menschenrechte: die FAO Voluntary Guidelines on the Responsible Governance of Tenure. INEF Forschungsreihe Menschen-rechte, Unternehmensverantwortung und Nachhaltige Entwicklung 11/2012. Duisburg: Institut für Entwicklung und Frieden, Universität Duisburg-Essen.

Von Braun, J., / R.S. Meinzen-Dick (2009): Land grabbing" by foreign investors in developing countries: risks and opportunities, International Food Policy Research Institute: Washington, DC.

Wakker, E. / S. Watch / J.D. Rozario (2004): Greasy palms: the social and ecological impacts of large-scale oil palm plantation development in Southeast Asia. Friends of the Earth, http://www.foe.co.uk/resource/reports/greasy_palms_impacts.pdf (access 9.2.2013).

Wikipedia (2013): http://en.wikipedia.org/wiki/Land_grabbing (access 6.5.2013).

Williams, T. O. et al. (2012): Water implications of large-scale land acquisitions in Ghana. Water Alternatives 5(2): 243-265.

Wily, L.A. (2012): Looking back to see forward: the legal niceties of land theft in land rushes, in: Journal of Peasant Studies 39(3-4), p.752.

Wolford, W. / S.M. Borras / R. Hall / I. Scoones / B. White (2013): Governing global land deals: the role of the state in the rush for land, in: Development and Change 44(2): 189-210.

WTO (2005): Marrakesh Agreement Establishing the World Trade Organization, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_01_e.htm#p (access 12.5.2013).