

# LAND AND WATER GRABBING

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## A DISCUSSION OF INTEGRITY IMPLICATIONS AND RELATED RISKS

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Photo: Lukas Nagel. Idle arid community land in the lowlands of West Pokot

### BACKGROUND

Secure land rights and water security are intrinsically linked, given that the rights to own, develop, and control a given land usually include the rights to use the water resources within. The demand for fertile land and water has risen globally, increasing the pressure on these natural resources. In developing countries in particular, this leads to land and water grabbing – the capturing of land and water resources through abuse of power – corruption. Corruption makes it more difficult for the poorest to secure their access to water and land. Assessing integrity risks and developing effective counter-measures is key to realising land rights and water security of marginalized communities, and preventing abuses.

## THE IMPORTANCE OF LAND AND WATER SECURITY

In many countries, land is recognized as the primary source of wealth, social status, and power (FAO, 2002). Consequently, securing land rights through the recognition and guarantee of real estate rights is important for economic growth and poverty reduction (Cotula et al., 2006). Land is also important in political terms, as people with better land rights tend to enjoy higher decision-making power (FAO, 2002). In addition, land can be of great historical and cultural importance, and frequently defines people's identities and their relationship to their environment (Antrop, 2005; United Nations, 2009).

Water security is crucial for economic, political, and cultural development, and its access is absolutely fundamental to ensuring that basic human needs are met, including sanitation and hygiene. Moreover, abundant water supplies are required for socio-economic development and activities such as energy, industry, and transport.

Land and water are also crucial for food security. The agricultural sector already consumes 70% of global water withdrawals (International Association of Hydrogeologists, 2015). In 2010, the World Bank estimated that between 445 million and 1.7 billion hectares of land worldwide had been identified for new agricultural investments (Deininger et al., 2011). The growing global population, increasing food prices, and the effects of climate change are putting strain on the demand for water and fertile land. Without secure access to water, crops fail and food shortages arise.

Finally, sustainable land and water use are needed to prevent the degradation of ecosystems. The tremendous expansion of croplands, pastures, and urban areas in recent decades is significantly impacting the capacity of ecosystems to regulate natural processes, preserve natural resources, and sustain our livelihoods (Foley et al., 2005). Moreover, sustainable water management is at the core of ensuring protection against water-borne pollution and water-related disasters (United Nations University, 2013).

## DEFINING LAND AND WATER GRABBING

The International Land Coalition defines land grabbing as land acquisitions that are (1) in violation of human rights, (2) without free, prior, and informed consent of the affected land-users, (3) without thorough assessment of the social and environmental impacts, (4) not based on transparent contracts, and/or (5) lacking effective democratic planning and meaningful participation (International Land Coalition, 2011). In parallel, water grabbing is defined as the acquisition

of water resources under similar violations or dysfunctional processes. Land and water grabbing includes local-level grabs, frequently by powerful local elites or family members – for example, men over women – as well as large-scale land acquisitions. The latter refers to land grabbing processes where the right to own or use a particular area of land larger than 200 hectares is transferred from local communities to big – frequently foreign – investors.

## THE LINK BETWEEN LAND AND WATER GRABBING

In many countries, water rights are linked to land rights, so investors obtaining a large tract of land often also gain unlimited access to the freshwater resources available therein (Mbengue and Waltman, 2015). Meaning land grabbing is not only a quest for land, but also for the associated water resources.

There are numerous and interrelated drivers for water and land grabbing: Wealthy food-insecure nations and private entities that produce food for export increasingly seek to secure fertile land globally; the increasing demand for biofuels and other sources of energy puts additional pressure on the same resources; and the rise of food and energy prices worldwide further increases land and water grabbing (Shepard, 2011). Countries in Africa and South Asia in particular have been targeted by global investors in their search for fertile land, for natural resources, or for land in their fast-growing cities (Owen et al. 2015).

Across the globe, sustainable agricultural intensification is urgently needed in many developing countries to enhance national food security, particularly of vulnerable populations. New investments in agricultural land and water management could bring benefits, such as improved technologies and access to markets for local communities. However, it is of vital importance that the management of these investments is carefully regulated to ensure that they are equitable and locally appropriate, and that the benefits are shared with local populations, while negative social and environmental impacts are minimized. Explanations of land being unused or underutilized frequently justify high benefits and low negative impacts of major land investments (World Bank, 2010; Guardian, 2011).

Yet, this reasoning may be masking land grabbing; there are cases where it is debatable if the referred land is indeed unused or even underutilized. The argument of unexploited land often disregards traditional, small-scale farming and cattle raising as 'not productive enough.' In addition, related socio-economical assessments rarely capture non-monetized or commonly owned goods and services such as flood protection, recreation, and the conservation of

endangered species (Balmford et al., 2002). Water services and resources have also suffered from this rationale. The argument that water is wasted if it flows without being utilized as a resource for irrigation, energy or other purposes, has set the basis for the development of large infrastructure projects – draining of wetlands, big dams – with detrimental environmental and socio-economic impacts. For example, the draining of wetlands leads to a decrease in evaporation, which can cause harmful changes in rainfall patterns.

## **INTEGRITY RISKS ASSOCIATED WITH LAND AND WATER GRABBING**

One key enabling factor of land and water grabbing, which is often overlooked, is corruption in land governance. This type of corruption can be defined as the abuse of power for private gain while carrying out functions of land administration and land management (TI, 2009). In many countries, land services rank among the most corrupt sectors and institutions (TI, 2014). Where land governance is corrupted, official processes and procedures are skipped, the legitimate rights and interests of local communities are overlooked, and decision-making processes are flawed, for example, in favour of big investors. Thus, corruption in land governance can immensely facilitate land and water grabbing.

More specifically, land and water security can be affected by integrity risks at different stages: (1) transaction, i.e. state officials accept bribes from a company or an individual to gain access to land or water resources or (2) institutional, i.e. decision-makers ignore national laws to seize land without facing the consequences (Cohen, 2016). At the institutional level, capture of policy and regulatory processes, where governance systems are biased towards the interests of large-scale investors, are particularly critical risks. Therefore, corruption in land governance can occur both at the national level where far-reaching decisions are made and implemented, and at the local level where the land is located.

While corruption in land governance can be seen as an enabling factor of land and water grabbing, it has many entry points itself, such as institutional fragmentation – including lack of proper coordination between too many institutions (Deininger et al., 2011) –, vague policies, lack of control mechanisms, or flawed incentive structures for public officials.

## **WHO IS MOST IMPACTED BY LAND AND WATER GRABBING?**

Land and water grabbing raise concerns for food security, rural agricultural development, and secure land and water rights. In cases of fast large-scale land acquisitions, even local decision-making may be at risk. Although the state formally retains ultimate jurisdictional control over these areas, investors gain the right to exploit the land and to dispose of its agricultural products, thereby effectively decreasing domestic control over vital land and water resources (Von Bernstorff, 2013).

Powerful actors taking control of land and/or water resources, often do it at the expense of previous local users whose livelihoods depend on these resources. Poor communities suffer the highest impact, as they are likely to lose their traditional land and water rights to investors. Communities often have no formal title deeds and do not understand their rights under the laws of the state (Fisher, 2009). As a consequence, many land deals are closed without consulting local communities. Moreover, many land deals contribute to the consumption and pollution of scarce water resources and threaten valuable natural resources such as forests, wetlands, and the natural habitats of endangered species (Maggi, 2013). Again, it is the poor communities who depend on the land and its natural resources that are the most affected, and sometimes forced to displace.

The most vulnerable in society are frequently the most marginalized. For example, in many countries women are already discriminated against when it comes to ownership of and access to land. In addition, women are frequently excluded in decision-making around water although they do the majority of water collection and often pay more for water than men (Das et al., 2016). Land and water grabbing and corruption can increase these inequalities and can disproportionately affect women, because they are the main managers of water for the household. Furthermore, they are particularly dependent on land as a livelihood base, property and investment option, and their employability, if land is lost, is perceived lower as that of men (Mutondoro et al., 2016).

## **LEGAL FRAMEWORKS RELATED TO LAND AND WATER RIGHTS**

In many formerly colonized countries in Africa and South Asia, water and land laws take no account of the legal systems that have been traditionally in practice, and even today the two systems often continue to exist in parallel (van Koppen et al., 2014).

Customary law governs the land rights of most local communities (Pannatier and Ducrey, 2005), through recognition that local people have been using the land for generations (Mbengue and Waltman, 2015). Such

rights are often unwritten and may vary according to locality. In many countries, customary rights clash with the national legal framework. This also affects access to water, as many legal frameworks governing land tenure have historically considered water rights as subsidiary components of land rights (Hodgson, 2004). Consequently, water law reforms have sometimes failed to clarify water tenure for communities.

This dichotomy of law increases the risk of corruption in the current international race to secure land and water. Synergizing the old and the new laws is challenging, and there are concerns related to accountability and transparency. Loopholes may allow local communities to be exploited, particularly because big investors are more likely to get formal written rights from governments (Mbengue and Waltman, 2015).

## LAND AND WATER GRABBING IN KENYA AND ETHIOPIA

### *Ethiopia*

Agriculture is the main pillar of the economy in Ethiopia. It constitutes approximately 37% of gross domestic product (GDP) and 70.5% of total employment, according to 2016 data by the World Bank. Most of Ethiopia's cultivated land is under rain-fed agriculture.

Rainfall variation, and frequent floods and droughts, lead to recurrent crop failures (Awulachew et al., 2007). The vulnerability to variations in water availability contributes to food insecurity in Ethiopia and has caused devastating famine crises (World Bank, 2006; World Food Programme, 2010; Bues and Theesfeld, 2012). Paradoxically, Ethiopia has become one of the main target countries for agricultural foreign investments. Total foreign investments have continuously increased in Ethiopia from 265 millions of USD in 2005 to 3196 millions of USD in 2016 (UNCTAD statistics, 2017).

The growing scale and speed at which the government has promoted large-scale land acquisitions in Ethiopia, brings serious integrity concerns in a number of recent cases. In Gambela, the poorest province of Ethiopia, the government has been leasing land and water resources to foreign investors, violating local people's customary rights. The government's 'villagization' programme resettles locals into centralized villages away from their traditional land. This allows the government to overcome customary rights and reallocate the land and water to the highest bidder (Pearce, 2012; The Guardian, 2015).

### *Kenya*

From a global perspective, Kenya is not among the countries that are most targeted by international

large-scale land acquisitions (Nolte et al., 2016). Still, there have been numerous attempts by international investors to acquire large tracts of land for agricultural purposes in Kenya. The government is generally not opposed to such investments and grants long-term leases to international investors for up to 99 years. Such land issues have sparked huge controversies in Kenyan society (Nolte and Văth, 2015).

The new Kenyan Constitution of 2010 addresses important land issues and initiated a land law reform process. Whilst the new constitution and land laws are generally regarded as valuable improvements, the reform process is still on-going and formal rules are often poorly enforced. This provides incentives for foreign investors, but also for local and national authorities and officials to skip official procedure and to operate in 'legal grey areas' (Nolte and Văth, 2015). For example, they occasionally bypass the rules 'in terms of consultation of the local communities, compensation and displacement, welfare and environmental implications' (Nolte and Văth, 2015).

Some cases of [attempted] large-scale land acquisitions in Kenya involve areas of great environmental importance such as forests and wetlands. The impact of such projects affects a much wider area and range of ecosystem services beyond the leased land. Some key integrity issues here relate to the accuracy of the environmental and social impact assessments (ESIAs) and the autonomy of the environmental authority (Maggi, 2013; Nolte and Văth, 2015; Kibugi et al., 2016; Duvail et al., 2012).

In Kenya, as in many other countries in Africa, historical factors introduced by colonial powers are at the core of contemporary land issues (Kenya Human Rights Commission, 2016; Kameri-Mbote, 2009). A study conducted by the Berlin Centre for Rural Development in 2016 shows that in West Pokot, the fertile highlands were often violently claimed by foreign settlers and influential people from the capital Nairobi, while the local population had no choice but to move to the arid lowlands (Centre for Rural Development (SLE), 2017).

This example shows how securing access to fertile land and related water resources can be a powerful driver for land grabbing. The population of West Pokot relies strongly on agriculture and pastoralism. Therefore, any land management and administration process – such as new registration of land, change of public land to private land – should carefully analyse the situation by taking into account access to land as well as access to water resources. Moreover, any new land arrangement should be designed ensuring the fulfilment of water rights for the local population.

## THE CONSEQUENCES

If land grabbing and corruption go hand in hand, the ability of land governance systems to enforce and protect people's right to land becomes impaired. This has even further consequences when water rights are dependent on land rights. As a result, people's food security and livelihoods are threatened. Societies become more exclusive, and only few individuals or groups benefit from economic growth and prosperity

generated on land, while the large bulk of the society is left behind (International Land Coalition et al., 2015.).

Improved agricultural systems have a great potential to end hunger, achieve food security, and improve nutrition (United Nations, 2014). For this purpose, land and water deals should run fairly and sustainably, in ways that promote food security and economic prosperity for all, that protect the rights of previous users, and that prevent environmental degradation.

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