



Large-scale land deals in Southern Africa: voices of the people

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Preface

This book presents case studies of large-scale land deals in Southern Africa. It aims to provide an accessible and vivid window into the lived realities and responses of rural people who are affected by such deals. For this reason, we have paid particular attention to what local people say, and have quoted their experiences and responses to the land deals.

The book emerges from an action research project implemented by the Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape, South Africa, in partnership with non-governmental organisations in five Southern African countries: LandNet in Malawi, Kuwuka Juventude Desenvolvimento e Advocacia Ambiental in Mozambique, Legal Assistance Centre in Namibia, Zambia Land Alliance in Zambia and Ruzivo Trust in Zimbabwe.

Our joint project, entitled *Commercialisation of Land and 'Land Grabbing' in Southern Africa: Implications for Land Rights and Livelihoods in Southern Africa*, involved not only documenting what was happening on the ground but also action research, together with the communities, in negotiations, lobbying and meetings with investors and with government institutions.

We hope that this book, its case studies and the testimonies from the people affected, will prove to be a useful resource to popularise knowledge of big commercial land deals in the region, among policymakers, activists, farmers' organisations and other civil society bodies. It can be used to debate why land deals are happening, how they affect rural communities, and the gaps in national laws, policies and institutions that govern land rights. We hope that reading this book, and using it in training and workshops, will help to strengthen activism and advocacy for just land laws and policies, and their full and transparent implementation.

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List of abbreviations

ARDA	Agricultural and Rural Development Authority
AU	African Union
BOT	Build, operate and transfer
CLRA	Communal Land Reform Act
DCGL	Dwangwa Cane Growers Limited
DCGT	Dwangwa Cane Growers Trust
DEPIC	District Ethanol Project Implementation Committee
EIA	Environmental Impact Assessment
EMA	Environmental Management Agency
FAO	Food and Agriculture Organization (of the United Nations)
GDP	Gross Domestic Product
GNU	Government of National Unity
JDA	Juventude Desenvolvimento e Advocacia Ambiental
LAC	Legal Assistance Centre
PLAAS	Institute for Poverty, Land and Agrarian Studies
TA	Traditional Authority
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests
ZLA	Zambia Land Alliance

Notes on contributors



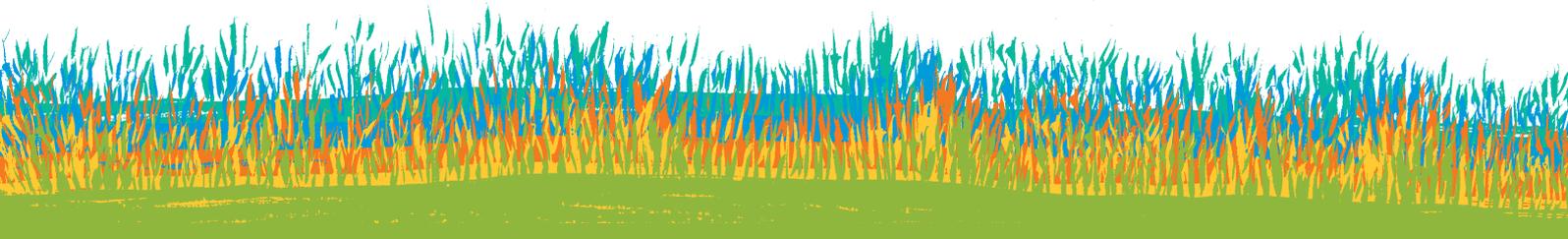
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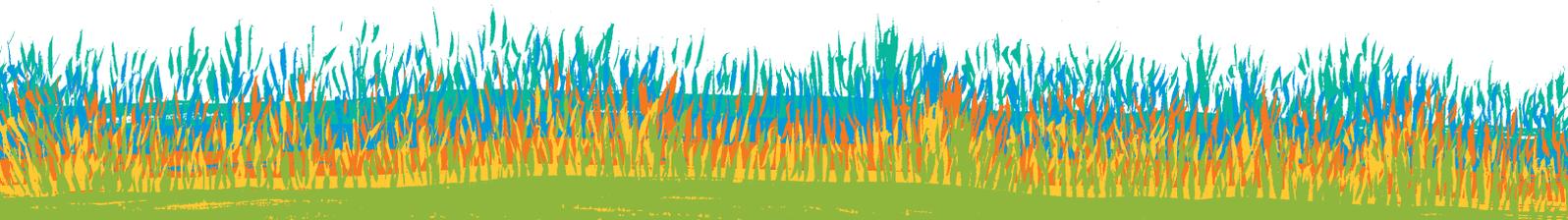


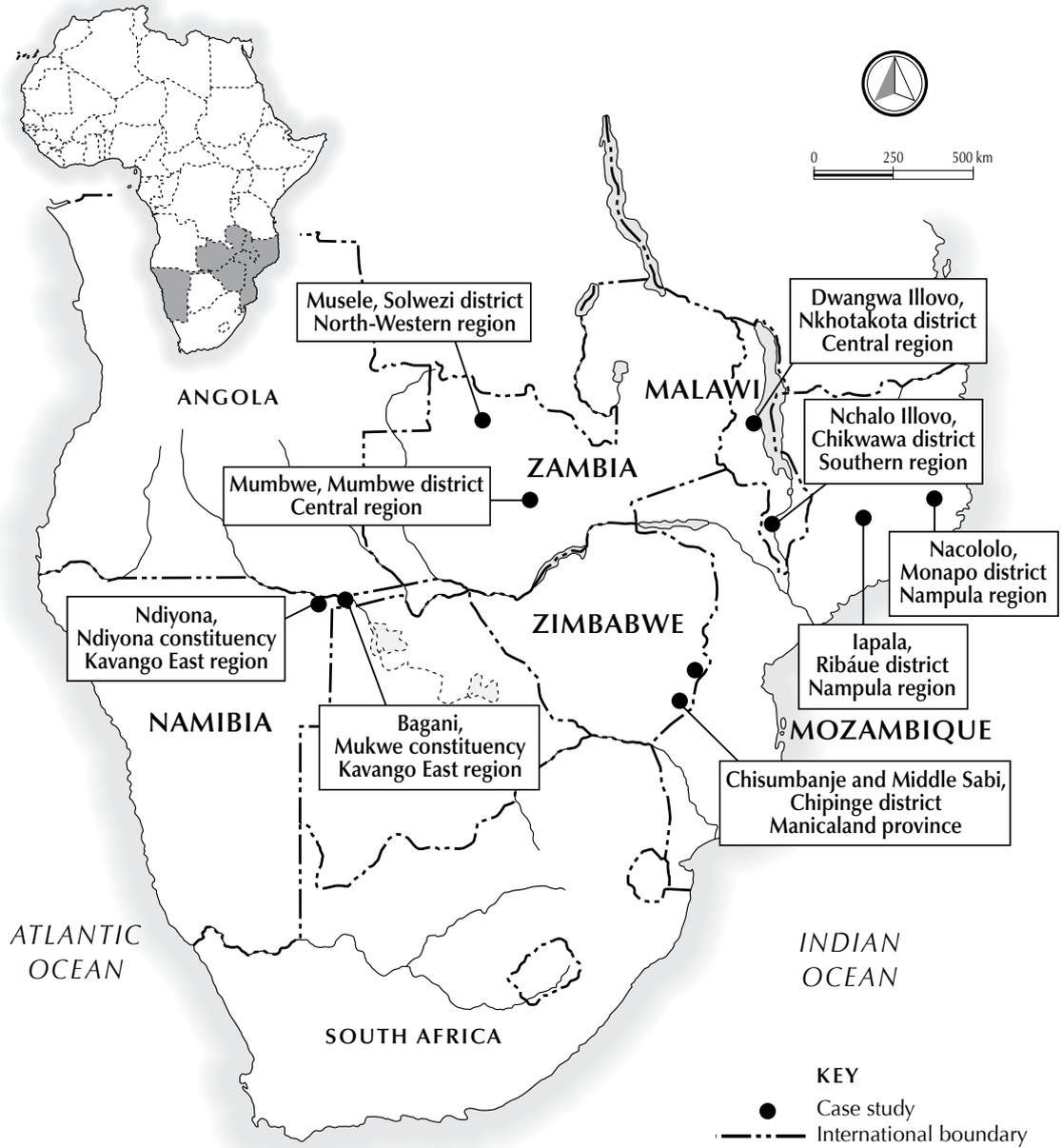
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Map 1: Southern Africa, showing locations of study sites across the five countries



Chapter I

Introduction

This book of case studies addresses situations in which commercial projects are planned on land held by rural communities. These include big farming projects by foreign and local companies, farmers becoming out-growers selling to agribusinesses, and concessions to mining companies.

The dramatic growth in big land deals over the past decade is a phenomenon not specific to Southern Africa. It is part of what has been termed a 'global land rush' following food price spikes, financial crisis and fuel price volatility (and growing interest in biofuels) in the period 2007-2008. Both domestic and foreign investors are increasingly keen to move into farming and other commercial ventures in rural areas. This has been presented as welcome development but also criticised as constituting a 'land grab'. Our case studies provide some empirical basis to debate these points of view.

International and regional land governance frameworks

In response to the 'global land rush', the Food and Agriculture Organization (FAO) of the United Nations adopted in 2012 a set of Voluntary Guidelines on Responsible Tenure of Land, Fisheries and Forests in the Context of National Food Security. These FAO Voluntary Guidelines (VGGT) set out the rights of landholders, and the obligations of both states and investors when entering into deals that will affect these rights. While ostensibly 'voluntary', the VGGT constitute the definitive guide to good governance of land tenure, and reference binding international law.

Similarly, the African Union (AU) adopted in 2014 a set of Guiding Principles on Large-Scale Land-Based Investment. These AU Guiding Principles require respect of good governance of land, including respect for customary land rights, transparency and gender equality, among other principles. Any large-scale investments in land should be informed by coherent national development plans that recognise the strategic importance of African agricultural land and the contributions of smallholder farmers to food security and poverty reduction.



Photo: sourced from Creative Commons (Molly Stevenson)

Recognising rural communities' land rights

Southern Africa is a region still grappling with dual legal systems governing rights to land. While privately titled land is usually well protected through deeds registries and cadastres, most rural people live on land held as communities under customary tenure, and without registered rights. This is the legacy of colonial legal systems which introduced private ownership and degraded customary tenure. After independence, some countries nationalised land, vesting greater state control over land occupied by rural communities, with national governments claiming this as state land and asserting authority over it.

The failure in law to recognise rural communities' rights as constituting property lies at the centre of the disputes over how community land can be transacted, who should be consulted and who can provide consent. Even where laws recognise such rights – as in Mozambique and Namibia – actual practices by state officials and traditional authorities continue to treat communities' claims on land as if they do not constitute property rights.

Support for and opposition to big land deals

Where ambitious commercial projects are introduced in poor rural areas, they tend to provoke different responses among different people. Our case studies in Zambia, Namibia and Zimbabwe illustrate how communities often become divided when there is the promise of 'development', even at the cost of people's existing livelihood strategies. The case studies also illustrate how family farmers have contested commercialised land uses – not only farming but also energy and minerals. While these are important sectors for national economic growth, their expansion has provoked conflicts.

Our cases highlight gender and generational differences. Women are often excluded from consultation and their roles in producing food for their families are undermined. Also, they are less likely to get contracts as out-growers, or to control cash incomes where the family turns over its land to commercial projects. Some younger people hope for jobs, while older people want to retain their land and livelihoods based on farming. People's levels of education and wealth also influence their responses. In Namibia, those who were poorer and more desperate hoped for jobs, while those able to sustain themselves from their own cultivation and livestock saw the risks of losing their land. These are some of the patterns we have identified, but there are variations, too.

In the big developments seen as strategic for development of poor regions – in Zambia (mining) and Zimbabwe (sugarcane for ethanol) – those opposing the deal and their impending loss of land were labelled as 'anti-development'.

Yet in these regions it is agreed by all that investment and development is needed. The disputes centre on the kind of investment, whether this entails loss of land and what status local people will have in ownership of any new enterprises. This underscores the importance of building alternative visions and plans for development that builds on rural people's livelihoods and the need to promote forms of investment that do not involve dispossession.

Consultation and 'free, prior and informed consent'

Most of the disputes over the investments we describe in this book arise from the failure, right at the start, to conduct adequate consultation with the people likely to be affected. The FAO Voluntary Guidelines and the AU Guiding Principles both confirm the principle that people likely to be affected by large-scale land deals are entitled to provide or withhold 'free, prior and informed consent'. This is a principle well established in international law. It means that people should have all the relevant information about investments planned in their area, and be able to decide whether or not to agree, and on what terms, before any deal is concluded.

Several of the cases show that failing to adequately consult and negotiate equitable terms with local people who will be affected is not good for the investors either. In Malawi, Namibia and Zambia, deals that were concluded with government or traditional authorities proved to be unimplementable due to local opposition. In Namibia, this led to a delay of several years and required the re-negotiation of the deal, while in Malawi this provoked protests and court cases over several years. In our Namibia and Zimbabwe cases, communities agreed to the projects, but these became mired in controversy because of delays in investment and the payment of compensation, and poor communication between investors and local communities. Rising conflict has had the effect of drawing public attention to the deals, leading state authorities to give greater scrutiny to the deals and to engage with both the communities and the investors to find solutions.

Who are the leases with and who gets paid?

In most cases, private companies are concluding long-term leases with national governments to land already claimed and used by local communities. In our Zimbabwe case, the company leased land from a government parastatal, though local people contest its authority over land they claim as theirs. In some instances, as in Namibia and Zambia, the deals are made between investors and traditional authorities, who claim to represent the will of local people. Payments for these leases usually go to government directly, rather than to local people.



There is a generalised lack of transparency on the terms of the deals, and sometimes even the identity of the investor. In some instances this is complicated where governments themselves are parties to the land deals, such as in our cases from Zimbabwe and Mozambique, and where commercial deals form part of ambitious national development plans in the form of growth corridors, such as the ProSavana initiative in Mozambique and the Green Belt initiative in Malawi.

An unspoken issue in this set of case studies is the degree to which intermediaries – including government officials, politicians and chiefs – have accepted bribes in return for their support. We were not able to confirm whether or not this was the case. We do note, though, that several communities suspect that this is the case. Allegations of bribery and corruption show how untransparent processes of concluding land deals undermine governance and the faith of citizens in their representatives and leaders.

Control over production and territory

Not all cases involve investors taking direct control over land, though. In Malawi, the disputes in both cases involve deals between sugar companies and traditional leaders, to convert farmland held under customary tenure to growing sugarcane to supply the sugar mills. Here, the companies have not acquired the land but rely on chiefs' willingness to dispossess people in their areas who refuse to switch to sugarcane and to re-allocate it to those who will, including outsiders and elites. This is not a case of a corporate 'land grab', though it does involve the expansion of corporate control over what is produced and across a territory it does not own.

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What impacts do these deals have?

The main impacts documented in our case studies are the enclosure and loss of land used by communities. Such enclosure may be subject to long-term leases, but for local people, in practice they are seen to represent the loss of land in perpetuity. In several cases, it was not residential or farming land that was acquired, but rather common property resources like grazing land, water sources and forests on which rural communities depend. Communities have claimed that the loss of land and related resources has undermined their livelihoods and food security, and want the deals to be cancelled, or want them on different terms.

But some benefits have clearly accrued, too. In some instances, jobs have been created, infrastructure has been improved and the local economy has been boosted. As cases from Malawi, Zambia and Zimbabwe show, small trading centres



have grown into small towns, with businesses emerging as a result of increased cash flow in the area. However, not all community members are happy. Some people are certainly benefiting. This suggests that, rather than big land deals having a uniform impact, there are winners and losers from the process.

Resettlement and compensation of the dispossessed

Resettlement and compensation policies still need to be strengthened. In Malawi and Zambia, for instance, evicted people were compensated only for improvements on the land and sometimes for standing crops – but not for the land itself. In Zimbabwe, a more diverse approach to compensation emerged, including providing displaced households with irrigated plots as compensatory land, as well as cash payouts. International frameworks can help guide national governments to revise legal requirements and policy guidelines for resettlement and compensation.

Land deals without investment

Our cases show that, in the midst of claims of 'land grabs', many planned mega-projects have not taken off, and the direction of change is not uniform. While debates on commercial land deals usually use the term 'investor', in several cases land deals have been concluded and yet no investment has materialised – even five or six years after leases are issued. People may be dispossessed in the interim, with the result that people lose their land and do not receive promised benefits like jobs. Often, the first form of investment is the fencing of allocated areas, which can impede local people's use of land, even if they are not physically dispossessed.

Gaps in land governance: law, policy and institutions

Our case studies show that there are still gaps in the laws, policies and institutions governing land rights in Southern Africa. Central to this is the status and support for customary tenure of land obtained through custom, occupation and use, and the recognition of customary tenure as constituting a property right. Related to this is confirmation of the role of chiefs and other traditional leaders as custodians rather than owners of land, so that they cannot enter into leases or agree with investors on deals that will affect the land rights of residents.

Several countries have very incomplete policy and legal frameworks. Malawi and Zambia have been revising their land laws and policies over the past decade and a half, while Zimbabwe is yet to develop adequate provisions for land tenure



and land rights administration following its Fast-Track Land Reform Programme. In Mozambique and Namibia, where the legal frameworks for recognition of customary and unregistered land rights are robust, implementation and coordination among state institutions and local authorities (including traditional authorities) remains the challenge.

If land governance is to be strengthened, then priorities include the need for stronger oversight and disclosure from government, and the publication of contracts and leases, in line with best practices in other countries. It is also important to promote possibilities for rural people to register their land rights in a low-cost and accessibly administrative way, and to provide for local dispute resolution mechanisms. In the absence of these, there are few alternatives for local people other than to protest or to challenge the deals in the courts – often a lengthy and expensive process.

Conclusion

The cases in this book demonstrate the resilience of rural people in Southern Africa and their insistence that their land rights be respected, and that outsiders – whether private investors or even their own governments – treat them as de facto owners of land. The cases also point to some of the limitations of the land governance frameworks and land administration in our respective countries, and the need for further reforms in law, policy and the institutions governing land rights. Our case studies suggest that, in practice, none of the countries addressed here are fully compliant with the FAO Voluntary Guidelines nor the AU Guiding Principles, to which our governments are bound. The voices of the people affected by these land deals should serve as a guide as to how rural communities wish to be treated. We hope that this book will provide inspiration to those who wish to hear them.



