



PAN AFRICAN PARLIAMENT



African Union



African Development Bank



Economic Commission for Africa



LAND POLICY INITIATIVE

# Promoting Sustainable Agricultural Investment: Legal and Policy Options

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## Large Scale Land Based Investments



Training for West African Parliamentarians  
Abidjan, Cote d'Ivoire  
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# Definition of LSLBI

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Various definitions for LSLBI

- 'land grabs'
- 'large scale acquisitions'

LPI definition:

- involve transfer of rights to use, control or own land through sale, lease or concession
- an area of 200 hectares or more
- imply the potential conversion of land from smallholder production, local community use or important ecosystem service provision to commercial use

*NB: This is a loose definition*

# Drivers of LSLBI

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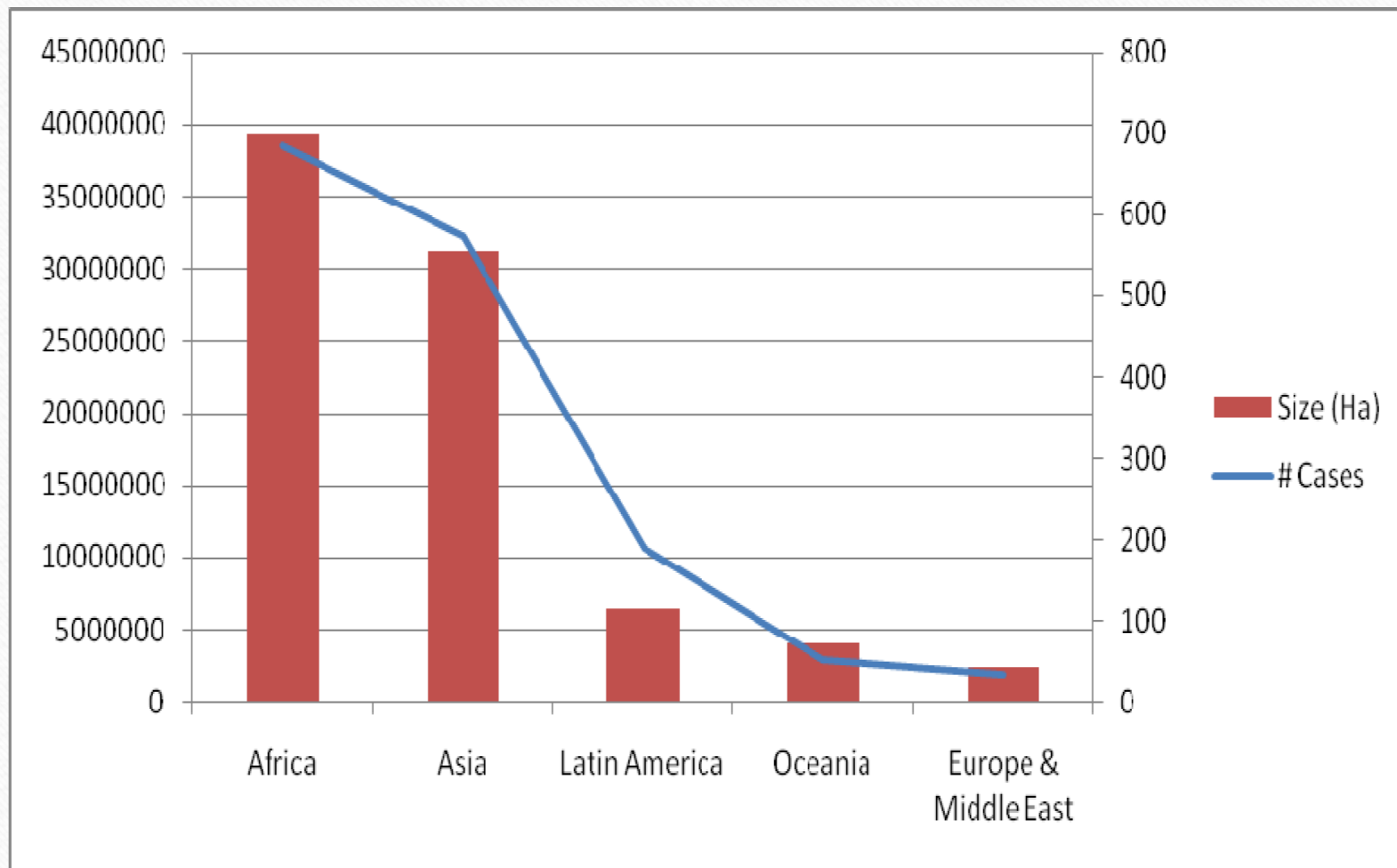
- Historic under-investment in agriculture
- Regional commitments not achieved:
  - 2003 Maputo Declaration – 10% of budgets
  - CAADP – 6% annual growth in agriculture
- Resulting gap between required investment and domestic allocations

# Drivers of LSLBI – Investor Motives

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- Investment in land is driven by interests and investment from developed and some developing States interested in investing in agricultural land to meet growing demands for certain crops and commodities.
- There is also evidence of domestic investors securing land for agricultural production and or for lease to external investors.
- In some instances investors are seeking to hedge their funds through speculative investment in ‘cheap’ and ‘abundant’ African land
- Expansion of industries (mining, timber) – profitable enterprises

# Where are LSLBI Taking Place?



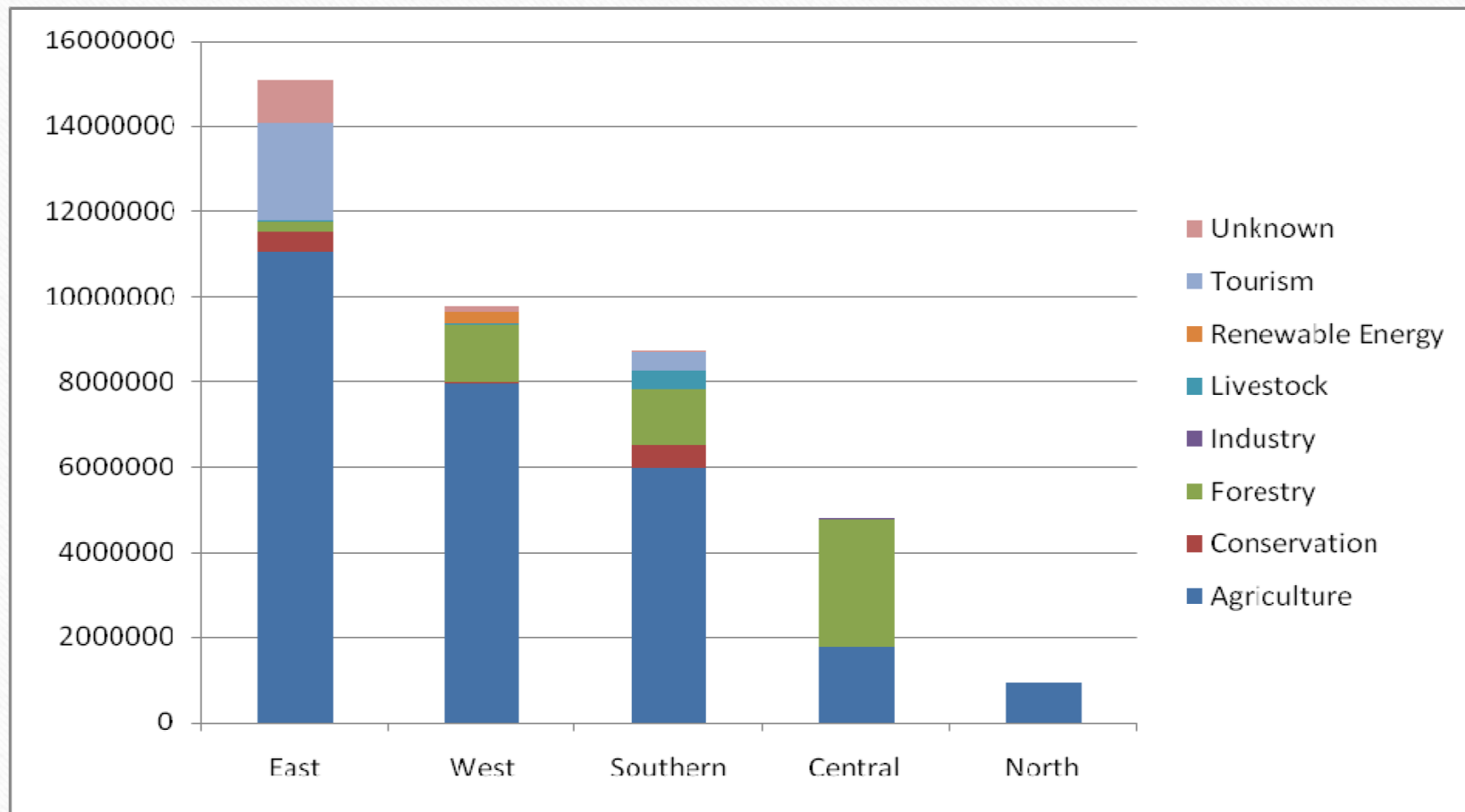
Source, Land Matrix, 2013

# In Which Sectors are LSLBI Taking Place?

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- Sectors invested:
  - agricultural investments
  - forestry
  - conservation
  - livestock
  - tourism
- Investments on agricultural land:
  - food crops (50%)
  - biofuels

# In Which Sectors are LSLBI Taking Place?



# Context

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Communities living in areas where investments are taking place have been marginalized with insignificant or no returns for the loss of their land and/or water rights.

Little evidence that employment, improvement and creation of infrastructure, technology transfer and enhanced foreign currency earnings, have been realized.

Large Scale Land Based Investments have taken place under a shroud of secrecy. Deals are signed in secret and are not available for the populace to inform and hold the signatories accountable. This lack of transparency poses serious governance challenges in LSLBI



# LSLBI and Women's Land Rights

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*When opportunities or resources limited, the situation of women is more precarious than that of their males.*

- Under increased competition for land, decisions concerning land pass swiftly from women into the hands of men. Women told – not consulted
- Land deals exacerbate the existing gender disparities in land access and ownership:
  - Gender gap becomes even more apparent when documented rights are considered.  
Uganda: 69 percent of men and 57 percent of women owning land –52 percent for men and only 18 percent for women with documentation
  - Privatization concentrates land in the hands of those who can successfully assert ownership
- Opportunities arising from LSLBI tend to fall to men

# Implications for smallholder farmers

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## **Studies have shown that:**

- increase in agricultural value addition arising from biofuels production is relatively small - agricultural sectors in developed countries benefit more than developing countries
- development of small-scale processing industry to benefit local farmers has been slow to emerge
- the nationalist arguments in favor of harnessing natural resources for energy generation towards meeting national energy needs is overtaken by the reality of corporate refining for external markets

# Implications for smallholder farmers

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*Small farms are more productive, bio diverse, and sustainable than large, industrial-style plantations - YET*

- Failure to consider smallholder farmers as key actors of agricultural development
- Undervaluing the potential of family farms and excluding smallholders as partners.
- Failure to recognize smallholder farmers as full-fledged partners in agribusiness
- Exclusion from emerging value chains
- This has had the effect of amplifying the implications of resource competition (for land and water) between existing users and incoming investors

# Implications for community land rights

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## **UN Basic Principles & Guidelines on Development Based Evictions and Displacement:**

- forced evictions should not take place
- where states fail to prevent such evictions, effective remedies should be provided

## **UN Declaration on the Rights of Indigenous Peoples:**

- right of indigenous people not to be forcibly removed from their lands or territories
- no relocation shall take place without their free, prior and informed consent
- after agreement on just and fair compensation and, where possible, with the option of return

## **In spite of these provisions evidence indicates:**

- states not observing these principles in the implementation of LSLBI
- customary claims rarely afford same legal protection as formal property rights, susceptible to expropriation and right holders vulnerable to forced eviction

# Further Implications for Communities

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- The land rights of pastoral communities are also particularly vulnerable
- LSLBI are usually accompanied by high demand for water
  - depletion of water resources for other, pre-existing uses by local communities
  - shifting water rights from the community to the investors

# Communities are often not compensated meaningfully

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- Communities who have lost land to LSBI have not received adequate compensation for loss of livelihoods. Results in increased conflict and rural to urban migration.
- Where communities receive the compensation, this is usually given to male heads of house and or the community leaders. Marginalizes other family members, women headed households and secondary and tertiary land right holders.
- Underlying reason for the widespread land dispossession - land laws do not adequately guide compensation
- No mechanism in place to reduce to monetary terms all the benefits that communities derive from the land for purposes of compensation (Secondary land rights enjoyed by women, intergenerational rights and religious use of land)

# Communities are often not compensated meaningfully

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- Investors sometimes promise community infrastructure as compensation. This includes the construction of halls, schools, roads and water infrastructure.
- Agreements between the community and investor not usually enforceable as the two parties do not sign a contract. Therefore communities lack means to enforce the construction of promised infrastructure.
- This highlights the need for monitoring of LSLBI at both the central government and community level

# Implications for environmental sustainability and biodiversity

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- **Degradation and loss of biodiversity:** Certain land uses promoted by LSLBI may have detrimental implications for the environment and biodiversity. This includes loss of species diversity, water resources and soil quality
- **Risks emanating from investor uses of land:**
  - LSLBI on arable land tend to promote intensive large-scale farming, often focusing on monoculture/single crop farming and high reliance on chemical fertilizers
  - LSLBI can result in damage to the environment including deforestation, loss of biodiversity and soil degradation, especially when large scale investments are implemented on soils that are not suitable for intensive modes of agriculture



# National Responses to emerging impacts of LSLBI

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**Efforts to identify models with improved outcomes for communities and farmers:** Models such as contract farming where a company contracts local farmers and buys their produce at a guaranteed price are an option. Rwanda, Uganda experience or

Out-grower schemes where the LSLB investor provides the nucleus farm and support local farmers with inputs and infrastructure including buying of the produce, information, etc.

**Efforts to limit the extent of LSLBI:** Tanzania begun to place a ceiling on the amount of land that can be leased to both foreign and local single large-scale investor for agricultural purposes.

**Civil society and other actors:** Key role in highlighting the implications of LSLBI on the rights and livelihoods of communities, highlight governance considerations

# Regional and Global Responses

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# Framework and Guidelines on Land Policy in Africa

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- articulates principles which should inform the development, content and implementation of land policies in AU Member States
- highlights several priority areas including articulating a policy framework for:
  - addressing emerging issues and anticipating future trends relating to land resources,
  - providing a basis for more coherent partnership between states, citizens and development partners in land policy formulation and implementation on the continent
- identifies principles which should govern land policy development and implementation in Africa
  - include democratization, transparency, good governance, popular participation, equity, poverty eradication, subsidiarity, gender equity and sustainability among others
- refers specifically to large scale investment in rural as one of the strategic issues to be addressed by land policy in African states

# The Nairobi Plan of Action of LSLBI

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Resulted from a meeting of African governments, parliamentarians, civil society, traditional leaders on land based investments

The Plan of Action undertakes to promote:

- assessments of land-based large-scale investments; provision of support to governments, traditional leaders, -civil society organizations and communities to facilitate fair and transparent negotiations
- establishment of a monitoring and reporting mechanism for tracking large-scale land based investments
- development of principles which encourage sound and sustainable investments in land
- guide fiscal policy and the development and implementation of land policies and land use plans that facilitate equitable access and secure land rights for communities - including women and investors, both local and foreign

# Voluntary Guidelines on Governance of Tenure

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*The Voluntary Guidelines on Responsible Governance of tenure of Land Forest and Fisheries in the context of National Food Security*

- An outcome of the efforts of global partners and African institutions
- Agreed considerations to guide the governance of land associated with transfers and other changes to tenure
  - general principles
  - the rights and duties
  - the administration of tenure (including valuation of land)
  - environmental considerations
- Can be used by individuals and communities, civil society, investors and governments to minimize negative implications of LSLBI
- Implementation guide which parliamentarians and governments can use to include gender and FPIC in LSLBI governance

# The Five Principles of the VGGT

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- Recognize and respect all legitimate tenure rights holders and their rights
- Safeguard legitimate tenure rights against threats and infringements
- Protect and facilitate the enjoyment of legitimate tenure rights
- Provide access to justice to deal with infringements of legitimate tenure rights
- Prevent tenure disputes, violent conflicts and corruption.

FAO Technical Guides prepared for effective use of the VGGT – Gender, FPIC, Forests, Private investment, Commons, Registration, etc

# Principles for Responsible Agricultural Investment

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Based on the VGGT and led by the FAO in collaboration with the UNCTAF, IFAD and World Bank

Draw attention to rights and livelihoods of rural populations and the need for socially and environmentally sustainable agricultural investments.

The following broad areas have been agreed *so far* as the basis for RAI:

- Respecting Land and Resource Rights
- Ensuring Food Security
- Ensuring Transparency, Good Governance, and a Proper Enabling Environment
- Consultation and Participation
- Responsible Agro Enterprise Investing
- Social Sustainability
- Environmental Sustainability

RAI principles will be useful in guiding the development of laws and policies which ensure agricultural investments supportive of the rights and livelihoods of communities.

## African Union's Guiding Principles on Large Scale Land Based Investment.

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The Principles serve to facilitate the implementation of:

- AU Declaration on Land Issues and Challenges in Africa
- Comprehensive Africa Agricultural Development Program (CAADP)
- Nairobi Plan of Action

by providing policy direction and guidance to inform LSLBI in African agriculture.

The Guiding Principles are a basis for commitment, solidarity and collective responsibility by governments, other stakeholders and investors to improve the governance of large scale land based agricultural investments in Africa.



# Objectives of Guiding Principles on Large Scale Land Based Investment.

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- a. Guide decision making on LSLBI in recognition of the fact that LSLBI may not always be the most appropriate form of investment;
- b. Provide AU Member States and other stakeholders with direction on how to realize investments in land which are sustainable and profitable to African economies and people;
- c. Create a basis for effective coordination, cooperation and collective responsibility amongst AU Member States and other stakeholders in response to the challenges of LSLBI;
- d. Provide investors with a tool to inform their engagement with African governments, traditional authorities and other actors and;
- e. Provide a basis for developing a monitoring and evaluation framework to track LSLBI in Africa with a view to facilitating learning and review of LSLBI;
- f. Provide a basis for review of existing LSLBI contracts.

These guidelines may feed into domestic initiatives of different countries on good land governance. In addition, those countries that do not have robust frameworks may use these guidelines as the basis for directing investing and governing land.

# Six Fundamental Principles on LSLBI

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The Guiding Principles are articulated as a comprehensive, mutually reinforcing framework of principles formed around a set of six fundamental principles.

- **Fundamental Principle 1:** LSLBI respect human rights of communities contribute to the responsible governance of land and land-based resources, including respecting customary land rights and are conducted in compliance with the rule of law.
- **Fundamental Principle 2:** Decisions on LSLBI are guided by a national strategy for sustainable agricultural development which recognizes the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.
- **Fundamental Principle 3:** Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation and social acceptance by affected communities.
- **Fundamental Principle 4:** LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.
- **Fundamental Principle 5:** Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.
- **Fundamental Principle 6:** Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people.

# Guiding Principles on LSLBI

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The guiding principles are a useful tool that African states can use to tackle broad land governance challenges, large scale land based investments and to facilitate inclusive decision making which until now was a task that CSOs have been tackling. The implications for Parliamentarians are many. The first one being to encourage their host governments to adopt the principles.