

MORE INCLUSIVE DECISION- MAKING PROCESSES IN FOREIGN LAND LEASING: POLICY INSIGHTS FROM KENYA

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KEY POINTS

- Foreign land leases could help developing countries to acquire foreign direct investments (FDIs), including technical expertise and income necessary for economic transformation.
- A lack of local stakeholder consultation and involvement in the design of land leases leads to the rejection or disruption of such leases by local communities and wastes investors' resources due to disruptions.
- Local public stakeholders in Kenya are willing to accept and participate in leases, provided they include certain provisions: that leases do not exceed 15 years; are renewable subject to mutual negotiations; offer formal employment to landowners' household members; and provide adequate monetary compensation for the leased land.
- Effective and transparent management of land leases requires the formation of management committees comprising local stakeholders such as youth, women and land experts.
- To enhance lease transparency, regular consultative meetings should be held, negotiation records must be shared with local community members and landowners should receive direct payment, rather than being paid through intermediaries.

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GLOBAL PERSPECTIVES ON LAND LEASING

Land leasing is a form of tenancy where a landowner allows a tenant to use land under agreed upon terms without selling it (Food and Agriculture Organization of the United Nations [FAO] 2004). It is estimated that foreign investors currently lease about 50 million ha in developing countries (UN 2010; Deininger and Byerlee 2010). Global foreign land leasing is driven by various economic forces, including the desire to produce enough food for the growing population at a reasonably low cost. For instance, populous countries such as China and India have agricultural leases in Zimbabwe and Philippines, respectively, where farm wages are relatively low. Oil- and mineral-rich Middle Eastern countries such as Qatar and Saudi Arabia also have land leases (mostly in Africa) to support food production (Von Braun and Meinzen-Dick 2009). Other important motivations for the rise in global land leasing include the search for alternative sustainable energy sources such as biofuels and the widely held view that agricultural land leases are relatively less prone to global economic shocks than other forms of investment (UN 2010).

LOCAL PERSPECTIVES ON LAND LEASING

Some of the key development benefits from foreign land leases for people in the host countries include: enhanced supply and stabilization of food prices; provision of employment; FDI of expertise technologies and capital for improving infrastructure such as roads, education and health facilities. However, land leasing’s immense development benefits can only be realized if the deals are structured in a more participatory and transparent manner — an aspect that is often missing in foreign land leases. Local stakeholders, especially the

landowners, are often excluded from negotiations. In a few instances, such as in Tanzania, where consultations are held, the term “stakeholders” is narrowly construed and talks are usually limited to government officials and politicians, thus, wider community preferences for alternative land uses are seldom incorporated (Vermeulen and Cotula 2010). Consequently, local communities often protest, leading to delays and disruptions of such investments. Documented examples of recent protests include the Democratic Republic of the Congo and Indonesia (Behrman, Meinzen-Dick and Quisumbing 2012).



David Jakinda Otieno (holding field notes with both hands) poses with a group of local residents working at a leased farm in Tana Delta area, Kenya. Photo by Dennis Etemesi.

THE LAND LEASE PROBLEM IN KENYA

CORPORATE ACQUISITION OF KENYAN LAND

There are various foreign agricultural land lease investments in Kenya. In the Tana Delta region, British corporation G4 Industries is developing oil seed production and the Emirate of Qatar is engaged in horticulture production on 40,000 ha. In the Yala wetland area of western Kenya, Dominion Farms Limited, a US corporation is involved in rice production (FIAN International 2010). Further, various multinational companies have expressed interest in acquiring huge amounts of land for various investment

undertakings in the Tana Delta region. These include: Mat International Limited’s interest in acquiring close to 30,000 ha (and a further 90,000 hectares from adjacent districts) for sugar cane production and Tiomin Kenya Limited’s interests in large tracts of land for the extraction of titanium (Nunow 2011). Aside from foreign investors, there are a few large local lease arrangements in the Tana Delta region, as well. Four years ago, Mumias Sugar Company was granted a licence by the government to convert a wetland area in the delta into sugar cane production to generate eco-friendly biofuels. The Kenyan government has also issued tenure rights and ownership of about 40,000 ha of land to a state corporation, Tana & Athi Rivers Development Authority, to grow rice and maize (FIAN International 2010).

PROTESTS AND VIOLENCE

In the recent past, communities across Kenya have protested the loss of ancestral land rights, disruption of their livelihoods, inadequate compensation for land and poor working conditions on the leased farms (FIAN International 2010). The most notable protests against land leases on Tana Delta land include those against planned investments by Mumias Sugar and the now-defunct Canadian firm, Bedford Biofuels, and in the Yala wetlands, Dominion Farms. In the Tana Delta region, between August 2012 and February 2013, widespread violence related to the scramble for land between two warring communities on one hand, and local residents and multinational investors on the other, claimed the lives of over 200 people and led to the displacement of over 1,000 more, as well as the destruction of more than 100 houses and other valuable properties. Land issues are particularly salient in Kenya, where less than 20 percent of land is arable and agriculture is the main source of livelihood for more than 70 percent of the population (Kenya Institute for Public Policy Research and Analysis [KIPPRA] 2009).

URGENT POLICY MEASURES REQUIRED

While the current leases remain contentious, the investors plan future extensions of the leases (FIAN International 2010). However, there is no clear policy framework to streamline foreign land deals; even recent land policy documents lack specific guidelines on how to address or manage foreign land leasing.¹ Land leasing requires urgent policy measures to ensure the effective design and use of leased land. This policy brief provides insights on the measures that local Kenyans, who live in the land lease areas of the Tana Delta and Yala wetlands of Siaya County in western Kenya, want to see incorporated in the design of land leases. The incorporation of local stakeholders' feedback in the design of future leases would ensure fair negotiations, enhance mutual trust in the leases, reduce protests and disruptions of lease investments, and ensure stability of lease developments.

WHAT KENYANS WANT IN FOREIGN LAND LEASE DESIGNS

This section reports insights obtained from an analysis of survey opinions on what Kenyans would want in the design of future land leases. A random sample of 369 respondents (mainly household heads or main land-use decision makers at the household level) were interviewed, comprising 169 respondents from the Yala wetlands in Siaya County and 200 from Tana Delta.² The respondents were identified through systematic random sampling procedure, which entailed selecting every third or sixth household in Tana Delta and Yala, respectively. The survey was conducted using face-to-face interviews from June to July 2012 in

Tana Delta and from October to November 2012 in the Yala wetlands. The survey aimed to characterize household's perceptions on foreign land leases and their preferences for various attributes of foreign land leases. Prior to the individual household survey, consultations were held with key informants on land issues (government land officers and land researchers) to understand important aspects of land leasing. In addition, focussed group discussions were held with eight key informants (comprising village leaders, farmers and religious leaders) in each study site. The focus group discussions were meant to understand general community perspectives on land leases.

Descriptive analysis of the survey data show that the average land ownership per household is 2.86 acres in the Yala wetlands and 8.42 acres in Tana Delta; about 83 percent and 71 percent of all the land is cultivated in the Yala wetlands and Tana Delta, respectively. Thus, there is relatively more land available for leasing and other investments in Tana Delta. About 90 percent of all respondents (n=332) "own" the land as individuals, but in Yala, less than 60 percent (n=101) have official paperwork to signify the security of their tenure. The situation is worse in Tana Delta, where up to 63 percent (n=126) of respondents lack these vital land registration documents. This has serious implications for the safety of transactions and investments made on the land in these sites.

On average, less than 40 percent (n=147) of the respondents were aware of existing leases in the areas where they live. This data corroborates the research by Vermeulen and Cotula (2010), which finds that foreign land lease negotiations are often held in secrecy. Although nearly 60 percent (n=221) of respondents in this study think that well-managed leases could offer economic benefits, about half of all respondents (n=185) fear that foreign land leases could be a form of land grabbing and displacement. This perception confirms the assertion by Vermeulen and Cotula (2010) that

1 See, for instance, Republic of Kenya (2009).

2 The population in Siaya County is estimated at 550,000, while the population in Tana Delta is estimated at 240,000 persons (Kenya National Bureau of Statistics [KNBS] 2011, 5-6). The sample sizes in this study vary due to differences in the land size between the two sites, and the higher concentration of foreign land lease investments in Tana Delta.

the “land rush” in Africa often makes locals vulnerable to dispossession due to weak land use rights and investors’ limited accountability to the public.

More than 90 percent (n=332) of respondents reported that it was “important” or “very important” to develop a land lease policy to guide foreign-lease investments in Kenya. Furthermore, most of them (91 percent; n=336) indicated that a policy targeted at streamlining foreign land leases was “urgently” or “very urgently” needed. Respondents suggested that inclusive management committees, comprising various stakeholders, such as farmers, women, youth, village elders, government land officials and religious leaders, should be formed to enhance the management of foreign-held land leases. At present, only a few respondents — 3 percent in Yala (n=5) and 13 percent in Tana Delta (n=26) — belong to local land management committees where they might influence decision making on land allocation and administration.

Respondents were wary of including political leaders such as members of Parliament, county senators or civic ward representatives in the proposed management committees, indicating they would prefer the limited involvement of politicians in negotiations. This is likely due to the fact that in other contexts, community-level consultations have been reportedly dominated by local political leaders who often promote investors’ objectives for personal gain at the expense of wider community interests (Nhantumbo and Salomao 2010; Sulle and Nelson 2009). In addition, respondents indicated they would like regular meetings that consist of transparent and inclusive negotiations where they are directly consulted; to have negotiation records shared with them; and agreed upon lease payments made directly to landowners, rather than made through intermediaries.

There was considerable preference among interviewees (60 percent; n=221) for a lease design that would: allow the size of leased plot to be increased based on mutually

agreed upon negotiations; provide formal contract employment rather than casual/temporary work; and making market price subject to negotiation on a case-by-case basis. Short leases that do not exceed 15 years are significantly preferred over medium and long-term leases. Key informant interviews and focus group discussions with local community members revealed that the main reason for preferring shorter leases was that a shorter duration would enable quicker assessment and renegotiation of lease terms. Respondents feared that long-term leases of up to 55 years would be difficult to renegotiate and would lead to future conflicts between developers and landowners’ descendants.

POLICY OPTIONS AND RECOMMENDATIONS

Kenya is currently in the process of revising its land policies. There is a sessional paper to guide the land reform process and various stakeholder forums have been conducted to deliberate on consolidating land acts and legislations (Republic of Kenya 2009). Despite this progress, the ongoing reforms only focus on the acquisition, registration, use and tenure rights associated with land leases, while the issue of local stakeholder participation in the management of foreign-held land leases is completely missing from the reform agenda. In order to improve the design of future leases, the following aspects should be considered:

- Ensure transparent lease negotiations in which local communities are directly involved as key stakeholders rather than being represented solely through politicians.
- Share records openly with local community members.
- Conduct regular consultative meetings with the locals in the communities where land leases are being sought.
- Pay lease money directly to landowners instead of making the payments through intermediaries.

Politicians and other local leaders could act as witnesses of the deals.

- Foreign investors should make full disclosure of their lease intentions and investment plans at the time of lease negotiations, to enable a smooth change in land use without disrupting local landowners' livelihood activities.
- Conduct community-level civic education on foreign land lease matters to promote local awareness and collaboration in land lease investments.
- Incorporate features that are important to local community members in the lease designs, such as acceptable lease durations (not exceeding 15 years); negotiations for lease renewal; mutual agreement on land size to be leased; long-term, permanent employment of local community members; and appropriate monetary compensation for the leased lands.
- Promote inclusive management processes for foreign-held lease designs, specifically allowing participation by women, village elders, government land officials, youth and religious leaders, among other important stakeholder groups.

CONCLUSION

Participatory negotiations and the involvement of local stakeholders in the design of foreign land leases are important factors for minimizing conflicts and disruptions, and for bringing the most benefit possible to landowners and host communities. This study confirms the notion of lack of or inadequate stakeholder consultation and involvement in foreign land leases. There is relatively low level of awareness by local people about ongoing lease investments in the regions studied. Due to the exclusion of locals from the

negotiation and implementation of leases, there is a feeling among them that foreign-held lease investments may contribute to their eviction and marginalization. The design of future land leases could be improved by considering the opinions of local people on lease durations, sizes, their renewability, and the provision of adequate monetary and non-monetary compensation for the leased land. Further, the formation of management committees, comprising various local community representatives, is deemed appropriate in enhancing stakeholder participation and ensuring accountability in the leases. Regular consultative meetings, the sharing of lease negotiation records with local communities and the direct payment of landowners rather than intermediaries are also considered appropriate for improving transparency.

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