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Land in Africa:

Who owns it? Who wants it? Who will pay for it?

Presentation to the Agribusiness Africa Conference
Emperor's Palace, Gauteng, 19 July 2018

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Two land questions

1. Land tenure

- Legal recognition of land rights
- Institutions to register and record rights
- Defence and regulation of land rights

2. Land redistribution

- Primarily in the former settler colonies
- To overcome dualism between white farms & native reserves
- Framed as decolonisation, but outcomes contested

Key messages

1. South Africa is an **extreme but not exceptional** case, in terms of the extent of land dispossession, and the expansion of private title.
2. Across Africa, **insecure land tenure** leaves rural populations vulnerable to dispossession – a continuation of a long history since colonialism.
3. The rise in **land-based investments** and agricultural commercialisation is seeing new entrants, and new controversies, with allegations of ‘land grabbing’.
4. South Africa **needs to learn** from experiences elsewhere, where the state, and traditional authorities, treat community and customary land as their own, and transact it over the heads of local people.

A distinct new trend

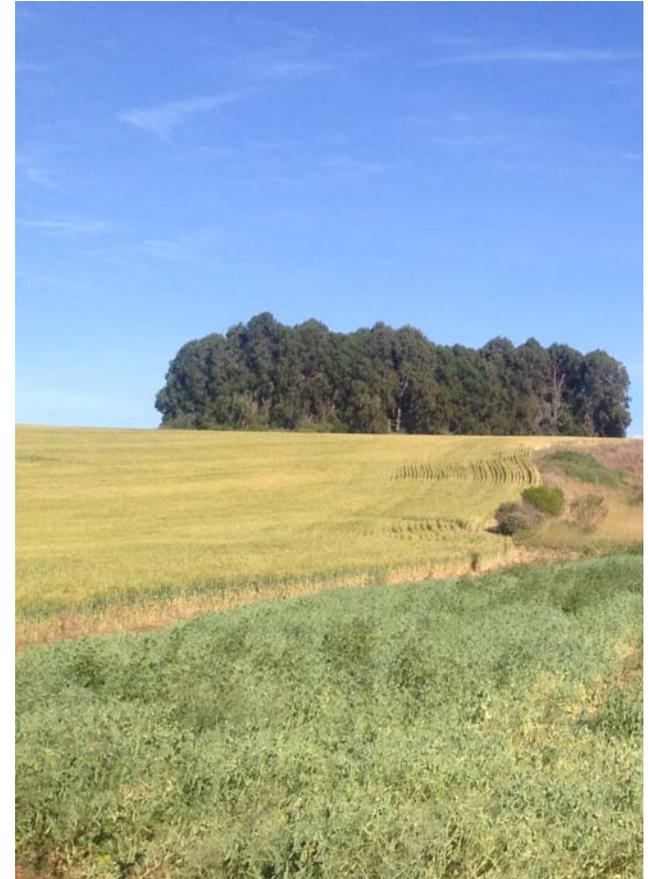
‘land grabbing’

‘large-scale land acquisitions’

‘rising interest in farmland’

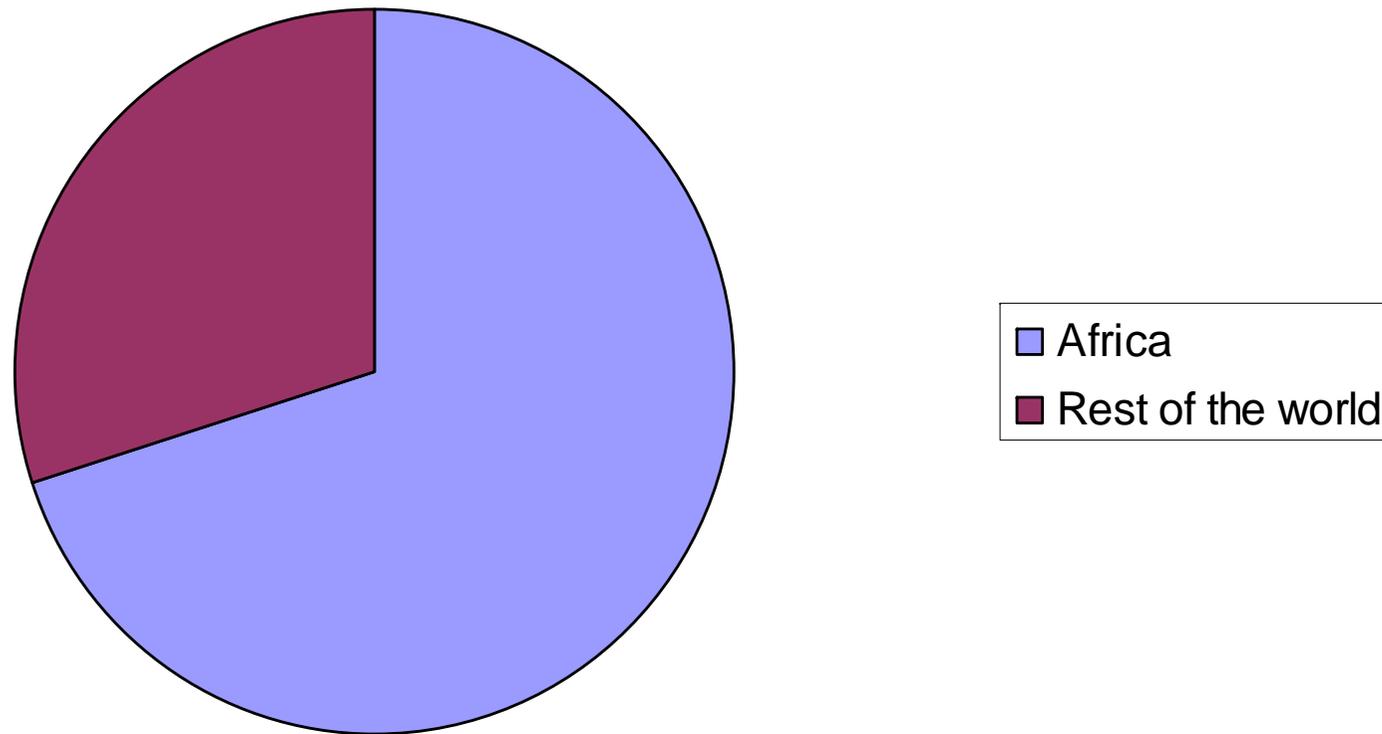
‘responsible agricultural investment’

Terminology is political – has implications for interpretation and response



Where are major land deals taking place?

Large-scale land acquisitions (2009)
Total approx 45 million hectares

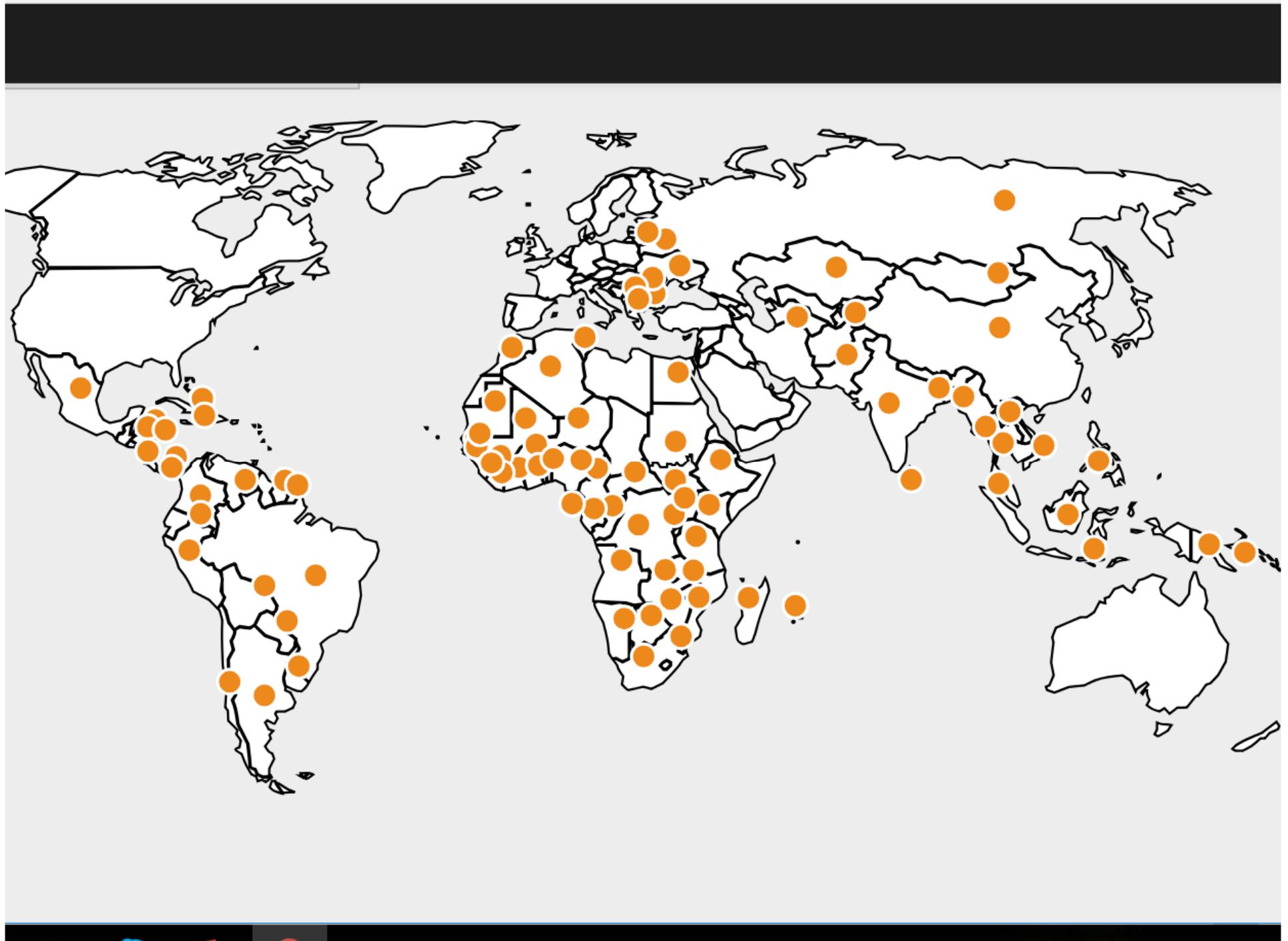


Source: World Bank 2010

Overseas Land Investments to Secure Food Supplies



Source: von Braun and Meinzen-Dick 2009,
with data compiled from media reports.



Why is it happening?



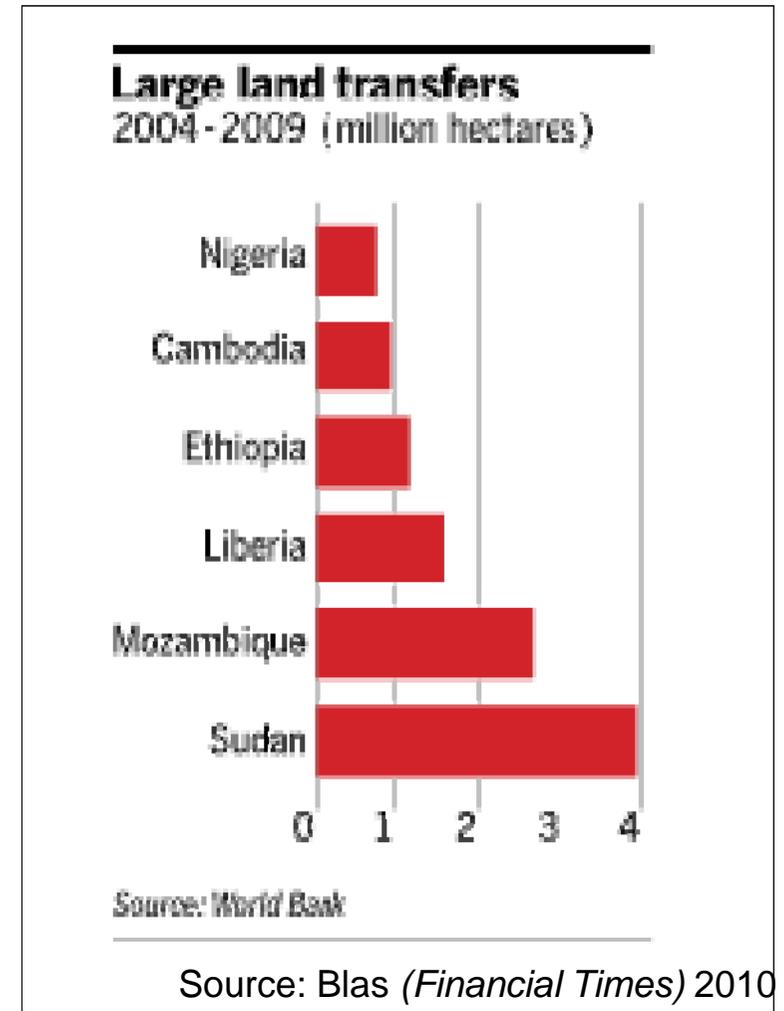
Triple F crisis

- Food
 - Fuel
 - Financial
- Plus pull factors
 - Rise in domestic demand

Large land deals in Africa

Drivers & actors:

- Asian powers seeking to secure food supply
- Oil-rich (but land and water poor) Gulf States
- European and North American banks, financiers and sovereign funds, responding to financial crisis
- All the above in partnerships with African governments and/or domestic partners.



Why is Africa the centre of land deals?

1. The land is presented as unused and available
 - The central “Guinea-Savannah” zone of Africa constitutes a “vast under-utilised land reserve” – World Bank 2009
 - But evidence that all of it is either claimed, used or occupied.
2. Customary tenure unrecognised by state / investors
 - Dominance of customary tenure systems
 - Customary use rights are inadequately recognised either in law or in practice as holders of real property rights.



An (incomplete) depiction of major land deals in some countries of Southern Africa

| | Jatropha | Sugar | Mining | Cotton | Rice | Tourism | Hydro-electric | Forestry |
|--------------|----------|-------|--------|--------|------|---------|----------------|----------|
| Angola | | | X | | | | X | |
| Madagascar | X | | | | X | | | X |
| Malawi | | X | X | X | | | | |
| Mozambique | X | X | X | | X | X | X | X |
| Namibia | | | X | | | X | X | |
| South Africa | X | X | X | | | X | | |
| Tanzania | X | X | X | | | X | | X |
| Zambia | X | X | X | | | | | |
| Zimbabwe | X | X | X | | | | | |

Significant trends in land deals in Southern Africa

1. Biofuels rather than food; boom & bust?
2. Extractive industries: mining and forestry
3. Reversals of land reform in Zimbabwe?
4. The next great Trek: South Africans head north
5. The 'vultures': speculative investment funds



African AgriLand Fund

“The Fund brings together the key themes of agriculture/food security, Africa, socially-responsible investing (SRI) and economic sustainability, purchasing and managing a wide spectrum of agricultural properties across the sub-Saharan region, with investments diversified across both geographically and across agricultural sectors - including crops, biofuels, livestock, game farming and timber. Returns, based on those successfully achieved through a 4-year pilot project, are projected to be approximately 30% per annum over the Fund's 5-year term.”

“Interested investors are invited to contact the Head of Marketing, ... for more information.”

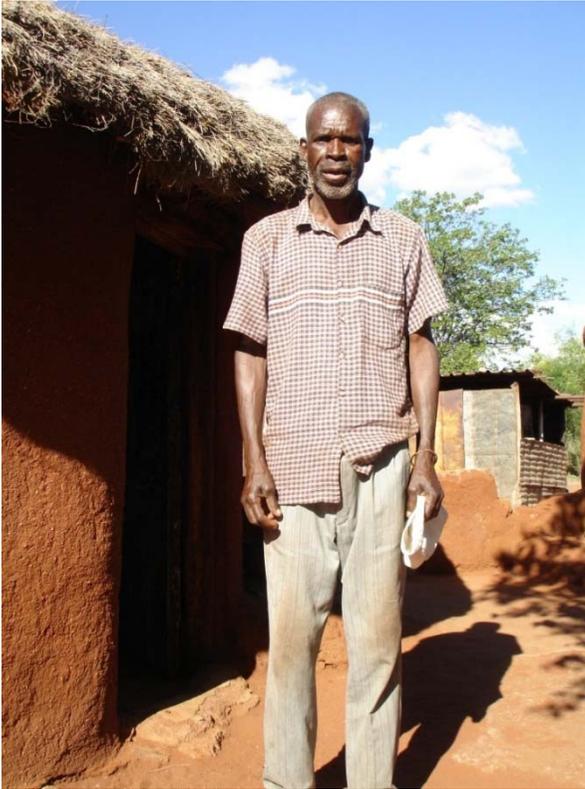
“Please note that the minimum investment size is €500,000 for private investors and €5m for institutional investors.”

“The Manager buys agricultural land and manages a wide spectrum of agricultural projects, spread across different commodities.”

12 dimensions of land deals

| Dimension | Range of experiences documented |
|-------------------------------|---|
| Size | Available data on deals over 1,000 hectares; huge variation ranging up to deals of 500,000 hectares and plans of deals up to 10 million hectares |
| Duration | Short to medium term, but mostly long-term 15-25 year (often renewable) leases, and up to 50 or 99 year leases |
| Source | Domestic private investors, foreign private investors (both being individuals or large companies), parastatals, foreign sovereign wealth funds, |
| Commodity | Jatropha, sugar, rice, other foods, forestry, various minerals, also tourism experiences. |
| Business model | Enclave model, colonist model, large commercial estates, nucleus estates with outgrowers, outgrowers and processor, smallholder model |
| Tenure arrangements | Lease, concession, illegal enclosure, or purchase (rare) |
| Resource access | Land, water, minerals, marine resource, wildlife, forestry (<i>and labour</i>) |
| Lease / compensation payments | Value, method of calculation, timing (once-off or repeat, eg. annual payments) and distribution to local communities, traditional leaders and local, district, provincial and national government |
| Displacement | 'Vacant' and 'unused' land, claimed land, grazing land, cultivated lands, lands used for natural resource harvesting |
| Labour | Locally hired labour, imported labour, self-employment as outgrower |
| Settlement | Changes in settlement (eg. villagisation), de-agrarianisation |
| Infrastructure | Investment in infrastructure for production, processing transport (roads, ports), and social infrastructure (schools, clinics) |

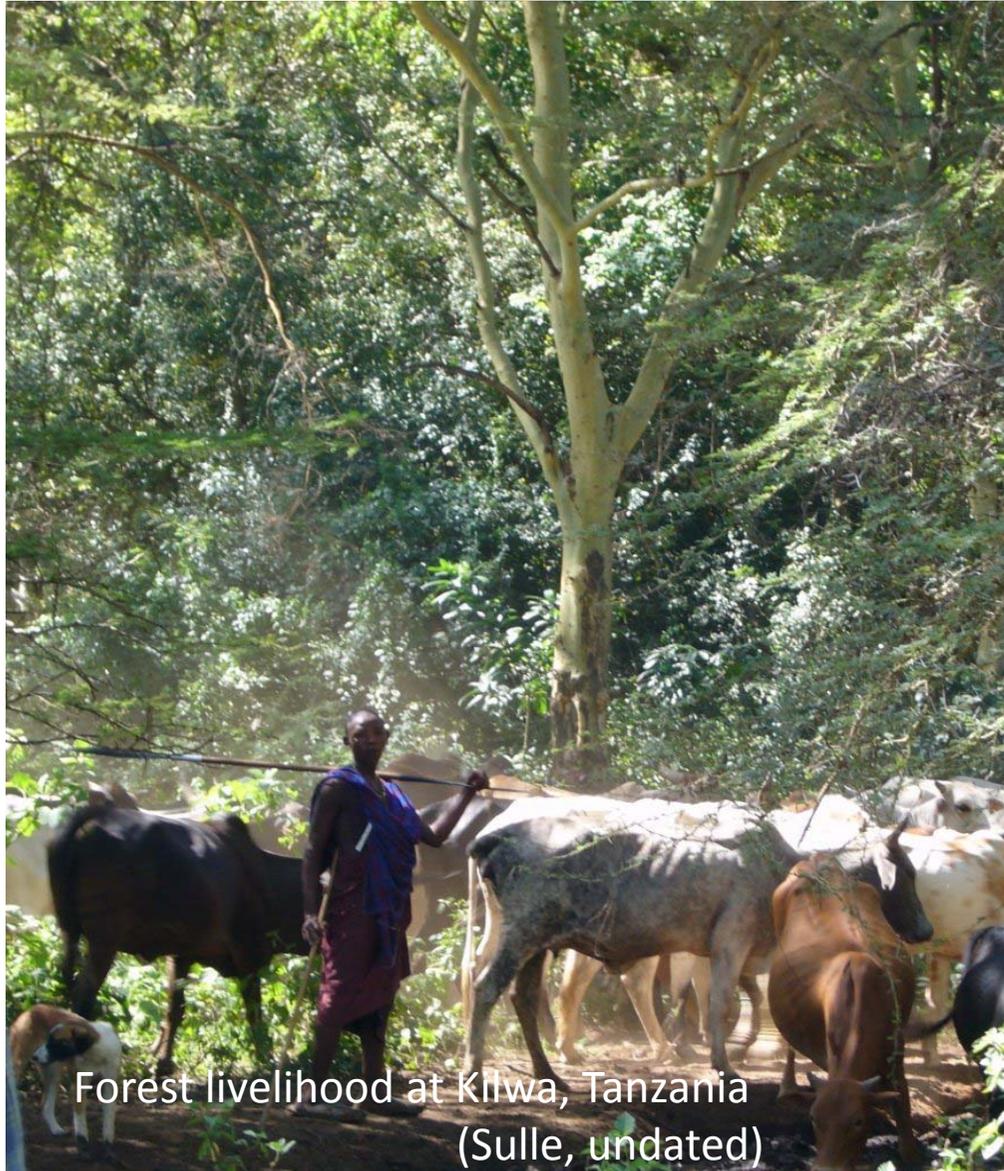
‘Whose land are you giving away, Mr President?’



Source: Hall 2008

- *Remedy lies in... legal acknowledgement that customary and other longstanding unregistered land tenancy amounts to a real property interest, registered or not... Without this change, majority rural landholders remain little better than squatters on their own land, a condition already wrongfully endured for a century or more... While hardly new, the current wave of state... backed leasing hardens an already dangerous dichotomy between the interests of governments and their people*
– Alden Wily 2010: 1

Land use changes not readily reversed



Forest livelihood at Kilwa, Tanzania
(Sulle, undated)



Cleared forest at Bioshape jatropha plantation
'trial plot' Kilwa district (IFM report, 2009)

Reflecting on these trends

1. 'Vacant land' discourse is fundamentally flawed
2. Investors not the 'grabbers' ?
3. Lessors not the rights holders? (state-sponsored grabbing of customary land rights)
4. Lessees not the investors? (onward transfers)
5. Not only land being grabbed...
6. Clearly not all transnational!
7. Largely legal (or *legalised*) – but wide variation
8. Stalemates & reversals in land policies



Regulatory responses



- **AU** Framework & Guidelines on Land Policy in Africa (2009)
- **FAO** Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries & Forests (2012)
- **AU** Guiding Principles on Large Scale Land Based Investments (2014)
- **FAO** Principles for Responsible Investment in Agriculture and the Food System (2014)

How does agricultural commercialisation affect land rights?



It depends on the model.

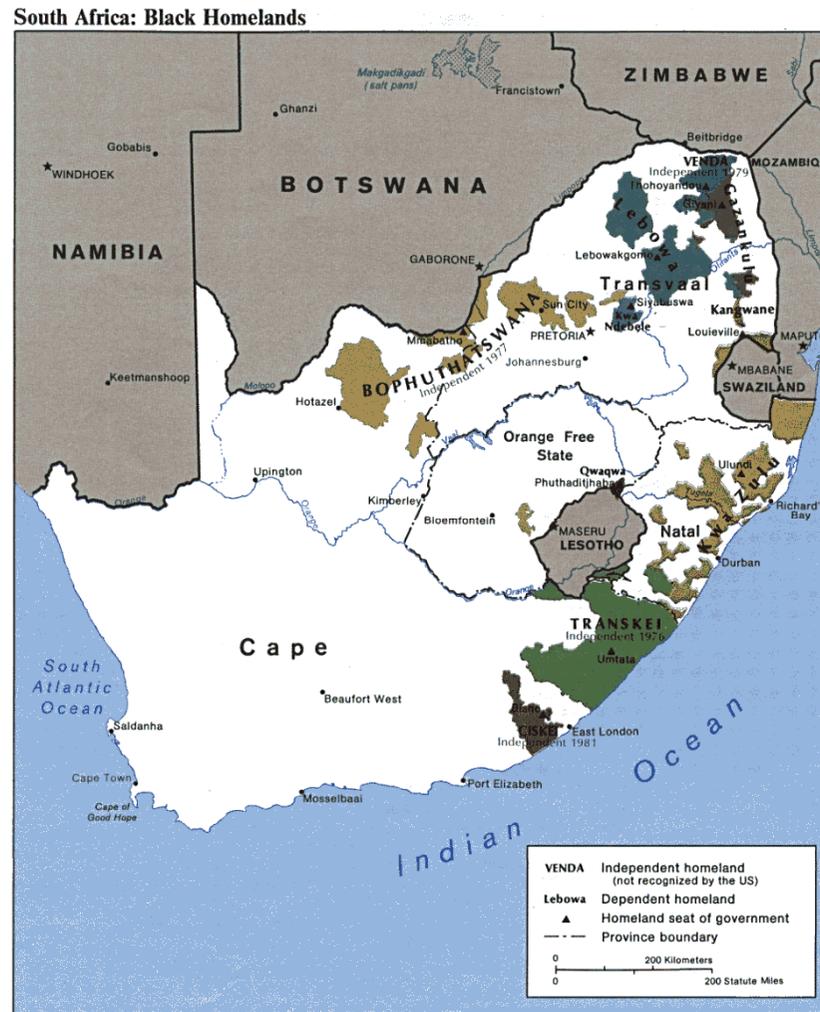
Four patterns of agricultural commercialisation:

1. **Large** estates and plantations
2. **Medium-scale** 'middle farmers'
3. **Outgrowers** and contract farming
4. **Smallholder** commercialisation

South African farmers and agribusiness companies have a growing footprint in Africa's agro-food system

- South African companies, and MNCs with SA-based operations, are major players in the changing agro-food system in Africa, in relation to:
 1. Inputs
 2. Finance
 3. Land
 4. Processing
 5. Retail
- Exporting the South African model – with its benefits and its flaws...
- Widespread withdrawal from land deals – either due to unviable projects or contestation.

What land, to be shared by whom, how, and with what outcomes?

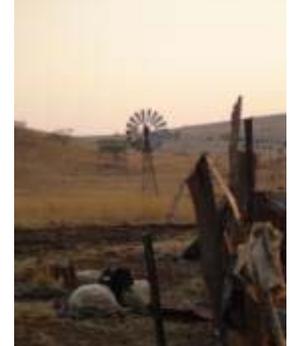


How is South Africa dealing with land?

- ‘Property clause’ (Section 25) in Bill of Rights in Constitution is a solid mandate for transformation.
 - No blanket protection of private property
 - Expropriation provided for within the rule of law
 - Subject to ‘just and equitable’ compensation
 - Requires redistribution, tenure reform & restitution
- Motlanthe’s High Level Panel (2017) is the most authoritative assessment of progress with land reform
 - **Redistribution:** 9.7% commercial farmland; leasehold model problematic
 - **Restitution:** will take generations; >20,000 old & 160,000 new claims
 - **Farm tenure:** evictions overshadow redistribution & restitution
 - **Communal tenure:** still insecure in law & practice; Ingonyama Trust is one such case. Dispossession continues due to mining, agric & tourism deals.

Section 25: Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application
- a) for a public purpose or in the public interest; and
 - b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
- a) the **current use** of the property;
 - b) the **history** of the acquisition and use of the property;
 - c) the **market value** of the property;
 - d) the extent of direct **state investment** and subsidy in the acquisition and beneficial capital improvement of the property; and
 - e) the **purpose** of the expropriation.
- (4) For the purposes of this section
- a) the **public interest includes the nation's commitment to land reform**, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - b) property is not limited to land.



Section 25: Property

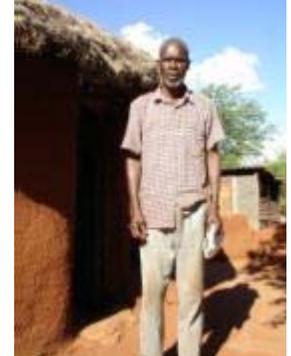
(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. [\[Land Redistribution\]](#)

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. [\[Tenure Reform\]](#)

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress. [\[Land Restitution\]](#)

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1). [\['Insulation clause'\]](#)

(9) Parliament must enact the legislation referred to in subsection (6).



Expropriation without compensation

- The debate has been obscured:
 - ANC and EFF mean different things by this
 - Nationalisation & state custodianship vs on a case-by-case basis
 - ANC has not declared itself on compensation policy, but some clues...
- Constitutional amendment not needed
 - HLP concluded that failings have been political, institutional, budgetary
 - not constitutional
 - Government has not tried to use its existing powers – needs testing
 - EWC is already provided for in the Constitution – as long as it is ‘just and equitable’
 - Expropriation Bill can (will be?) amended to specify when compensation will be paid and when not
- But politics and public perceptions are pushing amendment

Questions to consider

1. How can agribusinesses contribute to making land reform work in South Africa? What concessions can and should be made? Are we in a new moment of pacting?
2. How can and should private sector actors aiming for land-based investments engage with African communities – in SA and elsewhere – who hold land under customary tenure?
3. Can the FAO and AU guidelines provide a useful set of reference points for best practice?

